

ADDITIONAL INFORMATION

Disallowing nationally approved amendments to the National Law and National Regulations

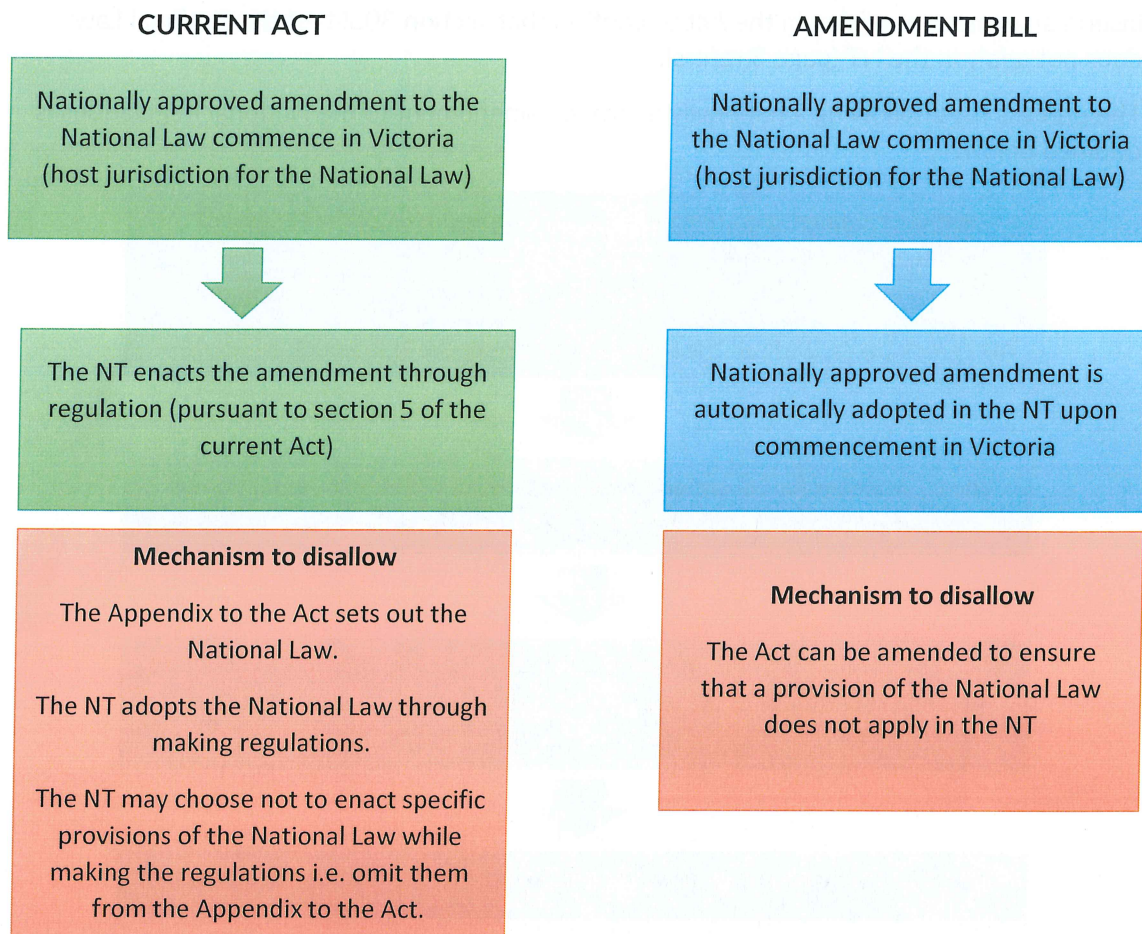
On 20 May 2019, a public briefing was held by the Social Policy Scrutiny Committee in relation to the Education and Care Services (National Uniform Legislation) Amendment Bill 2019 (the Amendment Bill).

As outlined in the tabled documentation, 'Background Information – Public Briefing – 20 May 2019', the national process for agreeing to an amendment to the Education and Care Services National Law (the National Law) and Education and Care Services National Regulations (National Regulations) is rigorous and requires the consensus of all jurisdictions.

Given the rigor of this process, it is highly unlikely that the Northern Territory (NT) will have to consider disallowing an amendment to the National Law or National Regulations. Regardless, the ability to do so has always been available to the NT, and will remain under the Amendment Bill.

Disallowing a National Law

There is no express provision for disallowing an amendment to the National Law, either in the current Act or the Amendment Bill. Instead, legislative mechanisms may be used to ensure that an amendment to the National Law is not implemented in the NT.



In summary, under the Amendment Bill the Act can be amended to repeal a provision/s of the National Law in the event that it is not in the best interest of the NT. This may occur:

1. concurrently with a nationally approved amendment commencing and coming into effect in the NT; or
2. at any time, should the NT Government choose to remove an existing provision of National Law.

Disallowing a National Regulation

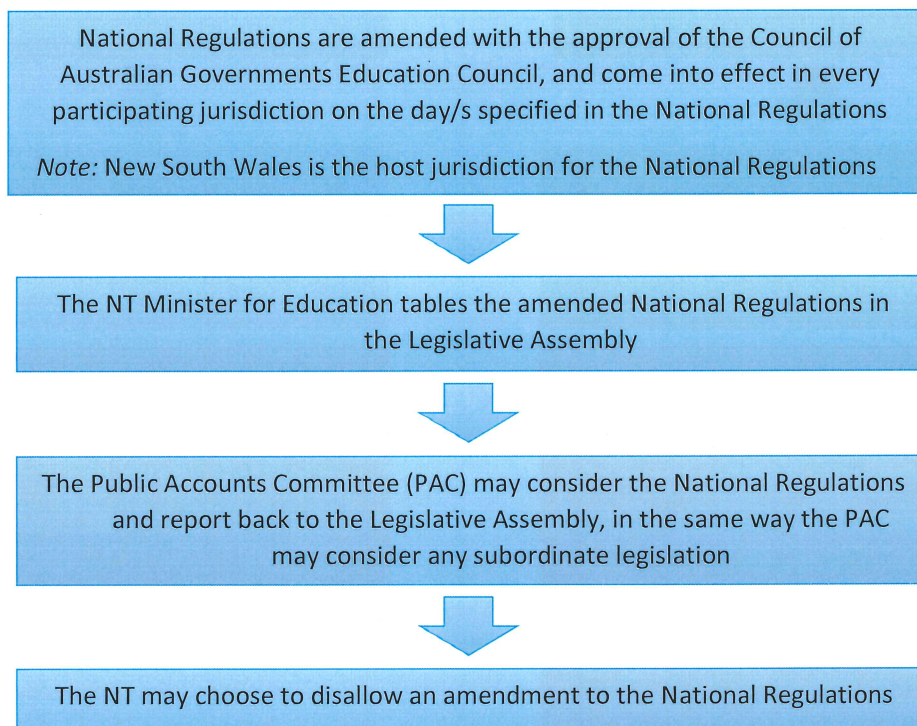
Part 14 Division 8 of the National Law provides for the making of National Regulations, and includes provision under section 303 for jurisdictions to scrutinise and disallow an approved amendment to the National Regulations.

However, section 303(4) of the National Law requires that, for a regulation that has been disallowed to cease to have effect, the majority of participating jurisdictions must also disallow that regulation.

Since the introduction of the National Law, the NT has not enacted section 303(4) of the National Law (that is disallowed section 303(4)). This provides the NT with the flexibility and autonomous discretion to disallow a provision within National Regulations.

The process of disallowing a National Regulation is unchanged; the Amendment Bill merely inserts an express provision in the Act to confirm that section 303(4) of the National Law does not apply in the NT (page 3 refers).

The process for disallowing a nationally approved amendment to the National Regulations is outlined below.



The comparison of how section 303(4) of the National Law has not been enacted/disallowed in the NT under the current Act and under the Amendment Bill is provided below:

CURRENT ACT

The National Law is currently set out in the Appendix to the Act.

Section 303(4) of the National Law has been omitted from the Appendix to the Act, and does not apply in the NT

AMENDMENT BILL

The National Law will be automatically adopted which means the NT will have the same legislation as the host jurisdiction, and the Appendix to the Act is no longer needed.

The NT needs to amend the Act to disallow a National Law.

Clause 5 of the Amendment Bill therefore specifies that section 303(4) of the National Law does not apply in the NT