



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
13th Assembly
SOCIAL POLICY SCRUTINY COMMITTEE
Public Briefing Transcript

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

9.00 am, Monday 20 May 2019
Litchfield Room, Level 3, Parliament House, Darwin

Members:

Ms Ngaree Ah Kit MLA, Chair, Member for Karama
Mrs Lia Finocchiaro MLA, Member for Spillett
Ms Sandra Nelson MLA, Member for Katherine
Mr Chansey Paech MLA, Member for Namatjira

Witnesses:

Department of Education

Agnes McGrath: General Manager Early Childhood Education and Care
Audrey Billias: Director Early Childhood Policy and Programs
Michelle Wells: Assistant Director Early Childhood Policy
Amy Ireland: Senior Manager Legislation Services, Strategic Services

EDUCATION AND CARE SERVICES (NATIONAL UNIFORM LEGISLATION) AMENDMENT BILL 2019
Department of Education

Madam CHAIR: Good morning, everyone. Thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Social Policy Scrutiny Committee. On behalf of the committee, I welcome everyone to this public briefing on the Education and Care Services (National Uniform Legislation) Amendment Bill 2019.

I acknowledge that this public briefing is being held on the land of the Larrakia people and I pay my respect to Larrakia elders past, present and emerging.

I also acknowledge my fellow committee members in attendance today: the Member for Spillett, Lia Finocchiaro; via teleconference is the Member for Katherine, Sandra Nelson; and the Member for Namatjira, Chansey Paech.

I welcome to the table to give evidence to the committee from the Department of Education Agnes McGrath, General Manager Early Childhood Education and Care; Audrey Billias, Director Early Childhood Policy and Programs; Michelle Wells, Assistant Director Early Childhood Policy; and Amy Ireland, Senior Manager Legislation Services, Strategic Services. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee under the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public briefing which is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If at any time during the briefing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

I will ask each witness to state their name for the record, and the capacity in which you are appear. I will then invite you to make a brief opening statement before proceeding to the committee's questions.

Could you each please state your name and the capacity in which you appear this morning.

Ms McGRATH: General Manager Early Child Education and Care, Department of Education.

Ms BILLIAS: Director Early Childhood Policy and Programs, Department of Education.

Ms WELLS: Assistant Director Early Childhood Policy, Department of Education.

Ms IRELAND: Senior Manager Legislation Services, Strategic Services, Department of Education.

Madam CHAIR: Thank you. Ms McGrath, would you like to make an opening statement?

Ms McGRATH: 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 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 which 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'.

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 and 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 Regulations is again 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 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 the 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. Of note, that there are only two other jurisdictions—South Australia and Western Australia—which do not currently automatically adopt amendments to the National Law, meaning that this bill aligns the NT with the majority of states and territories.

The preliminary 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, reduce 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 which 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 Counsel, 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 time line. 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 Northern Territory Minister for Education is a member. A detailed summary of this national process is provided in the tabled supporting documentation.

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—that is, the NT does not wish for an amendment to the National Law to apply to 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(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.

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 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.

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 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.

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 Northern Territory Government and the education and care services sector and its stakeholders.

Throughout the process of developing a 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 effective and that the education and care service and service sector and stakeholders will have access to the contemporary National Law without administrative delay.

Thank you.

Madam CHAIR: Thank you, Ms McGrath. That was quite detailed and very helpful, I wonder if you would mind if we could have a copy to be tabled as well as the accompanying documents.

Ms McGRATH: Yes.

Madam CHAIR: I will now open it up to the Social Policy Security Committee members for questions.

Mrs FINOCCHIARO: Ms McGrath, I jotted down some notes from early in your opening speech about section 5, about the automatic amendments. I may have misunderstood you. Could you step me through that again. I think you said section 5 was of the Victorian legislation or the proposed bill. I was trying to work out is at what point they become automatic. I think you said all jurisdictions have to agree to each amendment and then the NT may make a regulation to reflect the nationally agreed position. Is that the current way it works?

Ms McGRATH: Yes.

Mrs FINOCCHIARO: This bill will eliminate that process and will mean that it will automatically change the Act. If there is a change to the Victorian legislation, our Act will automatically change?

Ms McGRATH: It will, but it still allows for us to disallow.

Mrs FINOCCHIARO: Is that still by agreement, so at a national level all the jurisdictions have to agree to the Victorian legislation being amended?

Ms McGRATH: Yes, that is true.

Mrs FINOCCHIARO: With the exception of a couple of jurisdictions you said?

Ms McGRATH: Any changes to the Victorian Act have to be done by consensus from all the jurisdictions and it is done through the COAG Education minister's committee.

The NT is still ensuring that there is a provision there, to disallow anything to the National Regulations that seems not to be an appropriate amendment. It will retain the current position.

Mrs FINOCCHIARO: At COAG, the minister of the day would have to agree in order for everyone else or by consensus you mean it is a majority?

Ms McGRATH: Yes.

Mrs FINOCCHIARO: We could come back to the NT and under clause 5 of the bill disallow the amendment to the National Regulations?

Ms McGRATH: Yes.

Mrs FINOCCHIARO: I am trying to work through, in my mind, the scrutiny process on that. It would be at a ministerial level, identify some deficiency and why that amendment would not work for the Territory and it would go to PAC for some leveller?

Ms McGRATH: Yes, any significant changes to the law or regulations would require regulatory impact assessment consultation. We would collect it then and be able to determine why that would be the case.

(For further clarification: see Tabled Paper: Department of Education – Additional Information – Public Briefing – 20 May 2019 - <https://parliament.nt.gov.au/committees/spsc/93-2019>)

Mrs FINOCCHIARO: Do you know which jurisdictions did opt out of that automatic process?

Ms McGRATH: There are only two other jurisdictions, South Australia and Western Australia. Western Australia has mirror legislation, which was their policy at the time. South Australia has a process—what we have currently.

Mrs FINOCCHIARO: They want to keep it that way?

Ms McGRATH: Yes.

Mrs FINOCCHIARO: That is all my questions, thank you.

Madam CHAIR: Are there any questions down the line?

Ms NELSON: None from me right now.

Madam CHAIR: Ms McGrath, one of the questions—going through the bill and trying to understand without a legal background—is why is there a connection for Northern Territory legislation, a national legislation to Victoria? Can you explain again and clarify how that works? I am a bit confused.

Ms McGRATH: Victoria, basically, volunteered to be the host jurisdiction at the time. It was best placed to draft it on behalf of the national committees, and introduced it in parliament in late 2011 so it could be implemented nationally in 2012.

Madam CHAIR: So, that saved every other jurisdiction from doing the work as well. Thank you, Victoria. I wanted to ask about how often the National Quality Framework was reviewed. I believe you said there is an NQF review under way at the moment. When did that start and when are we hoping to have that completed?

Ms McGRATH: The review started in April. That is a national review, so there are staggered phases of consultation happening nationally. It will probably end later this year.

Madam CHAIR: As a part of that review, do our local stakeholders all have input through the work you all do?

Ms McGRATH: Yes.

Ms BILLIAS: I can provide a bit more detail about the current review. It started in April. There are national consultations on the issues. That is the first phase of consultation that is occurring national that involves face-to-face and online consultation. That will inform a regulatory impact statement next year, so there will be consultation at the same time about this time next year on the consultation regulatory impact statement. That is where they propose options to the issues they have heard in the first phase of consultation. Then that will inform a decision regulatory impact statement, probably in early 2021—yes. Then, from there, whatever the outcome of that decision the regulatory impact statement, which is agreed to by the Education Council, will go forth through the process of drafting instructions and then on to preparing an amendment bill. The drafting instructions travel through the COAG process so nothing passes through at every phase of consultation and every report through Education Council before it goes to the next stage of the process. About 2021 or 2022 possible amendments are likely.

For the National Quality Framework, all states and territories are committed to doing a review every five years to ensure we have contemporary regulation. It is quite a process so it takes three to four years for each review to go through the journey of consultation and approval.

Madam CHAIR: Sounds like quite an intensive ...

Ms BILLIAS: It is quite a process.

Madam CHAIR: ... but fantastic process. That is really good. I guess it always gives us the opportunity to make sure we are implementing best practice throughout the sector.

That is pretty much all of my questions. Does the committee have any more questions?

Mrs FINOCCHIARO: I have one more. Practically speaking, why is this the best approach going forward? Is it so that when childcare workers—there is that consistency across the country so that if there is a movement of professionals and people that everyone is applying the same standard? Is it because of—I do not know—resources to operators so they are given consistency? Are you able to talk a little about why that type of—when we are talking about automatic it means we really are wanting to be the same all the time, very quickly. What is the benefit of that?

Ms McGRATH: The National Quality Framework aligns all the states and territories under the same regulatory framework and quality assurance framework so that gives family, service providers and stakeholders the assurance of the uniformity of the standards. There is consistency, for example, in the ratios and the qualifications that are applied so it is not harder in one jurisdiction than in another. If parents move between jurisdictions, then there is the consistency in the standards.

The other part in this is the Australian Government too, which also provides subsidies to, say, the long day care sector. For them it is the assurance that there is a consistency in the services they are subsidising. They are highly contemporary, evidence-based standards that we are applying.

Madam CHAIR: If there are no further questions, that will conclude our public briefing on the Education and Care Services (National Uniform Legislation) Amendment Bill 2019. On behalf of the committee, I thank you all for appearing before us today.

The committee suspended.
