

# Education and Care Services National Law Bill 2010

## Introduction Print

### EXPLANATORY MEMORANDUM

#### General

The objective of this Bill is to adopt the Education and Care Services National Law (the National Law) hosted by the Victorian Parliament and set out in the Schedule to the Bill.

#### Policy objectives of the Bill

The principal objective of the Bill is to provide a national approach to regulation, assessment and quality improvement for early childhood education and care and outside school hours care; replace existing separate licensing and quality assurance processes for pre-school (kindergartens), long day care, family day care and outside school hours care; and establish a public rating system for education and care services. The reforms within the Bill focus on improving the quality of education and care services for all children—especially those from disadvantaged or at-risk backgrounds—reducing regulatory burden on services and providing greater access to information about the quality of services.

#### Reasons for the Bill

In December 2009 the Council of Australian Governments endorsed the National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care. This included the commitment to establish a jointly governed, uniform National Quality Framework and will facilitate the introduction through the national regulations of a new National Quality Standard. The National Quality Standard is organised across seven quality areas:

- Educational program and practice
- Children's health and safety
- Physical environment
- Staffing arrangements

- Relationships with children
- Collaborative partnerships with families and communities
- Leadership and service management

This Bill establishes the National Quality Framework and the Australian Children's Education and Care Quality Authority to oversee its administration. It provides for a role for Regulatory Authorities in each jurisdiction in approving persons and services that provide education and care; monitoring compliance with the national law; and assessing and publicly rating services against a new National Quality Standard.

#### **Major elements of the Education and Care Services National Law**

Part 1 of the Law sets out the objectives and guiding principles, the definitions to be used and the scope of education and care services subject to this Law.

Parts 2, 3, and 4 establish a national system of approvals to provide and operate an education and care service and to be a certified supervisor. These Parts set out the requirements for obtaining approval and the decision-making powers and responsibilities of the Regulatory Authority in participating jurisdictions. These approval processes streamline current licensing, approval and quality assurance arrangements.

Part 5 sets out the process for assessing and rating services against the National Quality Standard. All services under the National Quality Framework are subject to assessment and rating. The assessment and rating process is designed to promote continuous improvement in the provision of education and care across seven quality areas. A major objective of rating services is to provide parents with detailed information about the quality of services (across the seven quality areas and an overall rating). This Part also provides for a system of appeals and reviews of decisions relating to assessments and ratings.

Part 6 creates a range of offences regarding the operation of education and care services. These offences are primarily intended to ensure the health, safety and well-being of children and the operation of the national approvals system.

Part 7 provides for the tools that the Regulatory Authority may use to ensure compliance with the Education and Care Services National Law and is intended to ensure the safety, health and wellbeing of children attending education and care services.

Part 8 ensures the right of review of decisions made by a Regulatory Authority. Two types of review are provided for: internal review conducted by the Regulatory Authority; and external review conducted by an administrative tribunal or court or, in relation to ratings and assessments of services, by the Australian Children's Education and Care Quality Authority.

Part 9 provides powers to authorised officers engaged by Regulatory Authorities to monitor and enforce the Education and Care Services National Law.

Part 10 sets out the functions and powers of the Ministerial Council in relation to the National Quality Framework, the National Quality Standard, the Education and Care Services National Law and the Australian Children's Education and Care Quality Authority. The Ministerial Council will be responsible for setting standards for the operation of education and care services.

Part 11 establishes the Australian Children's Education and Care Quality Authority and its Board and provides for the engagement of a chief executive. This Part sets out the Authority's functions, which are consistent with, and build on, those set out in the National Partnership Agreement, including oversight of the National Quality Framework, reporting to the Ministerial Council and Regulatory Authorities, provision of advice, and information management. The Authority has the power to collect and publish information, develop protocols for communication and dispute resolution, make decisions regarding fees, undertake research and analysis, publish practice notes and guidelines for the application of this Law, and publish other guides and resources.

Part 12 sets out the functions of the Regulatory Authorities, which include approving providers and services, certifying supervisors, assessing and rating services, and monitoring compliance with the National Quality Framework, the National Quality Standard, the Education and Care Services National Law, and the national regulations.

Part 13 addresses information and privacy issues, including providing for the application of Commonwealth privacy and freedom of information laws.

Part 14 contains a range of miscellaneous provisions, including the establishment of the Australian Children's Education and Care Quality Authority Fund, reporting requirements, legal proceedings, and provides for the development, publication and commencement of national regulations.

Part 15 provides for transition from existing legislative and regulatory arrangements to the new arrangements set out under this national Law.

## Notes on Preliminary Provisions

### Education and Care Services National Law

#### PART 1—PRELIMINARY

- Clause 1 provides that the purpose of this Bill is to create a National Law to regulate education and care services for children.
- Clause 2 provides that this Bill comes into operation on the day or days to be proclaimed. Different days may be proclaimed for different provisions of this Law set out in the Schedule.
- Clause 3 sets out definitions for the purposes of the Bill (other than the Schedule).

#### PART 2—ADOPTION OF NATIONAL LAW

- Clause 4 provides that the Education and Care Services National Law as set out in the Schedule, applies as a law of Victoria.
- Clause 5 provides that the following Victorian Acts do not apply to this Law or the instruments made under it—
- the **Freedom of Information Act 1982**;
  - the **Information Privacy Act 2000**;
  - the **Interpretation of Legislation Act 1984**;
  - the **Subordinate Legislation Act 1994**.

Furthermore, the following Acts do not apply to this Law, except to the extent that this Law is applicable to the Regulatory Authority—

- the **Audit Act 1994**;
  - the **Financial Management Act 1994**;
  - the **Ombudsman Act 1973**;
  - the **Public Administration Act 2004**;
  - the **Public Records Act 1973**.
- Clause 6 defines the meaning of the generic terms including *magistrate*, *magistrate's court*, *superior court* and *this jurisdiction*, for the purposes of this jurisdiction

- Clause 7 provides that the Victorian Magistrate's Court is the relevant court and that the Victorian Civil and Administrative Tribunal is the relevant tribunal in this jurisdiction for the purposes of this Law.
- Clause 8 provides that the Secretary to the Victorian Department of Education and Early Childhood Development is the Regulatory Authority in this jurisdiction for the purposes of this Law.
- Clause 9 provides that the **Children's Services Act 1996** is the children's services law of this jurisdiction for the purposes of this Law.
- Clause 10 provides that the **Education and Training Reform Act 2006** is the education law of this jurisdiction for the purposes of this Law.
- Clause 11 provides that the **Children's Services Act 1996** is the former education and care services law of this jurisdiction for the purposes of this Law.
- Clause 12 provides that the **Infringements Act 2006** is the infringements law of this jurisdiction for the purposes of this Law.
- Clause 13 provides that the **Public Administration Act 2004** is the public sector law of this jurisdiction for the purposes of this Law.
- Clause 14 provides that the **Working with Children Act 2005** is the working with children law of this jurisdiction for the purposes of this Law.
- Clause 15 provides for the definition of declared terms used in clause 305 of the Education and Care Services National Law as they apply in Victoria.

Subclause (1) provides that a declared approved family day care service is a service to which a licence to operate a family day care service applied under the **Children's Services Act 1996**.

Subclause (2) provides that that a declared approved family day care venue is a venue approved by the Secretary under section 25J or 25L of the **Children's Services Act 1996**.

Subclause (3) provides that a declared approved provider is a person who held a licence to operate a under the **Children's Services Act 1996**.

Subclause (4) provides that a declared approved service is a service to which a licence to operate a standard (unless excluded by the regulations), outside school hours care, integrated or family day care service applied under the **Children's Services Act 1996**.

Subclause (5) provides that a declared certified supervisor is a person who was a primary nominee or approved nominee under the **Children's Services Act 1996**.

Subclause (6) provides that a declared compliance order is an order or notice issued to a licensee under section 43 or 43A of the **Children's Services Act 1996**.

Subclause (7) provides that a declared nominated supervisor is a person who was a primary nominee under the **Children's Services Act 1996**.

Subclause (8) provides that a declared former approval is a licence under the **Children's Services Act 1996**.

### **PART 3—MISCELLANEOUS**

- Clause 16 provides for the Regulatory Authority to provide funding to education and care services and associated children's services.
- Clause 17 provides for the making of regulations of a transitional nature as a result of the enactment of this Bill.

### **Clause Notes**

### **Schedule**

### **Education and Care Services National Law**

### **PART 1—PRELIMINARY**

- Clause 1 states that the short title of the Law is the Education and Care Services National Law.
- Clause 2 provides for the commencement of the Law in participating jurisdictions, in accordance with each jurisdiction's Act applying this Law.
- Clause 3 identifies the objectives and guiding principles for the National Law. The objective of this Law is to establish a national education and care services quality framework, which will seek to—
- Ensure children's safety, health and wellbeing;
  - Improve educational and developmental outcomes;
  - Promote continuous improvement;

- Establish a system of national integration and shared responsibility in the administration of the National Quality Framework;
- Improve public knowledge and access to, information about the quality of education and care services; and
- Enable sharing of information to reduce the regulatory burden on education and care services.

The guiding principles are as follows—

- The rights and best interests of the child are paramount;
- Children are successful, competent and capable learners;
- The principles of equity, inclusion and diversity underlie this Law;
- Australia's Aboriginal and Torres Strait Islander cultures are valued;
- The role of parents and families is respected and supported;
- Best practice is expected in the provision of education and care services.

These objectives and guiding principles are consistent with the COAG National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care.

Clause 4 provides that an entity with functions under the Education and Care Services National Law is to have regard to the objectives and guiding principles set out in clause 3.

Clause 5 defines terms used in the Education and Care Services National Law. For the purposes of this Law an education and care service means any service providing or intended to provide education and/or care on a regular basis to children under 13 years of age other than—

- a school providing full-time education to children, including children attending in the year before grade 1;
- a preschool program delivered in a school if—
  - the program is delivered in a class or classes where a full-time education program is also delivered to school children; and

- across the school, the preschool program is being delivered to fewer than 6 children.
- a personal arrangement;
- a service principally conducted to provide instruction in a particular activity (e.g. sporting or religious instruction);
- a service providing education and care to patients in a hospital or patients of a medical or therapeutic care service;
- care provided under a child protection law of a participating jurisdiction;
- a prescribed disability service;
- a service of a prescribed class.

By example, this definition means that education and care services under this Law include long day care, family day care, outside school hours care and preschool programs including those delivered in schools, unless expressly excluded.

The definition also means that the service is an education and care service even if it provides education and care to children or over 13 years of age.

Other services will be excluded by regulation to allow for future inclusion in this Law at a later date as determined by the Ministerial Council. Examples of services to be excluded by prescribed class are occasional or limited hours care, Multifunctional Aboriginal Children's Service, nannies, babysitters and playgroups.

For services that are not within scope of this Law, existing state and territory licensing and/or quality assurance provisions will continue to apply.

Clause 6 incorporates into this Law a schedule of miscellaneous provisions relating to interpretation for construing this Law. The National Partnership Agreement is declared to be a relevant document as extrinsic material under the interpretive provisions, allowing it to be considered in assisting in the Law's interpretation.

- Clause 7 clarifies that only one single national entity (the Australian Children's Education and Care Quality Authority) is created rather than multiple entities in each jurisdiction. The national entity established by this Law has the power to do acts conferred on it by this Law as applied by Acts of each participating jurisdiction.
- Clause 8 provides for the extraterritorial operation of the Education and Care Services National Law.
- Clause 9 provides that the Education and Care Services National Law binds the State, including the Government, a Minister and any statutory corporation or other entity.

## **PART 2—PROVIDER APPROVAL**

### **Division 1—Application for provider approval**

Under this Law, a holder of a provider approval may provide an education and care service subject to obtaining a service approval for each service.

- Clause 10 provides that one or more persons, other than a prescribed ineligible person, may apply for a provider approval. All persons applying for a provider approval must submit relevant information, and each person granted provider approval will be required to comply with any obligations attached to the approval.
- Clause 11 sets out the process for applying for a provider approval. Applications must be made in the jurisdiction where the applicant or one of the applicants resides, or where one of the applicant's principal offices are located.
- Clause 12 provides that applicants and, in the case of entities each person with management or control responsibility for a service operated by the entity, must satisfy the Regulatory Authority of their fitness and propriety to be involved in the provision of an education and care service.
- An exception to this requirement applies to the head of a government department administering an education law in a participating jurisdiction who, owing to his or her position, is determined to be a fit and proper person.

- Clause 13 specifies factors that are to be taken into account when assessing whether a person is fit and proper, including, but not limited to, compliance history, criminal history and financial solvency. The Regulatory Authority may also have regard to a person's medical history or financial circumstances as far as they may impact on an assessment of fitness and propriety.
- Clause 14 enables a Regulatory Authority to seek further information to determine fitness and propriety.
- Clause 15 provides that the Regulatory Authority may grant or refuse to grant a provider approval. The Regulatory Authority must not grant a provider approval if it is not satisfied as to matters of fitness and propriety set out in clause 12.
- If the Regulatory Authority has not made a decision within 60 days and has not extended this period by agreement with the applicant, the application is deemed to have been refused.
- A person may seek a review of a decision to refuse to grant a provider approval as set out in Part 8 of this Law.
- Clause 16 provides that the Regulatory Authority must give written notice to an applicant of the decision and the reasons for that decision on an application for a provider approval within seven days of making a decision.
- Clause 17 provides that a provider approval is not time-limited and remains valid unless cancelled or surrendered. A provider approval that is suspended remains in force, but the approved provider cannot operate a service during the period of suspension.
- Clause 18 provides that a person to whom provider approval is granted is a fit and proper person to operate an education and care service and an associated children's service, if the approved provider is the holder of the service approval for those services.
- Clause 19 provides that a provider approval may be granted subject to any conditions prescribed in the regulations or determined by the Regulatory Authority. All provider approvals are subject to the condition that the approved provider must comply with this Law. Penalties apply for non-compliance with a provider approval.
- An approved provider may seek a review of a decision to impose a condition on a provider approval as set out in Part 8 of this Law.

- Clause 20 provides that the Regulatory Authority must provide a copy of a provider approval to the approved provider and prescribes the information to be recorded on the approval.

### **Division 2—Reassessment**

- Clause 21 provides for the Regulatory Authority to, at any time, reassess whether a person continues to be fit and proper to be involved in the provision of an education and care service. The considerations and powers of the Regulatory Authority that apply to the assessments of fitness and propriety described in clauses 13 and 14 also apply to reassessments of fitness and propriety.

### **Division 3—Amendment of provider approvals**

- Clause 22 sets out the process by which, an approved provider may seek an amendment to a provider approval. An example of when an application for an amendment may be made is when an approved provider seeks a variation to a condition on the provider approval. The Regulatory Authority may accept or refuse the amendment sought by an approved provider or amend the approval in another way with the written agreement of the applicant.

An approved provider may seek a review of a decision to refuse to amend a provider approval as set out in Part 8 of this Law.

- Clause 23 provides that a Regulatory Authority may amend a provider approval at any time. An example of when this may occur is if the Regulatory Authority decides to add or remove a condition on a service approval. Any proposed amendment takes effect 14 days after the Regulatory Authority gives notice of the amendment or if another period is specified, at the end of that period.

An approved provider may seek a review of a decision to amend a provider approval as set out in Part 8 of this Law.

- Clause 24 provides that a Regulatory Authority must provide a copy of an amended provider approval to the approved provider and make any necessary amendments to a service approval. The amended service approval must also be provided to the approved provider.

#### **Division 4—Suspension or cancellation of provider approval**

Clause 25 provides for the circumstances under which a provider approval may be suspended. These are the approved provider being charged with an indictable offence or no longer being considered a fit and proper person; failure to comply with a condition of provider approval or this Law; failure to comply with this Law as applying in any participating jurisdiction; action being taken under Part 7 of this Law; the approved provider has not operated a service for more than 12 months; a transfer of a service approval has purportedly taken place without the consent of the Regulatory Authority; or failure to pay any outstanding prescribed fees.

An approved provider may seek a review of a decision to suspend a provider approval as set out in Part 8 of this Law.

Clause 26 provides that in considering the suspension of a provider approval, the Regulatory Authority must first give the approved provider a notice stating the intention to suspend the provider approval, the proposed period of suspension and the reasons for the decision. The notice must also state that the approved provider is given 30 days to respond in writing to the Regulatory Authority.

Show cause notices are provided for in this Law to ensure opportunities are provided for the person who is the subject of a notice to state their case before action is taken.

Clause 27 provides that, after considering any response from an approved provider provided for under clause 26, the Regulatory Authority may suspend the provider approval for a period not more than the prescribed period or decide not to suspend the provider approval.

Clause 28 provides that, if the Regulatory Authority is satisfied that there is an immediate risk to the safety, health or wellbeing of children, a provider approval may be suspended for up to six months without giving a show cause notice.

Clause 29 provides that the Regulatory Authority must give written notice to the approved provider of the decision to suspend a provider approval.

A notice of a decision to suspend must set out the period of suspension and the date on which it takes effect, which, if a show cause notice has been issued, is to be 14 days after the date of the decision unless otherwise stated. If a show cause

notice has not been given, the suspension takes effect on the giving of the notice of the decision to suspend.

Clause 30 provides that the effect of suspension of a provider approval is the suspension of all service approvals held by the provider (including associated children's services) except where another person is approved under clause 41 or the service is transferred to another approved provider.

Clause 31 provides for the circumstances under which the Regulatory Authority may cancel a provider approval, including the Regulatory Authority's assessment that the person is not a fit and proper person or that there is an unacceptable risk to children's safety, health or wellbeing should the approved provider continue to operate the service.

Other reasons are the approved provider being found guilty of an indictable offence or an offence under this Law as applying in any participating jurisdiction, being in breach of a condition of provider approval, or if the approved provider has not operated a service for more than 12 months.

An approved provider may seek a review of a decision to cancel a provider approval as set out in Part 8 of this Law.

Clause 32 provides that in considering the cancellation of a provider approval, the Regulatory Authority must first give the approved provider a notice stating the intention to cancel the provider approval and the reasons for the decision. The notice must also state that the approved provider is given 30 days to respond in writing to the Regulatory Authority.

Show cause notices are provided for in this Law to ensure opportunities are provided for the person who is the subject of a notice to state their case before action is taken.

Clause 33 provides that, after considering any response from an approved provider provided for under clause 32, the Regulatory Authority may cancel the provider approval; suspend the provider approval for a period; or decide not to cancel the provider approval. Written notice of the decision must be given to the approved provider. A notice of a decision to cancel a provider approval must set out the date on which the cancellation takes effect, which is to be 14 days after the date of the decision unless otherwise stated.

Clause 34 provides that the effect of cancellation of a provider approval is the cancellation of all service approvals held by the provider (including those relating to associated children's services)

except where provisions to transfer a service approval to another approved provider apply.

This provision also allows an approved provider to apply to the Regulatory Authority to transfer a service approval within 14 days of the decision to cancel the approval. The effect of this application is that the service approval is suspended pending the Regulatory Authority's decision. If the Regulatory Authority refuses to consent to a transfer, the original decision to cancel the service approval stands.

- Clause 35 provides that where a show cause notice is issued in relation to a proposed suspension or cancellation of a provider approval, the Regulatory Authority may require the approved provider to provide the contact information of parents of all children enrolled at each service operated by the approved provider for the purposes of informing parents of the proposed action.
- Clause 36 provides that the Regulatory Authority may require an approved provider, upon being advised by the Regulatory Authority of the suspension or cancellation of their provider approval, to notify parents of children enrolled at all or any services operated by the approved provider of the decision and its effect. Persons who fail to comply with this request are subject to a penalty.
- Clause 37 enables an approved provider to apply in writing to the Regulatory Authority to suspend a provider approval for no more than 12 months.
- The approved provider must notify parents of children attending an education and care service operated by the approved provider of an intention to seek a voluntary suspension of provider approval before making the application.
- This clause also sets out the processes for applying to the Regulatory Authority for a suspension of provider approval, and to have a suspension lifted before the prescribed end of the stated period of suspension. If an application to suspend a provider approval is granted, any service approval held by the provider (including those related to associated children's services) is also suspended.
- Clause 38 provides for the surrender and subsequent cancellation of a provider approval by written notice to the Regulatory Authority.
- The approved provider must notify parents of children enrolled at the education and care service of an intention to surrender a provider approval before giving notice to the Regulatory Authority. If a provider approval is surrendered, all service

approvals (including those related to associated children's services) are surrendered.

**Division 5—Approval of person to manage or control education and care service in place of approved provider**

Clause 39 provides that the nominated supervisor, or any other person with day to day control of an education and care service, must notify the Regulatory Authority within seven days of an approved provider's death.

This clause also provides for the executor of the approved provider's estate to continue to operate the approved education and care service provided the nominated supervisor or any certified supervisor continue to manage the day to day operation of the service.

The executor of the estate of the approved provider may transfer, surrender or apply for a suspension of the service approval. The executor of the estate of the approved provider may apply to the Regulatory Authority for a provider approval within 30 days of the death of the approved provider.

Clause 40 provides for the legal personal representative or guardian of an approved provider to apply to the Regulatory Authority for a provider approval where the approved provider has become incapacitated.

Clause 41 provides that the Regulatory Authority must not grant a provider approval to a person under clause 39 or 40 unless satisfied that the person is a fit and proper person under the assessment provisions set out in clauses 12, 13 and 14. The Regulatory Authority may grant the provider approval including granting it subject to conditions, or refuse to grant the approval. An approval may be granted for up to 6 months with provision for a further six month extension at the Regulatory Authority's discretion.

**Division 6—Exercise of powers by another Regulatory Authority**

Clause 42 provides for the Regulatory Authority in another participating jurisdiction to exercise all powers of the Regulatory Authority under this Part in respect of the provider approval, if the approved provider operates an education and care service in that participating jurisdiction.

It requires a Regulatory Authority to consult with other participating jurisdictions prior to amending, suspending or cancelling a provider approval.

## **PART 3—SERVICE APPROVAL**

### **Division 1—Application for service approval**

Under this Law, a service approval authorises an approved provider to operate a long day care, pre-school or outside school hours care service at a particular premises. Family day care services, not individual family day care educators, are subject to approval based on the adequacy of the service's policies and procedures.

Clause 43 provides that an approved provider may apply to the Regulatory Authority for a service approval.

An approved provider may only apply for a service approval if the approved provider is or will operate the education and care service. A person who has, or is in the process of applying for, a provider approval may apply for service approval. The Regulatory Authority must not grant the service approval unless the provider approval is granted.

Clause 44 sets out the steps required to apply for a service approval in the jurisdiction where the service will operate, including putting forward a nominated supervisor.

Clause 45 enables the Regulatory Authority to seek further information that is reasonably required for the purpose of assessing an application for a service approval. The time between making a request for further information and the provision of the information is not included in the period set out in clause 48 for making a decision on an application.

Clause 46 provides that the Regulatory Authority may require information from applicants and undertake inquiries and investigations in considering an application for a service approval. The Regulatory Authority may inspect the education and care service premises and inspect policies and procedures of the service.

Clause 47 provides that, in determining an application for a service approval, the Regulatory Authority must have regard for the National Quality Framework; except in the case of a family day care residence, the suitability of a premises; the adequacy of the policies and procedures of the service; whether the applicant has a provider approval and has put forward a certified supervisor who has consented to being a nominated supervisor for the service; and any other prescribed matters.

In addition the Regulatory Authority may have regard to whether the applicant is capable of operating the education and care service having regard to its financial and management capability and other matter the Regulatory Authority considers relevant.

Clause 48 provides for the Regulatory Authority to grant or refuse to grant a service approval to an approved provider. Any grant of a service approval is subject to any conditions the Regulatory Authority sees fit. If the Regulatory Authority has not made a decision within 90 days and has not agreed with the applicant to extend this period, the application is deemed to be refused.

An approved provider may seek a review of a decision to refuse to grant a service approval as set out in Part 8 of this Law.

Clause 49 provides that the Regulatory Authority must not grant a service approval if doing so would constitute an unacceptable risk to the safety, health or wellbeing of children or if the applicant does not have a provider approval. The Regulatory Authority may also refuse to grant a service approval on any grounds prescribed in the national regulations.

Clause 50 provides that the Regulatory Authority must notify an applicant of the decision and the reasons for the decision for a service approval within 7 days of making a decision.

Clause 51 provides that a service approval is granted subject to a number of conditions including ensuring the safety, health and wellbeing of children; meeting children's educational and developmental needs; commencing ongoing operation within six months of being granted an approval unless otherwise agreed by the Regulatory Authority; and the approved provider holding the prescribed insurance. The Regulatory Authority may impose any other conditions it sees fit. This clause also provides for the applicability of conditions to an associated children's service.

Additionally, service approvals for family day care services are conditional on the adequate monitoring of, and support for, family day care educators, and the engagement of sufficient co-ordinators to support family day care educators.

Any additional conditions, for example, in regard to quality improvement, may be imposed on a service approval by this Law or by the Regulatory Authority. Non-compliance with a condition of a service approval is subject to penalties.

An approved provider may seek a review of a decision to impose a condition on a service approval as set out in Part 8 of this Law.

- Clause 52 provides that the Regulatory Authority must provide a copy of a service approval to the approved provider and prescribes the information required in the approval.
- Clause 53 provides that an annual fee must be paid in respect to each service approval held. This fee will be prescribed in the national regulations.

### **Division 2—Amendment of service approval**

- Clause 54 sets out the process by which an approved provider may seek an amendment of a service approval, and the powers and obligations of the Regulatory Authority in determining an application.

An example of when an application for an amendment may be made is where an approved provider seeks the removal of a condition on a service approval. The Regulatory Authority may accept or refuse the amendment sought by the approved provider, or amend the approval in another way with the written agreement of the applicant. The Regulatory Authority must make a decision within 60 days and must provide the approved provider with written notice of its decision. An amendment cannot change a location of a service.

An approved provider may seek a review of a decision to refuse to amend a service approval as set out in Part 8 of this Law.

- Clause 55 provides that the Regulatory Authority may amend a service approval at any time by notice to the approved provider.
- For example, the Regulatory Authority may amend a service approval to add or remove a condition, or when the service approval is transferred to another approved provider. This clause also provides that the Regulatory Authority must amend a service approval as it relates to an associated children's service in accordance with any direction by the children's services regulator.

An approved provider may seek a review of a decision to amend a provider approval as set out in Part 8 of this Law.

- Clause 56 provides that, if an approved provider wishes to change the nominated supervisor of a service, the Regulatory Authority must be given written notice at least seven days before the new nominated supervisor is due to commence in the role.

Clause 57 provides that a Regulatory Authority must provide a copy of an amended service approval to the approved provider.

### **Division 3—Transfer of service approval**

Clause 58 provides for the transfer of a service approval from one approved provider to another approved provider.

Clause 59 provides that the Regulatory Authority must be notified in writing at least 42 days prior to the proposed date of the transfer of a service approval and a prescribed fee must be paid.

Clause 60 provides that a service approval cannot be transferred without the consent of the Regulatory Authority.

Clause 61 provides that consent is taken to have been given if the Regulatory Authority, having been notified of a proposed transfer of a service approval, has not notified the parties that it intends to intervene at least 28 days before the intended date of transfer.

Clause 62 sets out the circumstances under which the Regulatory Authority may intervene in a transfer of a service approval, including, but not limited to, concerns as to the receiving approved provider's compliance history with this Law as applying in a participating jurisdiction, financial capacity and management capability to operate the service. Any decision by the Regulatory Authority to intervene must be provided by written notice to the intended transferring and receiving approved providers at least 28 days prior to the proposed date of transfer.

Clause 63 provides that if the Regulatory Authority intervenes a transfer cannot proceed without the Regulatory Authority's written consent.

Clause 64 provides that if the Regulatory Authority has intervened in the transfer of a service approval it may seek further information from either party to the proposed transfer and undertake inquiries in relation to the receiving approved provider in deciding whether to consent to the transfer.

Clause 65 provides that if the Regulatory Authority has intervened in the transfer of a service approval, it may decide to consent or refuse to consent to the proposed transfer, and may impose conditions on the transfer, which must be observed.

An approved provider may seek a review of a decision to refuse to consent to transfer a service approval as set out in Part 8 of this Law.

- Clause 66 provides that if the Regulatory Authority has intervened in the transfer of a service approval, it must notify the parties to the proposed transfer of its decision to consent or refuse to consent, or its intention to suspend the transfer to allow more time for a decision at least seven days prior to the intended date of transfer. It also sets out the information required in the notice conveying a decision.
- Clause 67 provides that the transfer of a service approval is void if it is made without the consent of the Regulatory Authority, contravenes the conditions of the transfer, or is purported to be made to a person other than the person listed as the receiving approved provider in the notice to the Regulatory Authority.
- Clause 68 provides that both parties to a transfer must give written notice to the Regulatory Authority within two days of the transfer taking effect. On receipt of notice of a transfer of a service approval, the Regulatory Authority must amend the service approval and provide a copy to the receiving approved provider. The amendment to the service approval takes effect on the date of the transfer. Penalties apply for failing to notify the Regulatory Authority of the transfer of a service approval within the prescribed time.
- Clause 69 provides that the approved provider to whom a service is transferred must notify the parents of children enrolled at the service of the transfer at least two days before the transfer takes effect. Penalties apply for failing to comply with this provision.

#### **Division 4—Suspension or cancellation of service approval**

- Clause 70 provides that, to encourage continuous improvement and compliance with this Law and the national regulations, powers are granted to the Regulatory Authority to suspend a service approval.
- Circumstances under which a service approval may be suspended include the Regulatory Authority's assessment that it would not in the best interests of children for the service to continue, a condition of the service approval has not been complied with, or the service is not being managed in accordance with this Law.

Other reasons are the failure of a service that is rated as having not met the National Quality Standard to improve its rating; the contravention of this Law by the approved provider; failure by the approved provider to comply with a direction, compliance notice or emergency order; the operation of a service at the premises has ceased and the service has not been transferred to another approved provider within six months; within six months of being granted a service approval an ongoing service has not commenced; or the approved provider has not paid the prescribed annual fee for the service approval.

An approved provider may seek a review of a decision to suspend a service approval as set out in Part 8 of this Law.

Clause 71 provides that in considering the suspension of a service approval, the Regulatory Authority must first give the approved provider a notice stating the intention to suspend the service approval, the proposed period of suspension and the reasons for the decision. The notice must also state that the approved provider is given 30 days to respond in writing to the Regulatory Authority.

Show cause notices are provided for in this Law to ensure opportunities are provided for the person who is the subject of a notice to state their case before action is taken.

Clause 72 provides that, after considering any response from an approved provider provided for under clause 71, the Regulatory Authority may suspend the service approval or decide not to suspend the service approval.

Clause 73 provides that, if the Regulatory Authority is satisfied that there is an immediate risk to the safety, health or wellbeing of a child or children a service approval may be suspended without giving a show cause notice.

Clause 74 provides that the Regulatory Authority must give written notice to the approved provider of the decision to suspend a service approval. A notice of a decision to suspend must set out the period of suspension and the date on which it takes effect, which, if a show cause notice has been issued, is to be 14 days after the date of the decision unless otherwise stated. If a show cause notice has not been given, the suspension takes effect on the giving of the notice of the decision to suspend.

Clause 75 provides that if a Regulatory Authority considers that a service approval should be suspended to the extent that it applies to an associated children's service, it must refer the matter to the children's services regulator of this jurisdiction. The children's

services regulator must notify the Regulatory Authority if it proposes to conduct an investigation or inquiry into an associated children's service, and must advise the Regulatory Authority of a decision to suspend a service approval.

Clause 76 provides that the Regulatory Authority may consent to the transfer of a service approval that has been suspended, and that the suspension ceases on the transfer taking effect unless the Regulatory Authority provides otherwise.

Clause 77 sets out the circumstances under which the Regulatory Authority may cancel a service approval, including the Regulatory Authority's assessment that there is an unacceptable risk to children's safety, health or wellbeing. Other reasons are that, the service has not rectified the reason for a suspension of the approval; the service approval was obtained improperly (for example a service approval was transferred without the consent of the Regulatory Authority); or a condition of the service approval has not been complied with.

An approved provider may seek a review of a decision to cancel a service approval as set out in Part 8 of this Law.

Clause 78 provides that in considering the cancellation of a service approval, the Regulatory Authority must first give the approved provider a notice stating the intention to cancel the service approval and the reasons for the decision. The notice must also state that the approved provider is given 30 days to respond in writing to the Regulatory Authority.

Show cause notices are provided for in this Law to ensure opportunities are provided for the person who is the subject of a notice to state their case before action is taken.

Clause 79 provides that, after considering any response from an approved provider provided under clause 78, the Regulatory Authority may cancel the service approval; suspend the service approval or decide not to cancel the service approval, and must give written notice of the decision to the approved provider. A notice of a decision to cancel a service approval must set out the date on which it takes effect, which, unless otherwise stated, is to be 14 days after the date of the decision, unless an application to transfer the service approval is made as set out in clause 81.

Clause 80 provides that if a Regulatory Authority considers that a service approval should be cancelled to the extent that it applies to an associated children's service, it must refer the matter to the children's services regulator. The children's services regulator

must notify the Regulatory Authority if it proposes to conduct an investigation or inquiry into an associated children's service, and must advise the Regulatory Authority of a decision to cancel a service approval.

- Clause 81 provides that an approved provider may apply to the Regulatory Authority for consent to transfer the service approval within 14 days of a decision to cancel a service approval. If an application is made, the cancellation does not take effect and the service approval is suspended pending the Regulatory Authority's decision. An application under this clause cannot be made in relation only to the cancellation of an associated children's service.
- Clause 82 provides for a decision on an application under clause 81. If the Regulatory Authority consents to the transfer, the decision to cancel the service approval is revoked and the suspension of the service approval ceases upon transfer unless otherwise provided. If the Regulatory Authority refuses the application, the service approval is cancelled.
- Clause 83 provides that where a show cause notice is issued in relation to a proposed suspension or cancellation of a service approval, the Regulatory Authority may require the approved provider to provide the contact information of parents of all children enrolled at the service for the purposes of notifying parents of the proposed action.
- Clause 84 provides that the Regulatory Authority may require the approved provider, upon being advised by the Regulatory Authority of the suspension or cancellation of a service approval, to notify parents of children enrolled at the service operated by the approved provider of the decision and its effect. Failure to comply with this request is subject to a penalty.
- Clause 85 enables an approved provider to apply in writing to the Regulatory Authority and pay a prescribed fee to suspend a service approval for no more than 12 months. The Regulatory Authority will consider the reasonableness of a suspension in determining whether to approve the request. The approved provider must notify the parents of children enrolled at the service of the intention to apply for a suspension of a service approval at least 14 days prior to making the application to the Regulatory Authority.
- Clause 86 provides for the surrender and subsequent cancellation of service approval upon written notification to the Regulatory Authority.

### **Division 5—Application for service waiver**

- Clause 87 provides that an approved provider may apply for a waiver from a requirement that an approved education and care service comply with a prescribed element or elements in the National Quality Standard or national regulations. It is intended that a service waiver will only be able to be sought for elements relating to the physical environment and staffing arrangements of a service.
- Clause 88 sets out the requirements for making an application to the Regulatory Authority for a waiver.
- Clause 89 provides that the Regulatory Authority may seek further information and inspect the premises and offices of the applicant in considering an application for a waiver.
- Clause 90 provides that, in considering whether the grant of a service waiver is appropriate, the Regulatory Authority may have regard to whether the service is able to meet the prescribed element or elements of the National Quality Standard or the national regulations by alternative means and any matters disclosed in the application.
- Clause 91 provides that the Regulatory Authority may decide to grant the service waiver or refuse the application. An applicant for a service waiver must be notified of a decision within 60 days of the application and a service approval must be issued specifying the elements in relation to which the waiver applies.
- Clause 92 provides that the Regulatory Authority may revoke a service waiver.
- For example, this action may be taken where the Regulatory Authority considers the circumstances of the service to have changed since the original decision, or if the service has since fully complied with the elements set out in the waiver. A revocation takes effect at the end of the period prescribed in regulations. An approved provider may also apply in writing to have a service waiver revoked.
- An approved provider may seek a review of a decision to cancel a service waiver to as set out in Part 8 of this Law.
- Clause 93 provides that while the service waiver is in force the service will be considered to comply with the element or elements specified in the service waiver. This provision enables flexibility and recognises the variable circumstances of services throughout Australia. For example, a service operating in a rural or remote

area that is unable to attract a qualified staff member may be given a service waiver to operate despite not meeting this legislative requirement to provide a service to children in remote communities.

### **Division 6—Temporary waiver**

- Clause 94 provides that an approved provider may apply for a temporary waiver from the requirement to comply with a prescribed element or elements of the National Quality Standard or the national regulations. It is intended that a temporary waiver can only be sought for elements relating to physical environment and staffing arrangements of a service.
- Clause 95 sets out the requirements for making an application to the Regulatory Authority for a temporary waiver.
- Clause 96 provides that the Regulatory Authority may seek further information or inspect education and care service premises in considering an application for a temporary waiver.
- Clause 97 provides that in considering whether the grant of a temporary waiver is appropriate, the Regulatory Authority may have regard to whether special circumstances disclosed in the application reasonably justify the grant of the temporary waiver.
- Clause 98 provides that the applicant must be notified of a decision within 60 days of an application for a temporary waiver and, if granted, a service approval must be issued specifying the elements of the National Quality Standard or the national regulations on which compliance is waived. A temporary waiver must specify the period of the waiver, which can be no more than 12 months; however, an approved provider may apply for a further temporary waiver or to extend a temporary waiver.
- Clause 99 provides that the Regulatory Authority may revoke a temporary waiver.
- For example, this action may be taken where the Regulatory Authority considers the circumstances of the service to have changed since the original decision, or if the service has since fully complied with the elements set out in the temporary waiver.
- Clause 100 provides that a service is not required to comply with the element or elements of the National Quality Standard specified in the waiver.

### **Division 7—Exercise of powers by another Regulatory Authority**

- Clause 101 provides for any Regulatory Authority in whose jurisdiction a family day care educator provides education and care as part of a family day care service to exercise powers of the Regulatory Authority in respect of that service. A Regulatory Authority may only exercise a power to amend, suspend or cancel a service approval after consulting with the Regulatory Authority of each jurisdiction in which the family day care service operates.

### **Division 8—Associated children's services**

- Clause 102 provides that this Law does not apply to an associated children's service except where expressly provided.

### **Division 9—Offences**

- Clause 103 provides that it is an offence for a person to provide an education and care service unless the person is an approved provider in respect to that service, and the service is an approved education and care service.
- In the case of family day care, provider and service approval does not apply to individual family day care educators who are providing education and care to children for an approved family day care service, but to the service itself.
- Clause 104 provides for an offence to knowingly publish or cause to be published an advertisement to provide an education and care service without provider or service approval. It does provide for the right of an approved provider to advertise without service approval if an application for this approval has been made and is under consideration.

## **PART 4—SUPERVISOR CERTIFICATES**

### **Division 1—Application for supervisor certificate**

- Clause 105 enables a person issued with a supervisor certificate to be placed in day to day charge of an approved education and care service.
- Clause 106 provides that a person over the age of 18 may apply to the Regulatory Authority of the jurisdiction in which they ordinarily reside or intend to reside for a supervisor certificate.

- Clause 107 sets out the requirements for making an application for a supervisor certificate.
- Clause 108 provides that an applicant must satisfy the Regulatory Authority of their fitness and propriety to be a supervisor of an education and care service, and meet the minimum requirements relating to qualifications, experience and management capability.
- A person who is a registered teacher or who holds a current working with children card is taken to satisfy the fitness and propriety requirements unless there is evidence to the contrary.
- Clause 109 specifies factors to be taken into account by the Regulatory Authority in assessing whether a person is fit and proper to supervise an education and care service, including, but not limited to, compliance history and decisions in relation to this Law as applying in any participating jurisdiction and other relevant laws.
- The Regulatory Authority may also have regard to whether the person has a medical condition which may affect his or her capacity to be a supervisor.
- Clause 110 provides for the Regulatory Authority to seek further information or inquire further to determine whether the person is fit and proper.
- Clause 111 provides that a Regulatory Authority may grant or refuse to grant a supervisor certificate. A Regulatory Authority is taken to have refused to grant a supervisor certificate if it has not notified an applicant of a decision within 60 days of the date of the application and has not, with the applicant's agreement, extended this period of deliberation.
- A person may seek a review of a decision to refuse to grant a supervisor certificate as set out in Part 8 of this Law.
- Clause 112 provides that the Regulatory Authority must refuse to grant a supervisor certificate if the applicant is under the age of 18, the Regulatory Authority is not satisfied that the person is fit and proper or has the required qualifications, experience or management capability to supervise an education and care service.
- Clause 113 provides that the Regulatory Authority must give written notice to the applicant of a decision and the reasons for the decision, to grant or refuse to grant a supervisor certificate within seven days of the decision.

- Clause 114 provides for the grant of a supervisor certificate to a person or a prescribed class of persons. An application is not required.
- Clause 115 provides that a supervisor certificate is granted subject to any conditions imposed by this Law or determined by the Regulatory Authority. The certified supervisor must, to the extent that a matter is within his or her control, comply with this Law in relation to that matter, and must notify the Regulatory Authority of any change to his or her mailing address or name. Penalties apply for non-compliance with a condition of a supervisor certificate.
- A certified supervisor may seek a review of a decision to impose a condition on a supervisor certificate as set out in Part 8 of this Law.
- Clause 116 provides that the Regulatory Authority must issue a supervisor certificate if certification is granted, and sets out the information to be included on the certificate.
- Clause 117 provides that a supervisor certificate enables a person to be a nominated supervisor and to be the responsible person present at the premises of an education and care service in the absence of the approved provider or nominated supervisor.

### **Division 2—Reassessment**

- Clause 118 provides that the Regulatory Authority may reassess the fitness and propriety for a certified supervisor at any time.

### **Division 3—Amendment of supervisor certificate**

- Clause 119 provides that a certified supervisor may apply to the Regulatory Authority for an amendment of a supervisor certificate, and sets out the process for making an application. As an example, a certified supervisor may seek the removal of a condition on a supervisor certificate. The Regulatory Authority may accept or refuse the amendment sought by a certified supervisor or, amend the certificate in another way with the written agreement of the applicant.
- A certified supervisor may seek a review of a decision to refuse to amend a supervisor certificate as set out in Part 8 of this Law.
- Clause 120 provides that the Regulatory Authority may by written notice amend a supervisor certificate at any time, which has effect 14 days after the notice is given or at any later date stated in the notice. An example of when this action may be taken is where

the Regulatory Authority decides to add or remove a condition on a supervisor certificate.

A certified supervisor may seek a review of a decision to amend a supervisor certificate as set out in Part 8 of this Law.

- Clause 121 provides that a certified supervisor must notify the Regulatory Authority of any change in his or her circumstances that affects the requirement that the person be a fit and proper person and meet the prescribed minimum requirements for qualifications, experience or management capability; or any change to matters included on the supervisor certificate, any suspension or cancellation of a working with children check or working with children card and any disciplinary proceedings under an education law. Penalties apply for non-compliance.
- Clause 122 provides that the Regulatory Authority may amend a supervisor certificate in the event that a certified supervisor notifies of changes to information stated on a supervisor certificate.

#### **Division 4—Suspension or cancellation of supervisor certificate**

- Clause 123 provides for the circumstances under which the Regulatory Authority may suspend or cancel a supervisor certificate, on the grounds of an assessment that the person is no longer a fit and proper person to be a supervisor of an education and care service, or the person fails to comply with a condition of the supervisor certificate or a requirement of this Law.
- A certified supervisor may seek a review of a decision to suspend or cancel a supervisor certificate as set out in Part 8 of this Law.
- Clause 124 provides that if the Regulatory Authority is considering suspending or cancelling a supervisor certificate it must first issue a show cause notice outlining the intended action, the reasons for the decision, and the process for the certified supervisor to respond to the notice.
- Clause 125 provides that the Regulatory Authority, after considering the response from the certified supervisor provided under clause 124, may suspend, cancel or decide not to suspend or cancel the supervisor certificate.
- Clause 126 provides that, if the Regulatory Authority is satisfied that there is an immediate risk to the safety, health or wellbeing of a child or children, a supervisor certificate may be suspended without giving a show cause notice.

Clause 127 provides that the Regulatory Authority must give written notice to the approved provider of the decision to suspend or cancel a supervisor certificate.

A notice of a decision to suspend must set out the period of suspension and the date on which it takes effect, which, if a show cause notice has been issued, is to be 14 days after the date of the decision unless otherwise stated. If a show cause notice has not been given, the suspension takes effect on the giving of the notice of the decision to suspend.

Clause 128 provides for the suspension or cancellation of a supervisor certificate if the teacher registration of a person taken to be a fit and proper person under clause 108 is suspended or cancelled. This action will not apply if the person is assessed as a fit and proper person under the regular process set out in clause 109.

The supervisor certificate of a person is immediately suspended or cancelled if his or her working with children card is suspended or cancelled.

Clause 129 provides for a certified supervisor to apply in writing to the Regulatory Authority to voluntarily suspend their supervisor certificate for a period of not more than 12 months. If satisfied that the suspension of the supervisor certificate is reasonable in the circumstances, the Regulatory Authority may by written notice agree to the suspension.

Clause 130 provides for the voluntary surrender and subsequent cancellation of a supervisor certificate and sets out the process for this action.

#### **Division 5—Exercise of powers by another Regulatory Authority**

Clause 131 provides for the Regulatory Authority of a participating jurisdiction to exercise all the powers under this Part in respect of a supervisor certificate if the supervisor works in that jurisdiction. These powers may only be exercised after consultation with the Regulatory Authority of each participating jurisdiction in which the certified supervisor works.

#### **Division 6—Offence**

Clause 132 provides for an offence for a person to hold himself or herself out as a certified supervisor without holding a supervisor certificate.

## **PART 5—ASSESSMENTS AND RATING**

### **Division 1—Assessment and rating**

All services under the National Quality Framework will be subject to an assessment and rating process against the National Quality Standard and the requirements of the national regulations. These assessments and ratings will provide information to families about the quality of services. Under the National Quality Framework, services will be assessed against seven quality areas, and will be given one of five rating levels for each quality area and an overall rating.

- Clause 133 provides that the Regulatory Authority that granted the service approval for an education and care service, may at any time assess or reassess a service for the purpose of rating that service against the National Quality Standard and national regulations. New services or services that have not yet been rated will have a prescribed provisional rating.
- Clause 134 provides that the rating levels to be used in this Law are prescribed by the regulations. The highest rating level may only be given by the National Authority on application by an approved provider.
- Clause 135 enables the Regulatory Authority to determine a rating level for each quality area stated in the National Quality Standard and an overall rating for the service. In doing so the Regulatory Authority may have regard to any information obtained in the course of the rating assessment, any compliance history, any monitoring or investigation of the service or any other prescribed information.
- Clause 136 provides that the Regulatory Authority must give written notice to an approved provider of an assessment and the rating decision. This notice must be given within 60 days after the completion of the assessment by an authorised officer of the service for the purpose of an assessment or after the review period under clause 137.
- Clause 137 provides for the suspension of a rating assessment if the provider or service approval is cancelled or suspended, a compliance notice or an emergency action notice has been given or action has been taken for the emergency removal of children. In this situation the Regulatory Authority must give notice that the outcome of the rating assessment will be given within 60 days after either the end of the period for seeking a review of the decision or action, or, if a review is sought, once a decision is made.

## **Division 2—Reassessment and re-rating**

- Clause 138 provides that the Regulatory Authority may reassess a service at any time and determine new rating levels.
- Clause 139 provides that an approved provider may apply to the Regulatory Authority for a reassessment and re-rating of a service and the process for making an application. An application for a reassessment or re-rating may only be made once every two years or otherwise as agreed by the Regulatory Authority.
- Clause 140 provides that Division 1 relating to assessments and ratings also applies to reassessments and re-ratings under this Division.

## **Division 3—Review by Regulatory Authority**

- Clause 141 provides that an approved provider may ask the Regulatory Authority to review the rating assessment made by the Regulatory Authority within 14 days of receiving the rating notice under clause 136, and sets out the process for requesting a review.
- Clause 142 sets out the process for the Regulatory Authority to review a rating decision upon application by an approved provider and the period within which a review must be conducted. To ensure the review is independent and the principles of natural justice are provided for, the person undertaking the review must not have been involved in the original assessment. The Regulatory Authority may request further information in undertaking a review.
- Clause 143 provides that the Regulatory Authority may confirm or amend a rating assessment as a result of a review and must notify an approved provider of a decision and the reasons for it within 30 days of the decision being made. The rating decision made by the review is final unless an application to review the decision is made to the National Authority under clause 144.

## **Division 4—Review by Ratings Review Panel**

### **Subdivision 1—Application for review**

- Clause 144 provides that, following a review by the Regulatory Authority, an approved provider may apply to the National Authority for further review of the rating assessment by a Ratings Review Panel. An application may only be made on the grounds that the Regulatory Authority failed to apply prescribed processes or

failed to take into account relevant circumstances or facts at the time of the assessment.

- Clause 145 sets out the process for making an application for a review by the Ratings Review Panel, which must be made within 14 days of the review decision made by a Regulatory Authority. As the review is confined to whether prescribed processes were applied and relevant circumstances and facts were taken into account, an application must not include information or evidence that was not given to the Regulatory Authority during a rating assessment or a review of a rating assessment. The National Authority must give written notice to the Regulatory Authority of the application and invite the Regulatory Authority to make a submission to the review.

### **Subdivision 2—Establishment of Ratings Review Panel**

- Clause 146 provides for the establishment of a Ratings Review Panel by the Board of the National Authority.
- Clause 147 provides for the establishment of a Ratings Review Panel pool to act as members of the Panel, and sets out the required qualifications for members. The pool is to consist of members nominated by Regulatory Authorities and the Commonwealth Minister and may include a member of staff of the National Authority.
- Clause 148 sets out the procedure to be followed by the Ratings Review Panel, including how it must record its deliberations.
- Clause 149 provides for the transaction of business by telephone, closed circuit television or other means.

### **Subdivision 3—Conduct of Review**

- Clause 150 sets out the parameters for a review by the Ratings Review Panel, including evidence that may be considered and information and advice that may be requested. In the interests of procedural fairness, copies of documents, information or evidence produced by the Regulatory Authority must be provided to the approved provider.
- Clause 151 provides that as a result of a review the Ratings Review Panel must make a decision of the review within 60 days, unless otherwise extended by the chairperson of the Panel, to confirm the assessment of the Regulatory Authority or amend the assessment and rating levels. The outcome of the review must be conveyed to the Regulatory Authority and the approved

provider within 14 days of a decision and the rating level confirmed or amended by the review becomes the rating level for the service.

### **Division 5—Awarding of highest rating**

It is intended that the highest rating under the National Quality Standard and national regulations will recognise services that exhibit excellence and best practice in education and care. This rating is determined by the National Authority.

- Clause 152 enables an approved provider who satisfies the criteria established by the National Authority to apply to be assessed for the highest overall rating level and sets out the process for applying. An application may be made once every three years unless otherwise determined by the National Authority.
- Clause 153 provides that the National Authority may determine and publish the criteria for meeting the highest rating. The Board of the National Authority will assess if services meet the highest rating level, and in doing so must ask for, and take into account, the advice of the Regulatory Authority.
- Clause 154 enables the Board to ask the approved provider for information and documents, and make any inquiries it considers appropriate for the purposes of a rating assessment.
- Clause 155 provides that the Board of the National Authority may confer or refuse to confer the highest rating on a service within 60 days of receiving an application, or a further 30 days under prescribed circumstances. A conferral of the highest rating lasts for three years unless revoked sooner.
- Clause 156 provides that the Board must give written notice of the decision to confer or refuse to confer the highest rating level on a service to the approved provider and the Regulatory Authority.
- Clause 157 provides that the Board may at any time reassess a service.
- Clause 158 provides that the Board of the National Authority must revoke the highest rating level for a service at any time if it determines that the service no longer meets the criteria for the highest rating level, or the Regulatory Authority advises that the overall rating level of the service is lower than the second highest rating level.

Clause 159 enables an approved provider that has had the highest rating level conferred on a service to re-apply for the highest rating level within 90 days before the expiry of the rating, and sets out the process for making the application.

### **Division 6—Publication of rating levels**

Clause 160 sets out the process by which the National Authority must publish rating levels. The publication of ratings seeks to improve public knowledge about, and access to, information about the quality of services, which is a key driver of education and care reforms. Ratings are not published until after any period for seeking review expires or a decision on a review of a rating decision is made.

## **PART 6—OPERATING AN EDUCATION AND CARE SERVICE**

In order to fulfil the objectives and principles of this Law, this Part sets out obligations for approved providers, nominated supervisors, staff members and family day care educators, and prescribes penalties for infringement or non-compliance. The penalties for the offences included in this Law reflect a scale of seriousness; and the offences are applied to the most appropriate persons in recognition of different levels of responsibility.

Clause 161 provides that an approved provider must not operate a service without a nominated supervisor for the service.

Clause 162 provides that an approved provider must ensure that at least one person approved or certified by the Regulatory Authority is present at an education and care service at all times.  
A responsible person is the approved provider or a person with management or control of a service; the nominated supervisor of the service; or a certified supervisor who has been placed in day to day charge of the service.

This provision does not apply to family day care services, which are provided for in clauses 163 and 164.

Clause 163 provides that a family day care service must at all times employ or engage a suitably qualified co-ordinator to assist in the operation of the service and support, monitor and train the service's family day care educators.

Clause 164 provides that a family day care service must ensure that at least one person approved or certified by the Regulatory Authority is available and contactable to provide support to a family day care educator at all times when the service is caring for children. This person is the approved provider or a person with

management or control of the service; the nominated supervisor of the service; or a certified supervisor who has been placed in day to day charge of the service.

- Clause 165 provides that an approved provider, nominated supervisor or family day care educator must ensure children are adequately supervised at all times they are in the care of that service.
- Clause 166 provides that an approved provider, nominated supervisor, staff member or family day care educator must ensure that no child is subject to corporal punishment or unreasonable discipline.
- Clause 167 provides that an approved provider, nominated supervisor or family day care educator must ensure reasonable steps are taken to protect children from harm and from hazards likely to cause injury.
- Clause 168 provides that an approved provider or nominated supervisor must ensure that a program based on an approved learning framework (such as the Early Years Learning Framework or any proposed framework for school age care) is delivered to all children and takes into account each child's needs, interests, experiences and individual differences.
- Clause 169 provides that an approved provider, nominated supervisor or family day care educator must ensure compliance with prescribed staffing numbers and qualifications, unless the service has been granted a temporary waiver or a service waiver. This clause also provides for the National Authority to determine the equivalency of qualifications, including foreign qualifications, in relation to those required under the national regulations.
- Clause 170 provides that an approved provider, nominated supervisor or family day care educator must ensure unauthorised persons do not remain on service premises unless they are under the direct supervision of an educator or staff member of the service. This clause also clarifies who is not considered to be an unauthorised person, including holders of a current working with children check or card, and persons who are not required to hold a working with children card; parents, or an authorised nominee of a parent; family members; and in an emergency, medical and emergency service personnel.

- Clause 171 provides that a Regulatory Authority may direct an approved provider, a nominated supervisor or a family day care educator to exclude an inappropriate person from the premises for such time as the Regulatory Authority considers necessary.
- For clarity, an inappropriate person is a person who may pose a risk to the safety, health or wellbeing of children; or whose behaviour, state of mind or pattern of behaviour is such that it would be inappropriate for him or her to be on the premises while children are attending, for example a person who is under the influence of drugs or alcohol.
- Clause 172 provides that prescribed information, including, but not limited to, service and provider approvals, nominated supervisors or the prescribed class of person to which the nominated supervisor belongs, ratings decisions, service waivers and temporary waivers must be displayed at the main entrance of a service.
- Clause 173 provides that an approved provider must notify the Regulatory Authority in relation to changes in the name of the approved provider; management and control of the approved provider; failure to commence operating an education and care service within six months and an approved provider must notify the Regulatory Authority of matters in relation to operation of an education and care service including suspension, cancellation or disciplinary proceedings or other action taken against a nominated supervisor or certified supervisor; changes relating to the engagement of a nominated supervisor; and changes relating to the education and care service premises; ceasing to operate a service; and change in the principal office of the family day care service.
- Clause 174 provides that an approved provider must notify the Regulatory Authority of any serious incidents at the service as prescribed in the national regulations; complaints regarding the safety, health or wellbeing of a child or children; the contravention of this Law; any change relevant to an assessment of fitness and propriety; or any other prescribed information.
- Clause 175 provides that an approved provider or a family day care educator must keep the relevant prescribed documents and make them available for inspection by an authorised officer.

## **PART 7—COMPLIANCE WITH NATIONAL LAW**

### **Division 1—Notices**

- Clause 176 provides that, if the Regulatory Authority is satisfied that an education and care service is not complying with a prescribed provision of this Law, it may issue a written direction requiring the approved provider to take action to comply with the provision within a specified period not less than 14 days. An approved provider must comply with a compliance direction.
- Clause 177 empowers a Regulatory Authority to issue a compliance notice if a service is not complying with any provision of this Law. The notice requires the approved provider to take specified steps to comply with that provision. An approved provider must comply with a compliance notice
- Clause 178 provides for the Regulatory Authority to direct the approved provider of a family day care service to suspend the provision of care or education by a family day care educator in the interests of children's safety, health and wellbeing.
- The Regulatory Authority may give a show cause notice indicating the intention to direct the suspension of the provision of education and care and the reasons for the proposed direction. An approved provider, nominated supervisor or educator may, within fourteen days after the show cause notice is given, make a submission, which must be considered by the Regulatory Authority. The Regulatory Authority must convey a final decision to the approved provider and the family day care educator. A person must comply with a direction given by the Regulatory Authority.
- Clause 179 empowers a Regulatory Authority to issue an emergency action notice if there is an immediate risk to the safety, health or wellbeing of children.
- The Regulatory Authority may direct an approved provider of a service to take action to remove or reduce the risk within a specified timeframe, which must not be more than 14 days. An approved provider must comply with this notice.

### **Division 2—Enforceable undertakings**

- Clause 180 provides for enforceable undertakings, which are an alternative compliance tool through which a person in contravention of this Law undertakes to take, or refrain from taking, certain actions to comply with this Law. By agreeing to, and complying with, an enforceable undertaking, proceedings cannot be brought against the person for the prescribed offence under this Law; however the Regulatory Authority may publish an undertaking.
- Clause 181 provides that, in the event of failure to comply with an enforceable undertaking, the Regulatory Authority may seek recourse to the relevant tribunal or court to enforce the undertaking, and the tribunal or court may make orders regarding the undertaking, including an order to direct the person to comply with the undertaking. If the relevant tribunal or court determines that the person has failed to comply with a term of the undertaking, proceedings may be brought for any offence or contravention in respect of which the undertaking was given.

### **Division 3—Prohibition notices**

- Clause 182 provides for the Regulatory Authority to issue a prohibition notice to persons involved in providing an education and care service if it considers that there may be an unacceptable risk of harm to a child if the person were allowed to remain on the premises or to provide education and care to children.
- Clause 183 provides that the Regulatory Authority must issue a show cause notice outlining the intention to give a prohibition notice and the reasons for the intended prohibition. The show cause notice must also provide the person at least 14 days to respond to the notice. The requirement for a show cause notice does not apply if the Regulatory Authority is satisfied that it is necessary in the interests of a child's safety, health or wellbeing to issue an immediate prohibition notice.
- Clause 184 provides that the Regulatory Authority must consider any submission received within the stated time limit from a person issued with a show cause notice, and must give notice to a person if it is decided not to issue a prohibition notice.
- A person may seek a review of a decision to issue a prohibition notice as set out in Part 8 of this Law.

Clause 185 provides that a prohibition notice must state the activities the person is prohibited from doing, inform that the person may apply for cancellation of the notice, and provide details on how an application to cancel the notice must be made.

Clause 186 provides for the process by which a prohibition notice is cancelled, including the ability of a person subject to a prohibition notice to apply for its cancellation. The Regulatory Authority must decide on an application to cancel a prohibition notice as soon as practicable.

A person may seek a review of a decision to refuse to cancel a prohibition notice as set out in Part 8 of this Law.

Clause 187 provides that a person who is the subject of a prohibition notice must not be engaged or involved in any capacity in an education and care service, and must not fail to comply with any restrictions on any other activity relating to an education and care service. Penalties apply for non-compliance.

Clause 188 provides that an approved provider must not engage a person who is the subject of a prohibition notice if the approved provider knows or ought to have known that a prohibition notice was in force. Penalties apply for non-compliance.

#### **Division 4—Emergency removal of children**

Clause 189 provides for the emergency removal of children if the Regulatory Authority considers there to be an immediate danger to the safety or health of any child educated or cared for by the service. In undertaking this action, the Regulatory Authority is empowered to use the assistance of other persons reasonably required (including police officers), enter a premises without a warrant and use reasonable force as necessary.

An example of when this action may be taken is where there is reasonable belief that the environment is unsafe, children are not being adequately cared for and supervised, or reasonable precautions to protect children from hazards or harm have not been taken.

### **PART 8—REVIEW**

In addition to the provision of show cause notices in this Law, to ensure adequate application of the principles of natural justice, this Part provides for internal and external review of decisions made by the Regulatory Authority.

### **Division 1—Internal review**

- Clause 190 provides that a reviewable decision for internal review is a decision of the Regulatory Authority to impose conditions on, or otherwise amend or refuse to amend, a provider approval, service approval or supervisor certificate; refuse to grant a provider approval, service approval or supervisor certificate; to suspend a provider approval, service approval or supervisor certificate without prior issuance of a show cause notice; refuse to consent to the transfer of a service approval; revoke a service waiver; or issue a compliance direction or compliance notice.
- Clause 191 sets out the procedure for internal reviews of decisions by a Regulatory Authority. A person who is the subject of a reviewable decision may make a written application to the Regulatory Authority for review of the decision within 14 days of being notified of the decision. The person who conducts the review must not have been involved in the original assessment, and may ask the applicant for further information.
- The review must be conducted within 30 days of receipt of the application, which may be extended by up to 30 additional days if a request for further information is made, or by agreement with the applicant. At the end of the review, the Regulatory Authority may confirm the original decision or make any other decision it deems appropriate.

### **Division 2—External review**

- Clause 192 provides that a reviewable decision for external review is a decision of the Regulatory Authority under clause 191, other than in relation to a compliance direction or compliance notice; a decision to suspend or cancel a service approval, provider approval or supervisor certificate; a decision to direct a family day care service to suspend the provision of education or care by a family day care educator; or a decision to issue or refuse to cancel a prohibition notice.
- Clause 193 provides that a person who is the subject of a reviewable decision may apply to the relevant tribunal or court for review of the decision within 30 days of notification of the decision to be reviewed. The court or tribunal may confirm or amend the decision of the Regulatory Authority or substitute another decision for the decision of the Regulatory Authority, and in doing so may have regard to a decision of a relevant tribunal or court in another participating jurisdiction under this Law as applying in that jurisdiction.

### **Division 3—General**

- Clause 194 provides that this Part of the Education and Care Services Law applies despite any provision to the contrary in any Act that establishes the relevant tribunal or court.

## **PART 9—MONITORING AND ENFORCEMENT**

### **Division 1—Authorised officers**

- Clause 195 provides for the Regulatory Authority to authorise authorised officers who meet the requirements determined by the National Authority.
- Clause 196 provides that an authorised officer must be issued with an identity card, which must be carried in the exercise of the authorised officer's functions and produced upon request. Penalties apply for failure to produce an identity card on request.

### **Division 2—Powers of entry**

- Clause 197 empowers an authorised officer to, at any reasonable time, enter the premises of an approved education and care service or premises where an authorised officer believes on reasonable grounds that an approved service is operating, for the purposes of monitoring compliance with this Law; a rating assessment; or obtaining contact information of parents of children educated or cared for by a service as set out in clauses 35 and 83.

The authorised officer may not enter a residence unless an approved education and care service is operating at the residence at the time of entry, or the occupier has given written consent.

This clause also sets out powers and procedures in relation to inspecting premises; taking photographs, recordings or sketches; taking documents and records; and asking for information from any person on the premises.

- Clause 198 provides that a representative of the National Authority may enter a service during its regular operating hours in the company of an authorised officer of the Regulatory Authority for the sole purpose of informing the National Authority of the rating and assessment processes of the Regulatory Authority to promote consistency across participating jurisdictions.

- Clause 199 provides that an authorised officer may, with or without consent, enter and inspect the premises of an education and care service at any reasonable time if there are reasonable grounds for suspecting that an offence against this Law may have been or may be being committed. The premises or anything at the premises may be inspected, recorded, photographed or copied and the authorised officer may ask for information from any person at the premises. Evidence may also be seized.
- Clause 200 provides that an authorised officer may, with the consent of the occupier, enter the principal offices or any other business premises of an approved provider if the authorised officer reasonably believes that documents or other evidence of the commission of an offence against this Law are present. The authorised officer must first inform the occupier of their rights in relation to the entry and search of the premises.
- Clause 201 provides for an authorised officer to enter premises with a search warrant, and provides that Schedule 2 applies to its issue and the powers to be exercised on entry.
- Clause 202 provides for procedures in circumstances where things are taken by an authorised officer, including a requirement to return the item within 60 days, unless proceedings have commenced or a court has extended this timeframe. The authorised officer must provide the owner of the thing with reasonable access to the item.
- Clause 203 sets out the process for an authorised officer to apply to a court for an extension of the period for which a thing may be held.

### **Division 3—Other powers**

- Clause 204 empowers an authorised officer to require a person who has committed an offence or is reasonably suspected of committing an offence against this Law to provide evidence of their correct name and address.
- Clause 205 empowers an authorised officer to require a person to state and provide evidence of their correct date of birth, and to require the person to state their name and residential address if they are unable to comply with the request for proof of age, or the proof of age shows that the person has not attained the required minimum age.

The regulations of the Education and Care Services National Law will set down minimum age requirements for specified positions of authority within an education and care service.

Clause 206 provides for an authorised officer to, by written notice, require a specified person to provide information specified in the notice for the purposes of monitoring compliance with this Law, a rating assessment or obtaining contact information of parents of children attending a service as set out in clauses 35 and 83.

*Specified person* is defined in clause 206(4).

#### **Division 4—Offences relating to enforcement**

Clause 207 provides that a person must not obstruct an authorised officer in exercising powers under this Law.

Clause 208 provides that a person must not refuse to answer a question, refuse to provide information or fail to comply with a requirement made by an authorised officer under clause 5(2)(f) or (g) of Schedule 2 without a reasonable excuse.

Clause 209 provides that a person must not, without lawful authority, destroy or damage any notice or document given, prepared or kept under this Law.

Clause 210 provides that a person must not impersonate an authorised officer.

Clause 211 provides that an individual may refuse to give or produce information to an authorised officer that might tend to incriminate the person. An individual may not, however, refuse to produce a document that is required to be kept under this Law or to give their name or address as required under this Law. Any such document provided and any information obtained from that document is not admissible in any criminal or civil proceedings, except for criminal proceedings under this Law.

Clause 212 provides that before requiring information or documents, an authorised officer must produce identification, warn that failure to comply constitutes an offence, and advise individuals about the effect of clause 211 relating to the protection against self incrimination.

Clause 213 provides that an occupier must be given a copy of their written consent to entry and inspection, and the lack of written consent is presumed to mean that the occupier did not consent to the search.

### **Division 5—Powers of Regulatory Authority**

- Clause 214 provides that the Regulatory Authority may seek information and documents from an approved provider and make inquiries for the purpose of a rating assessment.
- Clause 215 provides that if the Regulatory Authority reasonably suspects that an offence against this Law has been, or may have been, committed, it may by written notice require a specified person to provide relevant information or documents specified in the notice or appear to give evidence or any relevant document specified in the notice. A person required to appear to give evidence may give such evidence via telephone, video conference or other electronic means unless the Regulatory Authority has reasonable grounds to require the evidence to be given in person. The Regulatory Authority must warn the person that failure to comply with the requirement is an offence and inform the person of the effects of clauses 217, 218 and 219. In this clause, *specified person* has the same meaning as in clause 206(4).
- Clause 216 provides that if the Regulatory Authority reasonably suspects that an offence against this Law has been, or may have been, committed, it may require a specified person at an education and care service to provide information or documents relevant to the suspected offence. The Regulatory Authority must warn the person that failure to comply with the requirement is an offence and inform the person of the effects of clauses 217, 218 and 219. A person must not be required remain at a service for more than a reasonable time in providing such information or documents. In this clause, *specified person* has the same meaning as in clause 206(4).
- Clause 217 provides that a person must not refuse or fail to comply with a requirement of a Regulatory Authority to produce information or documents or otherwise appear to give evidence under clause 215 or 216.
- Clause 218 provides that a person must not obstruct or hinder the Regulatory Authority in its exercise of powers under clause 215 and 216.
- Clause 219 provides that a person is not excused from complying with a requirement of a Regulatory Authority under clause 215 or 216 on the ground that complying may incriminate the person. However, the answers or information provided by an individual, and any information obtained because of that answer or information, are not admissible in evidence against

the person in any criminal proceedings (other than proceedings under this clause) or in any civil proceedings. Information obtained from a document or documents that are required to be kept under this Law are, however, admissible against the person in criminal proceedings under this Law.

## **PART 10—MINISTERIAL COUNCIL**

Under the governance arrangements set out in the National Partnership Agreement, the National Quality Framework will be a jointly governed national system with a three-tiered governance structure that includes the Ministerial Council, the National Authority and State and Territory Regulatory Authorities. At the apex of this structure with overall responsibility for the National Quality Framework is the Ministerial Council.

Part 10 provides for the responsibilities, powers and functions of the Ministerial Council for Education, Early Childhood Development and Youth Affairs (the Ministerial Council).

Clause 220 provides that the functions of the Ministerial Council are—

- to oversee the implementation and operation of the National Quality Framework;
- to promote uniformity in the application and enforcement of the National Quality Framework;
- to review and approve the National Quality Standard and set specific standards for education and care services and classes of education and care services;
- to review and approve the rating level system to be used in rating education and care services;
- to review and approve the fee structure under this Law;
- to review and approve new learning frameworks for the purpose of this Law;
- to monitor the implementation and operation of, and recommend improvements to, this Law;
- to monitor the implementation and operation of the national regulations;
- to review the education and care services to which this Law applies and recommend, or amend the national regulations to provide for, the inclusion of new classes of education and care service under this Law;

- to appoint the members of the Board of the National Authority;
- to monitor and review the performance of the National Authority;
- any other responsibilities conferred on the Ministerial Council under this Law.

This clause also provides that the Ministerial Council must have regard to the objectives and guiding principles of this Law in carrying out its responsibilities.

Clause 221 provides that the Ministerial Council has the power to make recommendations to the Board of the National Authority in relation to the exercise of the National Authority's functions; refer any matter to the Board of the National Authority for consideration and advice; make regulations in accordance with this Law; and anything necessary and convenient to perform its functions.

Clause 222 provides that the Ministerial Council may give directions to the Board of the National Authority in relation to the exercise of the National Authority's functions regarding the collection and use of information; reporting and accountability to the Ministerial Council and Regulatory Authorities; the rating level system to be used in rating education and care services; and the application of the National Quality Framework.

The Ministerial Council may also give directions to a Regulatory Authority with respect to its administration of the National Quality Framework.

In the interests of maintaining objectivity and impartiality, a direction under this clause cannot be about a particular person or education and care service, a particular application, approval, notification, assessment or proceeding, or the determination of a rating for a particular education and care service.

A direction to the National Authority does not have legislative standing; it must be given in writing to the Chairperson of the Board of the National Authority and must not be inconsistent with this Law or regulations. The Board of the National Authority or a Regulatory Authority must comply with a direction given to the Authority by the Ministerial Council.

Clause 223 clarifies that directions are to be given by resolution of the Ministerial Council in accordance with its procedures. This clause also provides that changes in membership of the Ministerial Council do not affect acts or things done by the Council.

## **PART 11—AUSTRALIAN CHILDREN'S EDUCATION AND CARE QUALITY AUTHORITY**

This Part establishes the second tier of the governance structure for the National Quality Framework: the Australian Children's Education and Care Quality Authority, as a national authority responsible for guiding the implementation and ongoing administration of the Framework across Australia. The National Authority will play a key role in monitoring and promoting national consistency in the implementation and operation of the National Quality Framework, and the Board of the National Authority will report directly to the Ministerial Council.

### **Division 1—The National Authority**

Clause 224 establishes the Australian Children's Education and Care Quality Authority as a body corporate with perpetual succession. The National Authority has a common seal, may sue and be sued in its corporate name, and represents the State.

Clause 225 sets out the functions of National Authority. These functions are consistent with, and build on, those set out in the National Partnership Agreement, and include guiding implementation and administration of the National Quality Framework, reporting, provision of advice, and keeping national registers of approved providers, services and supervisors and publishing practice notes and guidelines.

The National Authority may also determine the qualifications for educators under this Law and is responsible for establishing consistent procedures for operation of the National Quality Framework. In carrying out its functions, the National Authority must ensure that the regulatory burden on services is minimised as far as possible and must have regard to the objectives and guiding principles of the National Quality Framework.

Clause 226 provides that, if the National Authority considers it necessary, it may advise or seek guidance from the Ministerial Council.

Clause 227 provides that the National Authority has all the powers of an individual, particularly in relation to contracts, property, borrowing and investment, the development and supply of

resources to the education and care sector, and anything necessary or convenient in the exercise of its functions.

The National Authority may collect, hold and use information; develop protocols for communication and dispute resolution among the National Authority, Regulatory Authorities and the relevant Commonwealth Department; make decisions regarding fees; and undertake research and analysis.

- Clause 228 enables the National Authority to perform its functions in co-operation with, or with the assistance of, a participating jurisdiction or the Commonwealth. The National Authority may request and use information for the purpose of performing its functions, and a person or body subject to such a request is authorised to provide information to the National Authority.
- Clause 229 provides for the National Authority to undertake processes relating to audit and evaluation in relation to the administration of the National Quality Framework. The National Authority will report to the Ministerial Council on the outcomes of any audit or evaluation.

## **Division 2—The Board of the National Authority**

### **Subdivision 1—Establishment and responsibilities**

- Clause 230 establishes the Australian Children's Education and Care Quality Authority Board as the governing body of the National Authority.
- Clause 231 sets out the functions of the Board, including ensuring the effective and efficient functioning of the National Authority, and reporting to the Ministerial Council.
- Clause 232 provides that the Board must consist of up to 13 members (one member appointed for each State and Territory, four members appointed for the Commonwealth, and one Chairperson appointed by consensus by the Ministerial Council). The Deputy Chairperson is to be appointed from the 12 appointed Board members by consensus of the Ministerial Council. This clause also sets out Board members' required professional skills and expertise and provides that the Ministerial Council must seek to ensure a balance of skills and expertise in its appointment of members.

### **Subdivision 2—Members**

- Clause 233 provides that members hold office on terms and conditions determined by the Ministerial Council (which may include appointment on a part-time basis). It also provides that a period of appointment is for not more than a three year term for Board members and a maximum period of appointment of two consecutive terms.
- Clause 234 provides for remuneration for Board members as set by the Ministerial Council.
- Clause 235 sets out the circumstances under which the office of a Board member shall become vacant, and the grounds under which the Ministerial Council may remove a Board member.
- Clause 236 provides for acting arrangements for the Chairperson, Deputy Chairperson and members of the Board.
- Clause 237 provides for leave of absence to be granted to the Chairperson of the Board of the National Authority and other members of the Board.
- Clause 238 seeks to protect the independence and impartiality of the Board by providing that a Board member must disclose a direct or indirect pecuniary or other interest in a matter being considered by the Board that may be cause for conflict of interest. After declaring the interest a board member must not be present at, or take any part in, the deliberation and decision-making process, or be provided with any written material on the matter in question unless otherwise decided by the Board or Ministerial Council.

### **Subdivision 3—Procedure of Board**

- Clause 239 sets out the procedures for convening meetings of the Board.
- Clause 240 sets the quorum for Board meetings at nine, including the Chairperson or Deputy Chairperson. A quorum must have five participating jurisdictions present, plus a member representing the Commonwealth.
- Clause 241 provides that the chief executive officer may attend meetings of the Board, in an advisory role. As the chief executive officer is not a member of the Board, he or she does not have voting privileges.

- Clause 242 provides for the Chairperson or, in the absence of the Chairperson, the Deputy Chairperson to preside over Board meetings.
- Clause 243 sets out the voting procedures for Board meetings, including provision for a second casting vote by the Chairperson or Deputy Chairperson in the case of an equal vote. It also provides that if a decision to recommend a matter to the Ministerial Council is not arrived at by consensus, the Ministerial Council must be advised of the reasons for, and extent of, the minority opinion. This will assist the Ministerial Council in its deliberations by providing more information and alternative points of view on the matter.
- Clause 244 provides that a decision is not invalidated by any defects in the appointment of members of the Board. This measure is required to safeguard the continuous operation of the National Quality Framework from challenges to the Board's decisions on these grounds.
- Clause 245 provides for the transaction of business by telephone, closed circuit television or other means.
- Clause 246 provides for the Board to delegate any of its functions to the Regulatory Authority; the chief executive of a government entity or department of a participating jurisdiction; the chief executive officer of the National Authority; any other entity, with the approval of the Ministerial Council; or a committee established by the Board.
- Clause 247 provides that the Board of the National Authority may establish and determine the procedure of committees to assist it in the performance of its functions. The National Authority must report to the Ministerial Council on the activities of a committee.

#### **Subdivision 4—Chief executive officer of the National Authority**

- Clause 248 establishes the process for the appointment of the chief executive officer of the National Authority, which may be made only after the Ministerial Council has endorsed the appointment on the recommendation of the Board.
- Clause 249 provides that the chief executive officer reports to the Board of the National Authority. The chief executive officer's functions include responsibility for the day to day management of the National Authority, and working in collaboration with Regulatory Authorities and the Commonwealth.

- Clause 250 sets out the terms and conditions of appointment for the chief executive officer after endorsement of the Board's recommendation by the Ministerial Council.
- Clause 251 provides for the Board to decide the remuneration for the chief executive officer.
- Clause 252 provides for the office to become vacant upon the resignation or death of the chief executive officer, or upon termination by the Board.
- Clause 253 provides for the process for the resignation of the chief executive officer.
- Clause 254 sets out the circumstances for termination of the appointment of the chief executive officer by the Board.
- Clause 255 provides for the Board to appoint a person to act as the chief executive officer for a period no longer than six months.
- Clause 256 provides for the full disclosure of interests by the chief executive officer.

**Subdivision 5—Staff, consultants and contractors**

- Clause 257 provides for the National Authority to employ staff and decide on terms and conditions of employment.
- Clause 258 provides for the National Authority to second staff from a government agency of a participating jurisdiction or the Commonwealth in consultation with those parties.
- Clause 259 provides for the National Authority to engage consultants and contractors, and decide on terms and conditions of engagement.

**PART 12—REGULATORY AUTHORITY**

The third tier of the governance structure is the Regulatory Authority in each jurisdiction. The Regulatory Authority remains accountable to State and Territory Ministers. It will be the main point of day to day contact for services through its operational responsibility for the National Quality Framework.

- Clause 260 sets out the functions of the Regulatory Authority, including administering the National Quality Framework, assessing and rating education and care services, approving providers and services, certifying supervisors and monitoring and enforcing compliance with this Law and the national regulations. The Regulatory Authority is also responsible for investigating

complaints against services, information collection and reporting and collaborating with and supporting the National Authority.

Clause 261 sets out the powers of the Regulatory Authority. These powers relate to fees, funding and collecting, maintaining, sharing and publishing information.

Clause 262 provides for the Regulatory Authority to delegate functions.

### **PART 13—INFORMATION, RECORDS AND PRIVACY**

In the interests of the nationally consistent application of this Law, Commonwealth information and privacy laws will be applied instead of separate laws in each participating jurisdiction.

#### **Division 1—Privacy**

Clause 263 provides that the Commonwealth Privacy Act applies as a law for any participating jurisdiction for the purposes of this Law, and provides for a reference to the Office of the Privacy Commissioner to be taken as a reference to the Office of the National Education and Care Services Privacy Commissioner.

#### **Division 2—Application of Commonwealth FOI Act**

Clause 264 provides that the Commonwealth Freedom of Information Act applies as a law for any participating jurisdiction for the purposes of this Law, and provides for a reference to the Office of the Freedom of Information Commissioner to be taken as a reference to the Office of the National Education and Care Services Freedom of Information Commissioner.

#### **Division 3—Application of New South Wales State Records Act**

Clause 265 provides that the New South Wales State Records Act applies as a law for any participating jurisdiction for the purposes of this Law except to the extent that this Law applies to a Regulatory Authority and the records of a Regulatory Authority. The **Public Records Act 1973** will apply to the Regulatory Authority in Victoria.

#### **Division 4—Registers**

As provider approvals and supervisor certificates are nationally recognised and valid across all jurisdictions, this Division makes provision for the keeping of registers of approved providers and certified supervisors by the

National Authority. A register of services operating within a jurisdiction will also be kept by the Regulatory Authority.

- Clause 266 provides that the National Authority must keep a register of approved providers which may be inspected or copied.
- Clause 267 provides that the Regulatory Authority must keep and publish a register of education and care services including the rating levels for each service, which may be inspected or copied.
- Clause 268 provides that the National Authority must keep a register of certified supervisors, which may be inspected or copied.
- Clause 269 provides that the approved provider of a family day care service must keep a register of family day care educators and any other person engaged by the service, and must provide this information to the Regulatory Authority on request.

#### **Division 5—Publication of information**

- Clause 270 prescribes the information that may be published by the Regulatory Authority or the National Authority. This includes publication of ratings; enforcement actions, including compliance notices; prosecutions; enforceable undertakings; suspensions and cancellations. Information that could lead to the identification of a person other than an approved provider, certified supervisor or a person who is being prosecuted for an offence under this Law must not be published.

#### **Division 6—Disclosure of information**

- Clause 271 provides for the disclosure of information to prescribed parties in respect of education and care services for the purposes of this Law; research and development of national policy; funding education and care services; providing payment to persons using education and care services; compliance and disciplinary action. A disclosure of information is subject to the privacy provisions set out in clause 263 and any protocols approved by the National Authority.

Information that could lead to the identification of a person other than an approved provider, certified supervisor, family day care educator who has been suspended from providing education and care, prohibited person or a person who is being prosecuted for an offence under this Law must not be disclosed.

- Clause 272 provides that, upon the request of an approved provider, the Regulatory Authority may disclose whether a person is subject to a prohibition notice or whether a family day care educator

has been suspended from providing education and care at the direction of the Regulatory Authority. This disclosure is subject to the privacy provisions set out in clause 263 and any protocols approved by the National Authority.

- Clause 273 provides that, unless under certain circumstances prescribed in this clause, a person must not disclose protected information. Penalties apply for contravening this provision.

## **PART 14—MISCELLANEOUS**

### **Division 1—Finance**

- Clause 274 establishes the Australian Children's Education and Care Quality Authority Fund, to be administered by the National Authority.
- Clause 275 prescribes the money provided by a participating jurisdiction's Parliament for the purposes of the fund and other funds and property to be paid into the Authority Fund.
- Clause 276 prescribes the purposes for which payments may be made out of the Authority Fund, including for administering the Law and allocating, transferring or reimbursing monies to a participating jurisdiction.
- Clause 277 provides that the National Authority may invest money in the Authority Fund as prescribed.
- Clause 278 provides for the financial management duties of the National Authority, including ensuring financial statements are prepared in accordance with the Australian Accounting Standards.

### **Division 2—Reporting**

- Clause 279 outlines the timelines and required content for the National Authority's annual report, including a financial report; assessment of the implementation and administration of the National Quality Framework; reporting on committees; and Ministerial Council directions given to the National Authority and the Regulatory Authorities. Australian Accounting Standards will apply to the preparation of financial statements.
- Clause 280 provides for the tabling of the annual report in the Parliament of a participating jurisdiction determined by the Ministerial Council, and its publication on the National Authority's website.

Clause 281 provides for the National Authority to make any reports to the Ministerial Council that it considers necessary and for the Ministerial Council or individual Ministers to request a report from the National Authority.

### **Division 3—Application of Commonwealth Ombudsman Act**

Clause 282 provides that the Commonwealth Ombudsman Act applies as a law for any participating jurisdiction for the purposes of this Law except to the extent that this Law applies to a Regulatory Authority and the employees, decisions, actions and records of a Regulatory Authority. This clause provides for a reference to the Commonwealth Ombudsman to be taken as a reference to the National Education and Care Services Ombudsman.

### **Division 4—Legal proceedings**

Clause 283 provides for proceedings for an offence to be brought by the Regulatory Authority, a person authorised by the Regulatory Authority or a police officer.

Clause 284 provides that proceedings for an offence under this Law must be commenced within two years of the date of the alleged offence.

Clause 285 provides for a director or other person concerned with the management of a body corporate that has committed an offence to also be guilty and liable if they failed to exercise due diligence to prevent the contravention.

Clause 286 provides that if this Law requires or permits something to be done by a partnership or eligible association, the thing may be done by, as relevant, one or more of the partners on behalf of the partnership or one or more of the members of the executive committee on behalf of the eligible association. An offence is taken to be committed by, for partnerships, each partner who is a person with management and control of the service; for eligible associations, each person with management or control of the association; and for prescribed entities, each person with management or control of that entity.

Clause 287 provides that, in the case of multiple holders of a provider or service approval, each holder of the approval is jointly and severally responsible for compliance under this Law.

Clause 288 provides that if a person has been convicted or found guilty in another participating jurisdiction for an offence against this Law, proceedings cannot be brought in this jurisdiction against

the same person in respect of an offence concerning the same subject matter.

- Clause 289 provides that a member of the Board of the National Authority, a committee of the Board or the Ratings Review Panel and the Regulatory Authority or a member of the governing body of a Regulatory Authority are not personally liable for actions and omissions done in good faith in the exercise of functions under this Law. Any liability that would otherwise attach to such individuals attaches instead to the National Authority or the State as relevant.
- Clause 290 provides that if the Regulatory Authority becomes aware of misconduct by a registered teacher or other person who could be subject to disciplinary action under a jurisdiction's education law, the Regulatory Authority may refer the matter to the relevant disciplinary body. If the Regulatory Authority refers a matter to a disciplinary body, a prosecution cannot be brought under this Law for an offence in relation to that matter.
- Clause 291 provides that an authorised officer may serve an infringement notice for infringements relating to displaying prescribed information (clause 172), notifying the Regulatory Authority of certain circumstances (clause 173), complying with a compliance direction (clause 176) and any other offences prescribed in the regulations.
- An infringement penalty is 10 per cent of the maximum penalty that could be imposed on a person in respect of the offence. The payment of an infringement penalty expiates the offence, which means the infringement cannot be considered in making a decision on the fitness and propriety of a person or the assessment of a service.
- Clause 292 provides for a certificate signed by the chief executive of the National Authority or by a Regulatory Authority to be taken as prima facie evidence in prescribed matters stated in the document.

#### **Division 5—Service of notices**

- Clause 293 sets out the circumstances under which a notice, order or document can be served or taken to be served on a person.
- Clause 294 provides for effecting service of documents by post.

### **Division 6—False or misleading information**

Clause 295 provides that it is an offence for a person to give the Regulatory Authority or an authorised officer, information or documents that he or she knows to be false or misleading.

### **Division 7—Protection from reprisal**

This Division seeks to enable the reporting of concerns about possible breaches of this Law or the national regulations by providing protections to persons who provide information to the Regulatory Authority.

Clause 296 defines protected disclosure as disclosure of information or provision of documents to the Regulatory Authority pursuant to a request made under this Law or where there is reasonable belief that an offence has been, or is being committed under this Law or the safety, health and wellbeing of a child is at risk. Serious detrimental action is defined to include dismissal, involuntary transfer, loss of promotion or demotion.

Clause 297 prohibits a person from taking or threatening to take serious detrimental action against a person in reprisal for a protected disclosure.

Clause 298 provides for proceedings seeking damages to be taken against a person who takes serious detrimental action in reprisal for a protected disclosure.

Clause 299 sets out procedures available to a person who believes that serious detrimental action has been or may be taken against them for a protected disclosure.

Clause 300 sets out possible actions to be taken by the superior court if it is satisfied that a person has taken or intends to take serious detrimental action against a person in reprisal for a protected disclosure.

### **Division 8—National regulations**

Clause 301 provides for the making, publishing and commencement of national regulations. The Ministerial Council is responsible for making regulations, which may include, but are not limited to, fees; standards for education and care services; requirements for educational programs; information required to be submitted, displayed or published; and penalties.

Clause 302 provides for regulations to be published on the New South Wales Legislation website and for the regulation to commence on the day specified in the regulation.

- Clause 303 provides for any House of the Parliament in a participating jurisdiction to disallow a regulation made under this Law. A regulation will only cease to have effect if it is disallowed in a majority of participating jurisdictions.
- Clause 304 provides that the disallowance of a regulation by a majority of participating jurisdictions has the same effect as a repeal of the regulation. As a result, any law or provision of a law repealed or amended by a regulation subject to clause 303 is revived as if the disallowed regulation had not been made.

## **PART 15—TRANSITIONAL PROVISIONS**

This Part provides for the transfer from existing legislative and regulatory arrangements to the new arrangements set out under this Law.

### **Division 1—Introductory**

- Clause 305 sets out definitions for the purposes of the transitional provisions under this Law. By declaring a definition relevant to each jurisdiction, the approvals and actions will move across from former children's services or other laws to this law. The Regulatory Authority must provide a copy of the approvals under this Law to the approved provider or certified supervisor by 30 June 2012.

### **Division 2—Education and care services**

- Clause 306 provides for holders of a former approval under existing arrangements to be taken to be an approved provider, and the former approval held by the person or trust is taken to be a provider approval under this Law.
- Clause 307 provides for holders of a former approval to operate a service to be taken to hold a service approval under this Law.
- This does not extend to prescribed ineligible persons or approvals that were under suspension at the time of transition to this Law because the person who held that approval was not a fit and proper person. Other suspensions, including voluntary suspensions, and conditions are to be transferred intact under this Law. The Regulatory Authority must provide each declared approved service with a copy of the service approval on or before 30 June 2012.
- Clause 308 provides that a declared approved family day care venue existing under a former education and care services law immediately before the commencement day is taken to be an approved family day care venue under this Law.

- Clause 309 provides for a person who operated a declared out of scope service to be taken to hold a provider and service approval for the declared out of scope service for the period starting 1 January 2012 and ending on 30 June 2012. If the person applies under this Law for a provider approval and service approval on or before 30 June 2012, this period is extended until the applications are determined.
- Clause 310 provides that a service that was exempt from a requirement of a previous Law is taken to comply with the equivalent requirement of this Law for the period starting 1 January 2012 and ending on 31 March 2012 and, if the provider applies to the Regulatory Authority for a service waiver or temporary waiver under this Law on or before 31 March 2012, this period is extended until such application is determined.
- Clause 311 provides that an application made under a former law that has not been decided before the commencement of this Law is taken to be an application for a provider approval and service approval under this Law. It also provides that the Regulatory Authority may seek more information or inspect premises and documents in considering the application.
- Clause 312 provides that where, under the former law, multiple approvals were held for the same premises, these are taken to become one service approval under this Law. This does not apply to former approvals for family day care services.
- Clause 313 provides that a service that was accredited by the National Childcare Accreditation Council must continue to display its accreditation until a rating is given under this Law. It must also display a notice informing of the service's provisional rating and that the service is approved to operate.
- Clause 314 provides that in determining whether to suspend or cancel a provider approval or service approval, the Regulatory Authority may take into account any non-compliance by the approved provider with a former education and care services law that occurred in the 3 years preceding the commencement of this Law, but must not suspend or cancel an approval based solely on this information.
- Clause 315 provides that a declared certified supervisor is taken to be a certified supervisor under this Law. The Regulatory Authority must issue a supervisor certificate on or before 30 June 2012.

- Clause 316 provides that a declared nominated supervisor is taken to be the nominated supervisor of an education and care service under this Law unless the approved provider of the service fails to confirm the nomination or a declared nominated supervisor does not consent to being the nominated supervisor for that service.
- Clause 317 provides that orders, directions and undertakings given under the former law will remain in force under this Law.
- Clause 318 provides that the Regulatory Authority may bring or continue a prosecution for an offence under the former education and care services law in relation to a service that is taken to be an education and care service.

### **Division 3—National Authority**

- Clause 319 provides that the Ministerial Council is to convene the first meeting of the Board of the National Authority.
- Clause 320 provides that the first chief executive officer of the National Authority is to be appointed by the Chairperson of the Ministerial Council by consensus recommendation of the Ministerial Council, with remuneration and other terms and conditions set out in the appointment.
- Clause 321 provides that the first annual report of the National Authority is to be made within 4 months of the end of the financial year ending 30 June 2012, and is to cover the period from the first meeting of the National Authority to 30 June 2012.

### **Division 4—General**

- Clause 322 provides that Regulatory Authority must keep all documents that were required for monitoring and enforcement under the former laws and may make them available to the National Authority and other Regulatory Authorities in participating jurisdictions. These documents may be used for information purposes such as informing rating assessments and fit and proper deliberations under this Law. Providers must also keep all documents required under the former law and must make them available to the Regulatory Authority upon request.
- Clause 323 provides that a declared approved learning framework is taken to be an approved learning framework under this Law.

Clause 324 provides for savings and transitional arrangements to be made in the regulations.

#### **SCHEDULE 1**

This Schedule provides miscellaneous provisions relating to interpretation of the National Law.

#### **SCHEDULE 2**

This Schedule provides for the issue of search warrants and powers of entry exercisable under search warrant.