

TABLING NOTE FOR SUBORDINATE LEGISLATION

SUBORDINATE LEGISLATION NO. 27 OF 2017

EDUCATION AND CARE SERVICES (NATIONAL UNIFORM LEGISLATION) (ACT AMENDMENT) REGULATIONS 2017

Purpose

The *Education and Care Services (National Uniform Legislation) Act 2011* (the Act) and the Education and Care Services National Regulations 2011 (the National Regulations) provide the legislative foundation for the National Quality Framework (NQF) for early childhood and school age education and care services in the Northern Territory.

The NQF is a national regulatory and quality assurance system for long day care, family day care, three year old kindergarten, preschool and outside school hours care services.

The NQF commenced on 1 January 2012 (1 August 2012 in Western Australia). It operates as an 'applied national law system' whereby the national template legislation is enacted by Victoria, as host jurisdiction, and is applied by other jurisdictions either enacting their own legislation applying Schedule 1 of Victoria's law as a law of their own jurisdictions, or passing legislation consistent with Victoria's law (corresponding law).

Summary of key provisions

Commonwealth, state and territory ministers agreed to changes to the NQF following a review of the National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care.

The review recommendations, which include amendments to the Education and Care Services National Law (the National Law) (set out in the appendix to the Act) and the National Regulations, ensure quality education and care in Australia continue to improve in the most efficient and effective way. The changes respond to identified issues in the implementation of the NQF and will deliver benefits to service providers and educators.

The amendments identified by the review will improve the NQF by:

- simplifying and streamlining the administration of the National Law to reduce the administrative burden for the regulatory authority of jurisdictions
- removing supervisor certificate requirements to reduce the compliance burden for education and care services
- streamlining the assessment and rating process for education and care services by implementing a revised National Quality Standard to increase consistency in its interpretation and outcomes within and across jurisdictions
- strengthening the National Law as it applies to family day care services to improve the quality of education and care provided to children
- making minor and technical changes to specific provisions in the National Law to clarify their operation and effect.

Adopted in full, the recommendations will improve the effectiveness of the NQF and generate an estimated \$43.6 million in average annual net administrative savings to education and care services – saving the sector an estimated \$436 million in reduced regulatory burden over the next decade. The average annual net savings for the Northern Territory will be approximately \$150 000.

Legislative Authority

The *Education and Care Services National Amendment Act 2017* was passed through the Victorian Parliament (as the host jurisdiction) on 23 March 2017 and received Royal Assent on 27 March 2017.

Section 5 of the Act requires “uniform adoption of nationally approved amendments to Education and Care Services National Law” and that “The Administrator may, by regulation, amend the Education and Care Services National Law set out in appendix to this Act to give effect in this jurisdiction to any nationally approved amendment.”

On 30 August 2017, the Northern Territory Administrator made regulations to amend the National Law set out in the appendix to the Act.

NORTHERN TERRITORY OF AUSTRALIA

EDUCATION AND CARE SERVICES (NATIONAL UNIFORM LEGISLATION) (ACT AMENDMENT) REGULATIONS 2017

Subordinate Legislation No. 27 of 2017

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NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. 27 of 2017*

***Education and Care Services (National Uniform Legislation) (Act
Amendment) Regulations 2017***

I, John Laurence Hardy, Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Education and Care Services (National Uniform Legislation) Act*.

Dated 30 August 2017

J. L. HARDY
Administrator

By His Honour's Command

E. D. LAWLER
Minister for Education

* Notified in the *Northern Territory Government Gazette* on 31 August 2017.

1 Citation

These Regulations may be cited as the *Education and Care Services (National Uniform Legislation) (Act Amendment) Regulations 2017*.

2 Legislation amended

These Regulations amend the Appendix to the *Education and Care Services (National Uniform Legislation) Act*.

3 Commencement

- (1) These Regulations (except regulations 28, 29 and 72) commence on 1 October 2017.
- (2) Regulations 28, 29 and 72 commence on 1 February 2018.

4 Section 5 amended

- (1) Section 5(1), definitions ***approved family day care venue, family day care service, Ministerial Council, nominated supervisor, office, certified supervisor*** and ***supervisor certificate***

omit

- (2) Section 5(1)

insert (in alphabetical order)

approved family day care venue means a place (other than a residence) approved under section 50A or 54(8A) as a family day care venue for an approved family day care service.

family day care educator assistant means a person engaged by or registered with a family day care service to assist family day care educators.

family day care service means an education and care service that:

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

*Note for definition ***family day care service****

A family day care service that is an approved family day care service may provide education and care to children from a family day care residence or an approved family day care venue.

Ministerial Council means the Ministerial Council which:

- (a) is constituted from time to time by Ministers of the Crown of the Commonwealth, State and Territory Governments; and
- (b) is responsible for early childhood education and care matters.

nominated supervisor, in relation to an education and care service, means an individual who:

- (a) is nominated by the approved provider of the service under Part 3 to be a nominated supervisor of that service; and
- (b) unless the individual is the approved provider, has provided written consent to that nomination.

*Note for definition **nominated supervisor***

An individual may be both a nominated supervisor of a family day care service and a family day care co-ordinator for that service if the individual meets the criteria for each role.

office, in relation to a family day care service, means:

- (a) the principal office of the service; or
- (b) the principal office of the approved provider of the service; or
- (c) any other business office of the approved provider of the service; or
- (d) any premises of the service from which the service's family day care educators are co-ordinated.

person in day-to-day charge, in relation to an education and care service, means a person who is placed in day-to-day charge of the service in accordance with the national regulations.

prohibition notice means a prohibition notice given under section 182(1) or (3).

serious incident means an incident or class of incidents prescribed by the national regulations as a serious incident.

(3) Section 5(1), definition **staff member**

omit

the nominated supervisor

insert

a nominated supervisor

5 Section 13 amended

(1) Section 13(2)(b)

omit

Law.

insert

Law; and

(2) After section 13(2)(b)

insert

(c) whether the person has the management capability to operate an education and care service in accordance with this Law; and

(d) any of the following actions taken under the *A New Tax System (Family Assistance) (Administration) Act 1999 (Cth)* in relation to a child care service approved under that Act, operated by the person or in relation to which the person was a person with management or control:

(i) any sanction imposed under section 200 of that Act;

(ii) any suspension imposed under section 201A of that Act;

(iii) any infringement notice given under section 219TSI of that Act.

6 Section 14 amended

Section 14(2)

omit

and

insert

until

7 Section 27 amended

Section 27(a) and (b)

omit, insert

- (a) if the suspension was proposed on a ground referred to in section 25(a) – accept an undertaking from the approved provider under section 179A; or
- (b) in any case:
 - (i) suspend the provider approval for a period not more than the prescribed period; or
 - (ii) decide not to suspend the provider approval.

8 Section 39 amended

(1) Section 39(2)

omit, insert

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

(2) Section 39(3)

omit

the nominated supervisor or any certified supervisor

insert

that at least one nominated supervisor

(3) Section 39(3)

omit

day to day

insert

day-to-day

9 Section 41 amended

Section 41(4)(b)

omit, insert

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

10 Section 43 amended

Section 43(2)

omit

supervisor

insert

supervisors

11 Section 44 amended

(1) Section 44(1)(d)

omit, insert

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

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

(2) Section 44(3)

omit, insert

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

Note for section 44

This approval is granted under section 50A only if exceptional circumstances exist.

12 Section 47 amended

Section 47(1)(e)

omit, insert

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

13 Section 50A inserted

After section 50

insert

50A Approval of a place as a family day care venue

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

14 Section 51 amended

(1) Section 51(2)

omit, insert

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

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

(2) After section 51(4)

insert

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

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

- (a) the maximum number of children is exceeded because a child is, or 2 or more children from the same family are, being educated and cared for by the education and care service in an emergency; and
- (b) the approved provider is satisfied on reasonable grounds that this will not affect the health, safety and wellbeing of any other child who is attending the education and care service.

Example for subsection (4B)

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

15 Section 52 amended

Section 52(b), after "principal office"

insert

of the service

16 Section 54 amended

(1) After section 54(1)

insert

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

(2) Section 54(4)

omit

and

insert

until

(3) Section 54(8)

omit, insert

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

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

17 Section 56 replaced

Section 56

repeal, insert

55A Condition relating to family day care co-ordinators

- (1) Without limiting section 55, an amendment under that section may impose a condition on the service approval for a family day care service requiring the approved provider to ensure that there is a minimum of one qualified person employed or engaged as a family day care co-ordinator for each 15 family day care educators engaged by or registered with that service.
- (2) A condition may only be imposed under subsection (1) if:
- (a) the family day care service has been operating for more than 12 months; and
 - (b) the Regulatory Authority:
 - (i) has taken into account the approved provider's capability and compliance with this Law in respect of the family day care service; and
 - (ii) considers that family day care educators are not adequately monitored and supported by a family day care co-ordinator.
- (3) Section 163 does not apply if a condition is imposed under subsection (1) in respect of a family day care service.
- (4) A person is a qualified person under this section if the person has the qualifications prescribed by the national regulations.

56 Notice of addition of nominated supervisor

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

-
- (2) The notice must:
- (a) nominate one or more individuals to be nominated supervisors of the service and, unless the individual nominated is the approved provider, include from each nominated individual the written consent to the nomination; and
 - (b) include the prescribed information; and
 - (c) be given:
 - (i) at least 7 days before the individual is to commence work as a nominated supervisor; or
 - (ii) if that period of notice is not possible in the circumstances, as soon as practicable but not more than 14 days after the individual commences work as a nominated supervisor.

Note for section 56

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

56A Notice of change of a nominated supervisor's name or contact details

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

18 Section 62 amended

- (1) Section 62(3)

omit

The notice

insert

Subject to subsection (5), the notice

- (2) After section 62(4)

insert

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

19 Section 72 amended

Section 72(a) and (b)

omit, insert

- (a) if the suspension was proposed on the ground referred to in section 70(a), (c) or (d), accept an undertaking from the approved provider under section 179A; or
- (b) in any case:
 - (i) suspend the service approval for a period not more than the prescribed period; or
 - (ii) decide not to suspend the service approval.

20 Section 84 amended

Section 84(1)

omit

81

insert

82

21 Section 89 amended

- (1) Section 89, before "For"

insert

(1)

- (2) Section 89, at the end

insert

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

22 Section 91 amended

Section 91(4)

omit, insert

- (4) If a service waiver is granted, the Regulatory Authority may place any conditions on the service waiver, including any condition limiting the use of the service waiver.
- (5) The Regulatory Authority may, at any time remove, add to or vary any conditions placed on a service waiver under subsection (4).
- (6) If a service waiver is granted or its conditions are amended under subsection (5), the Regulatory Authority must issue or reissue the service approval specifying:
 - (a) the element or elements of the National Quality Standard and the national regulations that have been waived; and
 - (b) any conditions placed on the waiver.

23 Section 96 amended

- (1) Section 96, before "For"

insert

- (1)

- (2) Section 96, at the end

insert

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

24 Section 98 amended

Section 98(4)

omit, insert

- (4) An application under subsection (3) must include payment of the prescribed fee.

-
- (5) If a temporary waiver is granted, the Regulatory Authority may place any conditions on the temporary waiver, including any condition limiting the use of the temporary waiver.
 - (6) The Regulatory Authority may, at any time, remove, add to or vary any conditions placed on a temporary waiver under subsection (5).
 - (7) If a temporary waiver is granted or its conditions are amended under subsection (6), the Regulatory Authority must issue or reissue the service approval specifying:
 - (a) the element or elements of the National Quality Standard and the national regulations that have been temporarily waived; and
 - (b) the period of the waiver; and
 - (c) any conditions placed on the waiver.

25 Section 103A inserted

After section 103

insert

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

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

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

\$100 000, in any other case.

26 Part 4 repealed

Part 4

repeal

27 Section 142 amended

Section 142(4)

omit, insert

- (4) The Regulatory Authority may extend the 30 day review period under subsection (3) in one of the following circumstances:
- (a) for an additional period of up to 30 days, if a request for further information is made under subsection (2);
 - (b) for an additional period of up to 30 days, by agreement between the approved provider and the Regulatory Authority;
 - (c) for an additional period of up to 60 days, where the Regulatory Authority considers there are special circumstances that warrant an extension of time to conduct the review.

28 Section 152 amended

Section 152(5)

omit, insert

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

29 Section 158 amended

Section 158(b)

omit, insert

- (b) the Regulatory Authority advises the Board that the service no longer meets the requirements for the rating levels prescribed for the purposes of section 152(5).

30 Section 161 amended

Section 161

omit

a nominated

insert

at least one nominated

31 Section 161A inserted

After section 161

insert

161A Offence for nominated supervisor not to meet prescribed minimum requirements

The approved provider of an education and care service must not nominate an individual to be a nominated supervisor of that service unless that individual meets the prescribed minimum requirements for nomination as a nominated supervisor.

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

\$25 000, in any other case.

32 Section 162 amended

Section 162(1)(b) and (c)

omit, insert

(b) a nominated supervisor of the service;

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

33 Section 162A inserted

After section 162

insert

162A Persons in day-to-day charge and nominated supervisors to have child protection training

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

34 Section 163 amended

Section 163(1)

omit

one or more

insert

the prescribed minimum number of

35 Section 164 amended

Section 164(1)(b) and (c)

omit, insert

- (b) a nominated supervisor of the service;
- (c) a person in day-to-day charge of the service.

36 Section 164A inserted

After section 164

insert

164A Offence relating to the education and care of children by family day care service

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

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

\$50 000, in any other case.

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

Penalty: \$2 000.

37 Section 165 amended

Sections 165(2)

omit

The

insert

A

38 Section 166 amended

Sections 166(2)

omit

The

insert

A

39 Section 170 amended

(1) Section 170(2), (3) and (4)

omit, insert

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

- (a) the person is an authorised person; or
- (b) the person is under the direct supervision of an educator or other staff member of the service.

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

\$5 000, in any other case.

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

- (a) the person is an authorised person; or
- (b) the person is under the direct supervision of an educator or other staff member of the service.

Penalty: \$1 000.

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

(a) the person is an authorised person; or

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

Penalty: \$1 000.

(2) Section 170(5), definition **unauthorised person**

omit

unauthorised person means a person who is not

insert

authorised person means a person who is

40 Section 172 amended

Section 172(c)

omit, insert

(c) each nominated supervisor of the service;

41 Section 173 amended

(1) Section 173(2)(a)

omit

or certified supervisor

(2) Section 173(2)(b)

omit, insert

(b) if a nominated supervisor of an approved education and care service:

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

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

(iii) withdraws consent to the nomination;

-
- (3) Section 173(2)(d)
omit
ceasing
insert
if the approved provider ceases

- (4) Section 173(3) and (4)
omit, insert

- (3) A notice under subsection (1) or (2) must:
- (a) be in writing; and
 - (b) include any prescribed information.
- (4) A notice under subsection (1) must be provided within the relevant prescribed time to the Regulatory Authority that granted the provider approval to which the notice relates.
- (5) A notice under subsection (2) must be provided within the relevant prescribed time to the Regulatory Authority that granted the service approval for the education and care service to which the notice relates.

42 Section 174 amended

- (1) Section 174(2)(b)
omit, insert
- (b) any complaints alleging:
- (i) that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the approved education and care service; or
 - (ii) that this Law has been contravened;
- (2) Section 174(5)
omit

43 Section 174A inserted

After section 174

insert

174A Family day care educator to notify certain information to approved provider

A family day care educator who educates and cares for children as part of a family day care service must notify the approved provider of the service of the following information:

- (a) any serious incident that occurs while a child is being educated and cared for by the educator as part of the service;
- (b) any complaints alleging:
 - (i) that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the educator; or
 - (ii) that this Law has been contravened;
- (c) information in respect of any other prescribed matters.

Penalty: \$2 000.

44 Section 178 amended

Section 178(1)(a)

omit

the nominated

insert

a nominated

45 Part 7, Division 2 replaced

Part 7, Division 2

repeal, insert

Division 2 Enforceable undertakings

179A Enforceable undertakings

- (1) This section applies:
 - (a) if a person has contravened, or if the Regulatory Authority alleges a person has contravened, a provision of this Law; or
 - (b) in the circumstances set out in section 27(a), 72(a) or 184(3).
- (2) If subsection (1)(a) applies, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain actions, or refrain from taking certain actions, to comply with this Law.
- (3) If subsection (1)(b) applies in relation to the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the approved provider, under which the approved provider undertakes to take certain actions, or refrain from taking certain actions in relation to the education and care service.
- (4) If subsection (1)(b) applies in relation to a person other than the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain actions, or refrain from taking certain actions in relation to an education and care service.
- (5) A person may, with the consent of the Regulatory Authority, withdraw or amend an undertaking.
- (6) The Regulatory Authority may withdraw its acceptance of the undertaking at any time and the undertaking ceases to be in force on that withdrawal.
- (7) The Regulatory Authority may publish on the Regulatory Authority's website an undertaking accepted under this section.

179B Certain actions prohibited while undertaking is in force

- (1) While an undertaking is in force under section 179A(2), proceedings may not be brought for any offence constituted by the contravention or alleged contravention in respect of which the undertaking is given.
- (2) While an undertaking is in force under section 179A(3), the Regulatory Authority must not (as the case requires):
 - (a) suspend the provider approval under section 27 in relation to a matter that is the subject of the undertaking; or
 - (b) suspend the service approval under section 72 in relation to a matter that is the subject of the undertaking; or
 - (c) give a prohibition notice under section 182 in relation to a matter that is the subject of the undertaking.
- (3) While an undertaking is in force under section 179A(4), the Regulatory Authority must not give a prohibition notice under section 182 in relation to a matter that is the subject of the undertaking.

180 Certain actions prohibited if undertaking is complied with

- (1) If a person complies with the requirements of an undertaking under section 179A(2), no further proceedings may be brought for any offence constituted by the contravention or alleged contravention in respect of which the undertaking was given.
- (2) If an approved provider complies with the requirements of an undertaking under section 179A(3), the Regulatory Authority must not (as the case requires):
 - (a) suspend the provider approval under section 27 in relation to a matter that is the subject of the undertaking; or
 - (b) suspend the service approval under section 72 in relation to a matter that is the subject of the undertaking; or
 - (c) give a prohibition notice under section 182 in relation to a matter that is the subject of the undertaking.
- (3) If a person complies with the requirements of an undertaking under section 179A(4), the Regulatory Authority must not give a prohibition notice under section 182 in relation to a matter that is the subject of the undertaking.

181 Failure to comply with enforceable undertakings

- (1) If the Regulatory Authority considers that a person who gave an undertaking under section 179A has failed to comply with any of its terms, the Regulatory Authority may apply to the relevant tribunal or court for an order under subsection (2) to enforce the undertaking.
- (2) If the relevant tribunal or court is satisfied that the person has failed to comply with a term of the undertaking, the relevant tribunal or court may make any of the following orders:
 - (a) an order directing the person to comply with the term of the undertaking;
 - (b) an order that the person take any specified action for the purpose of complying with the undertaking;
 - (c) any other order that the relevant tribunal or court considers appropriate in the circumstances.
- (3) If the relevant tribunal or court determines that the person has failed to comply with a term of an undertaking under section 179A(2), proceedings may be brought for any offence constituted by the contravention or alleged contravention in respect of which the undertaking was given.
- (4) If the relevant tribunal or court determines that an approved provider has failed to comply with a term of an undertaking under section 179A(3), the Regulatory Authority may without further notice:
 - (a) if the undertaking was given in circumstances set out in section 27(a) – suspend the provider approval under section 27; or
 - (b) if the undertaking was given in circumstances set out in section 72(a) – suspend the service approval under section 72; or
 - (c) if the undertaking was given in circumstances set out in section 184(3) – give a prohibition notice under section 182 in relation to a matter that is the subject of the undertaking.
- (5) If the relevant tribunal or court determines that a person has failed to comply with a term of an undertaking under section 179A(4), the Regulatory Authority may, without further notice, give a prohibition notice under section 182 in relation to a matter that is the subject of the undertaking.

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

46 Section 182 amended

- (1) Section 182, heading
- omit*
- issuing**
- insert*
- giving**
- (2) Section 182(2)(b)
- omit*
- certified
- insert*
- nominated
- (3) Section 182(2)(g)
- omit, insert*
- (g) a volunteer;
- (h) a person who was formerly a person referred to in paragraphs (a) to (g) in relation to the approved education and care service,
- (4) After section 182(2)
- insert*
- (3) The Regulatory Authority may give a prohibition notice to a person to:
- (a) prohibit the person from being nominated as a nominated supervisor if the Regulatory Authority considers the person is not a fit and proper person to be nominated as a nominated supervisor of a service; or
- (b) impose one or more conditions on the nomination of the person as a nominated supervisor that the Regulatory Authority considers appropriate, if the Regulatory Authority

considers the person is a fit and proper person to be nominated as a nominated supervisor of a service subject to those conditions.

47 Section 184 amended

- (1) Section 184, heading
- omit*
- issue**
- insert*
- give**
- (2) After section 184(2)
- insert*
- (3) The Regulatory Authority may accept an undertaking from a person under section 179A instead of giving a prohibition notice under this Division.

48 Section 185 replaced

Section 185

repeal, insert

185 Content of prohibition notice

- (1) A prohibition notice given to a person under section 182(1) must state that the person is prohibited from doing one or more of the following:
- (a) providing education and care to children for an education and care service;
 - (b) being engaged as an educator, family day care educator, employee, contractor or staff member of, or being a volunteer at, an education and care service;
 - (c) carrying out any other activity relating to an education and care service.
- (2) A prohibition notice given to a person under section 182(3) must state that either:
- (a) the person is prohibited from being nominated as a nominated supervisor of an education and care service; or

-
- (b) the person may only be nominated as a nominated supervisor of an education and care service on the condition or conditions specified by the Regulatory Authority in the notice.
 - (3) A prohibition notice given to a person under section 182(1) or (3) must state:
 - (a) that the person may apply for cancellation of the notice; and
 - (b) how an application for cancellation must be made.

49 Section 186 amended

After section 186(4)

insert

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

50 Section 187 amended

- (1) Section 187, before "While"

insert

- (1)

- (2) Section 187, after "notice"

insert

under section 182(1)

- (3) Section 187(b)

omit

a supervisor, educator

insert

an educator

-
- (4) Section 187, at the end

insert

- (2) While a prohibition notice under section 182(3) is in force under this Law as applying in any participating jurisdiction for a person, the person must not:

(a) in the case of a prohibition notice under section 182(3)(a) – consent to a nomination of that person as a nominated supervisor of an education and care service; or

(b) in the case of a prohibition notice under section 182(3)(b) – consent to a nomination of that person as a nominated supervisor of an education and care service in contravention of a condition or conditions stated in the prohibition notice.

Penalty: \$20 000.

51 Section 188 amended

- (1) Section 188, before "An"

insert

- (1)

- (2) Section 188

omit

a supervisor, educator

insert

an educator

- (3) Section 188, at the end

insert

- (2) An approved provider must not nominate a person as a nominated supervisor of an education and care service if the approved provider knows, or ought reasonably to know, that a prohibition notice is in force under this Law as applying in any participating jurisdiction prohibiting the nomination of that person as a nominated supervisor of an education and care service.

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

\$100 000, in any other case.

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

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

52 Section 188A inserted

After section 188, in Part 7, Division 3

insert

188A False or misleading information about prohibition notice

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

Penalty: \$6000.

53 Section 190 amended

- (1) Section 190(a), (b) and (c)

omit

, a service approval or a supervisor certificate

insert

or a service approval

- (2) Section 190(d)(iii)

omit

54 Section 192 amended

Section 192(b)(v)

omit

55 Section 194 amended

Section 199(4)(a)

omit, insert

- (a) the authorised officer reasonably believes that an approved education and care service is operating at the residence at the time of entry; or
- (ab) the register of family day care educators records that the approved education and care service operates at the residence at the time of entry; or

56 Section 200 amended

Section 200(1)

omit

principal office or any other business premises of an approved provider

insert

principal office of the approved provider of the service or any other business office of the approved provider of the service

57 Section 200A inserted

After section 200

insert

200A Entry to premises without search warrant

- (1) An authorised officer may enter any premises (including residential or business premises) for the purpose of determining whether an education and care service is operating without a service approval at or from the premises, if:
 - (a) the authorised officer reasonably believes that a person is operating an education and care service in contravention of section 103 at the premises; and
 - (b) the occupier of the premises has consented in writing to the entry and inspection.

-
- (2) An authorised officer must not enter and search the premises under this section unless, before the occupier consents to the entry, the authorised officer has:
- (a) produced the authorised officer's identity card for inspection; and
 - (b) informed the occupier:
 - (i) of the purpose of the search and the powers that may be exercised; and
 - (ii) that the occupier may refuse to consent to the entry and search or the taking of anything found during the search; and
 - (iii) that the occupier may refuse to consent to the taking of any copy or extract from a document found on the premises during the search.
- (3) An authorised officer who exercises a power of entry under this section may for the purposes of the investigation do any of the things referred to in clause Schedule 2, clause 5(2)(a) to (e) as if a reference to that Schedule included a reference to this section.

58 Section 201 amended

Section 201(3)

omit

principal office or any other business premises of an approved provider

insert

principal office of the approved provider of the service or any other business office of the approved provider of the service

59 Section 202 amended

Section 202(1) and (3)

omit

section 199 or 200

insert

section 199, 200 or 200A

60 Section 206 amended

Section 206(4), definition *specified person*, paragraph (a)

omit

certified

insert

nominated

61 Section 225 amended

(1) Section 225(1)(g)

omit, insert

(g) to establish and maintain national registers of approved providers and approved education and care services and to publish those registers;

(2) Section 225(1)(o)

omit, insert

(o) to provide support and training for staff of Regulatory Authorities;

62 Section 249 amended

Section 249(1)

omit

day to day

insert

day-to-day

63 Section 261 amended

Section 261(2)(b) and (c)

omit, insert

(b) subject to the *Privacy Act 1988* (Cth), to collect, hold and use information about providers of education and care services, family day care educators and nominated supervisors;

-
- (c) to maintain and publish registers of approved providers and approved education and care services;

64 Sections 268 and 269 replaced

Sections 268 and 269

repeal, insert

269 Register of family day care educators, co-ordinators and assistants

- (1) The approved provider of a family day care service must keep a register at the principal office of the service that contains the prescribed information in respect of the following persons:
- (a) each family day care educator engaged by or registered with the service;
 - (b) each family day care co-ordinator employed or engaged by the service;
 - (c) each family day care educator assistant engaged by or registered with the service.

Penalty: \$4 000, in the case of an individual.
\$20 000, in any other case.

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

Penalty: \$2 000.

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

Penalty: \$4 000, in the case of an individual.
\$20 000, in any other case.

65 Section 270 amended

- (1) Section 270(1)

omit

certified

-
- insert*
- nominated
- (2) Section 270(2)(a)
- omit, insert*
- (a) must publish on its website the register of approved providers;
and
- (3) Section 270(5)(a)
- omit*
- or certificates
- (4) Section 270(6)(a)
- omit*
- certified
- insert*
- nominated
- (5) Section 270(6)(b)
- omit*
- Law.
- insert*
- Law; or
- (6) After section 270(6)(b)
- insert*
- (c) if the Regulatory Authority is satisfied that it is in the public interest to do so, a person with management or control of an education and care service.

66 Sections 271 and 272 replaced

Sections 271 and 272

repeal, insert

271 Disclosure of information to other authorities

- (1) The National Authority may disclose information in respect of an education and care service for a purpose listed in subsection (4), to:
 - (a) a relevant Commonwealth Government Department; or
 - (b) any State or Territory Government Department; or
 - (c) any Commonwealth, State or Territory public authority; or
 - (d) any State or Territory local authority; or
 - (e) a Regulatory Authority of a participating jurisdiction.
- (2) The Regulatory Authority may disclose information in respect of an education and care service for a purpose listed in subsection (4), to:
 - (a) a relevant Commonwealth Government Department; or
 - (b) any State or Territory Government Department; or
 - (c) any Commonwealth, State or Territory public authority; or
 - (d) any State or Territory local authority; or
 - (e) a Regulatory Authority of another participating jurisdiction.
- (3) The National Authority, the Regulatory Authority and any Government Department, public authority or local authority may disclose information to each other in respect of an education and care service for a purpose listed in subsection (4).
- (4) The purposes for disclosure of information under this section are:
 - (a) the disclosure is reasonably necessary to promote the objectives of the national education and care services quality framework; or
 - (b) the disclosure is for the purposes of enabling or assisting the other entity to perform or exercise any of its functions or powers under this Law; or

-
- (c) the disclosure is for the purposes of research or the development of National, State or Territory policy with respect to education and care services; or
 - (d) the disclosure is for a purpose relating to the funding of education and care services; or
 - (e) the disclosure is for a purpose relating to the payment of benefits or allowances to persons using education and care services, provided the disclosure of information is not otherwise prohibited by law.
- (5) The Regulatory Authority must disclose to the Regulatory Authorities of other participating jurisdictions the suspension or cancellation of a working with children check, working with children card or teacher registration of a nominated supervisor of which it is notified under this Law.
- (6) The Regulatory Authority may disclose to the head of the government department responsible for the administration of a working with children law, any prohibition notice given under this Law as applying in any participating jurisdiction in respect of the person.
- (7) A disclosure of information under this section is subject to Division 1 and any protocol agreed for the purposes of this section by:
- (a) the National Authority, all participating jurisdictions and the Commonwealth; and
 - (b) subject to any protocol referred to in paragraph (a), the National Authority and the Regulatory Authority, or the National Authority, the Regulatory Authority and any Regulatory Authority of another participating jurisdiction.
- (8) Information disclosed under this section for the purpose of research or the development of National, State or Territory policy with respect to education and care services must not include information that could identify or lead to the identification of an individual other than:
- (a) an approved provider or a nominated supervisor; or
 - (b) a family day care educator who has been suspended from providing education and care to children as part of a family day care service; or
 - (c) a person to whom a prohibition notice applies; or

-
- (d) a person who is being prosecuted for an offence against this Law.

272 Disclosure of information to education and care services

- (1) At the request of an approved provider, the National Authority or the Regulatory Authority may disclose the following information to the provider, if the National Authority or Regulatory Authority considers on reasonable grounds that the provider requires the information to comply with the provider's obligations under this Law:
- (a) whether a person named in the request is subject to a prohibition notice given under section 182;
 - (b) whether a family day care educator named in the request has been suspended from providing education and care to children as part of a family day care service under section 178.
- (2) A disclosure of information under this section is subject to Division 1 and any protocol agreed for the purposes of this section by:
- (a) the National Authority, all participating jurisdictions and the Commonwealth; and
 - (b) subject to any protocol referred to in paragraph (a), the National Authority and the Regulatory Authority, or the National Authority, the Regulatory Authority and any Regulatory Authority of another participating jurisdiction.

67 Section 284 amended

Section 284

omit

Proceedings

insert

Subject to section 181(6), proceedings

68 Section 291 amended

Section 291(1)(a)

omit

173 or 176

insert

173, 176 or 269

69 Section 292 amended

(1) Section 292(a)(iii)

omit

(2) Section 292(d)

omit

or a certified supervisor

(3) Section 292(g)

omit

or supervisor certificate

70 Section 301 amended

Section 301(3)(a)

omit

and certificates

71 Part 15, Division 5 inserted

After section 324

insert

Division 5 Transitional provisions—Education and Care Services (National Uniform Legislation) (Act Amendment) Regulations 2017

325 Definitions

In this Division:

2017 Regulations means the *Education and Care Services (National Uniform Legislation) (Act Amendment) Regulations 2017*.

commencement day, in relation to a participating jurisdiction, means the date of commencement of this Division in that jurisdiction.

326 Approved family day care venues

- (1) In this section:

appointed day means the day that is 6 months after the commencement day.

formerly approved family day care venue means a family day care venue that, immediately before the commencement day, was an approved family day care venue.

- (2) Subject to subsection (3), a formerly approved family day care venue ceases to be an approved family day care venue on the appointed day unless, before the appointed day the Regulatory Authority, on application by the approved provider under section 54 (as amended by the 2017 Regulations), approves the venue as a family day care venue.
- (3) If, before the appointed day, the Regulatory Authority had not determined an application by an approved provider under section 54 (as amended by the 2017 Regulations) for approval of the venue, the formerly approved family day care venue continues to be an approved family day care venue until the application is determined.
- (4) Despite section 54(5), the Regulatory Authority must make a decision on an application made under section 54 for approval of a formerly approved family day care venue within 6 months of receiving the application.

327 Declared approved family day care venues continue to be approved

Despite section 326, a declared approved family day care venue that was taken under section 308 to be an approved family day care venue continues, on and after the commencement day, to be an approved family day care venue for the purposes of this Law.

328 Service approval condition requiring sufficient family day care co-ordinators

- (1) In this section:

appointed day means the day that is 12 months after the commencement day.

- (2) This section applies to a family day care service if, immediately before the commencement day:
- (a) the service was an approved family day care service; and

(b) the service approval included a condition referred to in section 51(2).

(3) Despite the commencement of the 2017 Regulations, sections 51(2) and 163, as in force immediately before the commencement day, continue to apply to the approved family day care service until the appointed day, unless the Regulatory Authority earlier amends the service approval to impose a condition under section 55A.

329 Service approval condition requiring minimum number of family day care co-ordinators

(1) This section applies to a family day care service if, immediately before the commencement day:

(a) the service was an approved family day care service; and

(b) the service approval included a condition requiring the service provide a specified minimum number of family day care co-ordinators.

(2) Despite the commencement of the 2017 Regulations, section 163, as in force immediately before the commencement day, and the condition requiring the service provide a specified minimum number of family day care co-ordinators continue to apply to the approved family day care service until the condition is amended under section 54 or 55.

330 Publication of information about certified supervisors

(1) The National Authority may publish information about any enforcement action taken under this Law before the commencement day in relation to any person who was a certified supervisor before that day, including:

(a) the prosecution of any offence; and

(b) the acceptance of an undertaking; and

(c) the suspension or cancellation of a supervisor certificate.

(2) This section is repealed on 31 December 2021.

331 Evidentiary certificates

- (1) Despite the amendment of section 292 by the 2017 Regulations, a Regulatory Authority or the National Authority may continue to certify matters relating to any person who was a certified supervisor before the commencement day as if that section had not been amended.
- (2) This section is repealed on 31 December 2021.

72 Part 15, Division 6 inserted

After section 331

insert

Division 6 Further transitional provisions—Education and Care Services (National Uniform Legislation) (Act Amendment) Regulations 2017

332 Definitions

In this Division:

2017 Regulations means the *Education and Care Services (National Uniform Legislation) (Act Amendment) Regulations 2017*;

commencement day, in relation to a participating jurisdiction, means the date of commencement of this Division in that jurisdiction.

333 Partial assessment and re-rating

- (1) This section applies to an approved education and care service that has been assessed and rated against the National Quality Standard, as in force immediately before the commencement day, whether that assessment and rating occurred before, on or after the commencement day.
- (2) Despite section 138, the Regulatory Authority may only reassess an aspect or element of the approved education and care service after the relevant day if the approved education and care service has been reassessed against the National Quality Standard as in force on and after the commencement day.
- (3) Despite section 139(1), an approved provider may only apply for reassessment and re-rating of an aspect or element of the approved education and care service after the relevant day if the approved education and care service has been reassessed against the National Quality Standard, as in force on and after the

commencement day.

(4) In this section:

relevant day means:

- (a) in relation to an approved education and care service that was assessed and rated before the commencement day, the day that is 6 months after the commencement day; or
- (b) in relation to an approved education and care service that was assessed and rated after the commencement day, the day that is 6 months after the day on which the rating for the service is published under section 160.

334 Application for highest rating level made before commencement day

- (1) This section applies if before the commencement day:
 - (a) an approved provider had applied for an education and care service to be assessed for the highest rating level under section 152; and
 - (b) the application had not been determined.
- (2) Despite its replacement by the 2017 Regulations, section 152(5), as in force immediately before the commencement day, continues to apply in respect of the application.
- (3) Section 153(2) applies for the purposes of the assessment of the approved education and care service, as if a reference:
 - (a) to the criteria published under subsection (1) were a reference to the criteria published under subsection (1) immediately before the commencement day; and
 - (b) to the National Quality Standard and the national regulations were a reference to the National Quality Standard and the national regulations as in force immediately before the commencement day.

335 Highest rating level awarded before, or on application made before, commencement day

- (1) This section applies in relation to an approved education and care service that was awarded the highest rating level:
 - (a) before the commencement day; or

-
- (b) after the commencement day on an application referred to in section 334.
- (2) Section 153(2) applies for the purposes of a reassessment under section 157 of the approved education and care service, as if a reference:
 - (a) to the criteria published under subsection (1) were a reference to the criteria published under subsection (1) immediately before the commencement day; and
 - (b) to the National Quality Standard and the requirements of the national regulations were a reference to the National Quality Standard and the national regulations as in force immediately before the commencement day.
 - (3) Despite its amendment by the 2017 Regulations, section 158 as in force immediately before the commencement day continues to apply to the revocation of the highest rating level and for the purposes of that section:
 - (a) the criteria to be met are the criteria published under section 153(1) immediately before the commencement day; and
 - (b) the overall rating level is to be determined in accordance with the National Quality Standard as in force immediately before the commencement day.

73 Repeal of Regulations

These Regulations are repealed on the day after they commence.