



Western Australia

# **Education and Care Services National Law (WA) Amendment Act 2018**

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# Education and Care Services National Law (WA) Amendment Act 2018

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Western Australia

## **Education and Care Services National Law (WA) Amendment Act 2018**

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**No. 18 of 2018**

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**An Act to amend the *Education and Care Services National Law (WA) Act 2012*, and to make consequential amendments to the *Spent Convictions Act 1988* and the *Working with Children (Criminal Record Checking) Act 2004* and for related purposes.**

*[Assented to 7 September 2018]*

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Education and Care Services National Law (WA) Amendment Act 2018*.

### **2. Commencement**

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) the rest of the Act —
  - (i) if assent day is before 1 October 2018 — 1 October 2018; or
  - (ii) if assent day is on or after 1 October 2018 — on a day fixed by proclamation.



**Education and Care Services National Law (WA) Amendment Act 2018**

**Part 2** Education and Care Services National Law (WA) Act 2012 amended

**Division 2** Education and Care Services National Law amended

**s. 5**

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**5. Section 10 amended**

In section 10 delete “*Western Australian College of Teaching Act 2004*” and insert:

*Teacher Registration Act 2012*

**6. Section 15 amended**

Delete section 15(3).

**7. Section 19 deleted; transitional regulations repealed**

(1) Delete section 19.

(2) The *Education and Care Services National Law (Transitional) Regulations 2012* are repealed.

**8. Part 4 deleted**

Delete Part 4.

**Division 2 — Education and Care Services National Law amended**

**9. Provisions amended**

This Division amends the Education and Care Services National Law set out in the Schedule to the *Education and Care Services National Law (WA) Act 2012*.

**10. Section 5 amended**

(1) In section 5(1) delete the definitions of:

*approved family day care venue*

*certified supervisor*

*family day care service*

*Ministerial Council*

*nominated supervisor*

*office*

*supervisor certificate*

(2) In section 5(1) insert in alphabetical order:

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

*executor*, in relation to an approved provider, includes a person —

- (a) entitled to a grant of letters of administration in relation to the estate of the approved provider, including with the will annexed; or
- (b) granted letters of administration in relation to the estate of the approved provider, including with the will annexed; or
- (c) granted probate of the will of the approved provider; or
- (d) named as executor in a valid will of the approved provider;

Note: This definition is not included in section 5 of the national law as set out in the Schedule to the *Education and Care Services National Law Act 2010* (Victoria).

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

*family day care service* means an education and care service that —

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

Note: A family day care service that is an approved family day care service may provide education and care to children

from a family day care residence or an approved family day care venue.

**Ministerial Council** means the Ministerial Council which —

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

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

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

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

**office**, in relation to a family day care service, means —

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

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

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



**12. Section 14 amended**

In section 14(2) delete “request and” and insert:

request until

**13. Section 17 amended**

In section 17 delete “until it is cancelled or surrendered under this Law, or this Law as applying in a participating jurisdiction.” and insert:

until —

- (a) it is cancelled or surrendered under this Law, or this Law as applying in a participating jurisdiction; or
- (b) if the provider approval is granted to an individual — the individual dies.

Note: This section differs from section 17 of the national law as set out in the Schedule to *the Education and Care Services National Law Act 2010* (Victoria).

**14. Section 25 amended**

In section 25(1)(g)(i) delete “section 188B; or” and insert:

section 188AB; or

**15. Section 27 amended**

Delete section 27(a) and (b) and insert:

- (a) if the suspension was proposed on a ground referred to in section 25(1)(a), accept an undertaking from the approved provider under section 179A; or



**17. Section 41 amended**

Delete section 41(4)(b) and insert:

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

Note:

At the end of section 41 the following note is to be inserted:

Note: Executor is defined in section 5 of this Law but is not defined in section 5 of the national law as set out in the Schedule to the *Education and Care Services National Law Act 2010* (Victoria).

**18. Section 43 amended**

In section 43(2) delete “supervisor” and insert:

supervisors

**19. Section 44 amended**

- (1) In section 44(1)(c) delete “any prescribed” and insert:

the prescribed

- (2) Delete section 44(1)(d) and insert:

- (d) nominate one or more individuals to be nominated supervisors of the service; and
- (da) include from each nominated individual (other than the approved provider) the written consent to the nomination; and



**22. Section 51 amended**

(1) Delete section 51(2) and insert:

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

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

(2) After section 51(4) insert:

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

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

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

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



- (8) Subject to subsection (8A), an amendment cannot change a location of an education and care service.
- (8A) The Regulatory Authority may approve a place (other than a residence) as a family day care venue for a family day care service if the Regulatory Authority considers exceptional circumstances exist.

**25. Section 55A inserted**

After section 55 insert:

**55A. Condition relating to family day care co-ordinators**

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

- (4) A person is a qualified person under this section if the person has the qualifications prescribed by the national regulations.

**26. Section 56 replaced**

Delete section 56 and insert:

**56. Notice of change to nominated supervisor**

- (1) The approved provider of an education and care service must give written notice to the Regulatory Authority in accordance with this section if the approved provider wishes to add a new nominated supervisor of the education and care service.
- (2) The notice must —
- (a) nominate one or more individuals to be nominated supervisors of the service and, unless the individual nominated is the approved provider, include from each nominated individual the written consent to the nomination; and
  - (b) include the prescribed information that is requested by the Regulatory Authority; and
  - (c) be given —
    - (i) at least 7 days before the individual is to commence work as a nominated supervisor; or
    - (ii) if that period of notice is not possible in the circumstances, as soon as practicable but not more than 14 days after the individual commences work as a nominated supervisor.

Notes:

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

2. This section differs from section 56 of the national law as set out in the Schedule to the *Education and Care Services National Law Act 2010* (Victoria).

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

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

**27. Section 62 amended**

- (1) In section 62(3) delete “The notice” and insert:

Subject to subsection (5), the notice

- (2) Delete section 62(4) and insert:

- (4) A notification under subsection (2) must be in writing.
- (5) The period within which notice must be given under subsection (3) does not apply where the Regulatory Authority has not been notified of the intended transfer of a service approval in accordance with section 59.

**28. Section 70 amended**

In section 70(1)(i)(i) deleted “188B; or” and insert:

188AB; or

**29. Section 72 amended**

Delete section 72(a) and (b) and insert:



**32. Section 91 amended**

Delete section 91(4) and insert:

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

**33. Section 96 amended**

(1) In section 96 delete “For” and insert:

(1) For

(2) At the end of section 96 insert:

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

**34. Section 98 amended**

Delete section 98(4) and insert:

- (4) An application under subsection (3) must include payment of the prescribed fee.
- (5) If a temporary waiver is granted, the Regulatory Authority may place any conditions on the temporary waiver, including any condition limiting the use of the temporary waiver.
- (6) The Regulatory Authority may, at any time remove, add to or vary any conditions placed on a temporary waiver under subsection (5).
- (7) If a temporary waiver is granted or its conditions are amended under subsection (6), the Regulatory Authority must issue or reissue the service approval specifying —
  - (a) the element or elements of the National Quality Standard and the national regulations that have been temporarily waived; and
  - (b) the period of the waiver; and
  - (c) any conditions placed on the waiver.

**35. Section 103A inserted**

After section 103 insert:

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

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

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

\$100 000, in any other case.

**36. Part 4 deleted**

Delete Part 4.

**37. Section 142 amended**

Delete section 142(4) and insert:

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

**38. Section 152 amended**

Delete section 152(5) and insert:

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



**42. Section 162 amended**

Delete section 162(1)(b) and (c) and insert:

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

**43. Section 162A inserted**

After section 162 insert:

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

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

**44. Section 163 amended**

In section 163(1) delete “one or more” and insert:

the prescribed minimum number of

**45. Section 164 amended**

Delete section 164(1)(b) and (c) and insert:

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



**49. Section 166 amended**

In section 166(2) delete “The nominated” and insert:

A nominated

**50. Section 170 amended**

(1) Delete section 170(2), (3) and (4) and insert:

- (2) The approved provider of the education and care service must ensure that a person does not remain at the education and care service premises while children are being educated and cared for at the premises, unless —
- (a) the person is an authorised person; or
  - (b) the person is under the direct supervision of an educator or other staff member of the service.

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

\$5 000, in any other case.

- (3) A nominated supervisor of the education and care service must ensure that a person does not remain at the education and care service premises while children are being educated and cared for at the premises, unless —
- (a) the person is an authorised person; or
  - (b) the person is under the direct supervision of an educator or other staff member of the service.

Penalty: \$1 000.

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

- (a) the person is an authorised person; or



**52. Section 173 amended**

- (1) In section 173(2):
  - (a) in paragraph (a) delete “or certified supervisor”;
  - (b) delete paragraph (b) and insert:
    - (b) if a nominated supervisor of an approved education and care service —
      - (i) ceases to be employed or engaged by the service; or
      - (ii) is removed from the role of nominated supervisor; or
      - (iii) withdraws consent to the nomination;
  - (c) in paragraph (d) delete “ceasing” and insert:

if the approved provider ceases
- (2) Delete section 173(3) and (4) and insert:
  - (3) A notice under subsection (1) or (2) must —
    - (a) be in writing; and
    - (b) include any prescribed information.
  - (4) A notice under subsection (1) must be provided within the relevant prescribed time to the Regulatory Authority that granted the provider approval to which the notice relates.
  - (5) A notice under subsection (2) must be provided within the relevant prescribed time to the Regulatory Authority that granted the service approval for the education and care service to which the notice relates.



**55. Section 178 amended**

In section 178(1)(a) delete “the nominated” and insert:

a nominated

**56. Part 7 Division 2 replaced**

Delete Part 7 Division 2 and insert:

**Division 2 — Enforceable undertakings**

**179A. Enforceable undertakings**

- (1) This section applies —
  - (a) if a person has, or believes the person may have, contravened, or if the Regulatory Authority alleges a person has contravened, a provision of this Law; or
  - (b) in the circumstances set out in section 27(a), 72(a) or 184(3).
- (2) If subsection (1)(a) applies, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain actions, or refrain from taking certain actions, to comply with this Law.
- (3) If subsection (1)(b) applies in relation to the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the approved provider, under which the approved provider undertakes to take certain actions, or refrain from taking certain actions in relation to the education and care service.
- (4) If subsection (1)(b) applies in relation to a person other than the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take

certain actions, or refrain from taking certain actions in relation to an education and care service.

- (5) A person may, with the consent of the Regulatory Authority, withdraw or amend an undertaking.
- (6) The Regulatory Authority may withdraw its acceptance of the undertaking at any time and the undertaking ceases to be in force on that withdrawal.
- (7) The Regulatory Authority may publish on the Regulatory Authority's website an undertaking accepted under this section.

Note: This section differs from section 179A of the national law as set out in the Schedule to the *Education and Care Services National Law Act 2010* (Victoria).

**179B. Certain actions prohibited while undertaking is in force**

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

**180. Certain actions prohibited if undertaking is complied with**

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

**181. Failure to comply with enforceable undertakings**

- (1) If the Regulatory Authority considers that a person who gave an undertaking under section 179A has failed to comply with any of its terms, the Regulatory Authority may apply to the relevant tribunal or court for an order under subsection (2) to enforce the undertaking.

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

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

**57. Section 182 amended**

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

Note:

The heading to amended section 182 is to read:

**Grounds for giving prohibition notice**

**58. Section 184 amended**

After section 184(2) insert:

- (3) The Regulatory Authority may accept an undertaking from a person under section 179A instead of giving a prohibition notice under this Division.

Note:

The heading to amended section 184 is to read:

**Deciding whether to give prohibition notice**

**59. Section 185 replaced**

Delete section 185 and insert:

**185. Content of prohibition notice**

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

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

**60. Section 186 amended**

After section 186(4) insert:

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

**61. Section 187 amended**

- (1) In section 187:
  - (a) delete “While a prohibition notice” and insert:
    - (1) While a prohibition notice under section 182(1)

- (b) in paragraph (b) delete “a supervisor, educator,” and insert:

an educator,

- (2) At the end of section 187 insert:

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

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

Penalty: \$20 000.

**62. Section 188 amended**

- (1) In section 188 delete “An approved provider must not engage a person as a supervisor, educator,” and insert:

- (1) An approved provider must not engage a person as an educator,

- (2) At the end of section 188 insert:

- (2) An approved provider must not nominate a person as a nominated supervisor of an education and care service if the approved provider knows, or ought reasonably to know, that

a prohibition notice is in force under this Law as applying in any participating jurisdiction prohibiting the nomination of that person as a nominated supervisor of an education and care service.

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

\$100 000, in any other case.

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

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

\$100 000, in any other case.

**63. Section 188A inserted**

At the end of Part 7 Division 3 insert:

**188A. False or misleading information about prohibition notice**

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

Penalty: \$6 000.

**64. Section 188A amended**

In Part 7 Division 3A section 188A in the definition of *person linked to a WA service* delete paragraph (c).



**68. Section 190 amended**

In section 190:

- (a) in paragraph (a) delete “approval, a service approval or a supervisor certificate; or” and insert:

approval or a service approval; or

- (b) delete paragraph (d)(iii).

**69. Section 192 amended**

Delete section 192(b)(v).

**70. Section 199 amended**

Delete section 199(4)(a) and insert:

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

**71. Section 200 amended**

In section 200(1) delete “principal office or any other business premises of an approved provider.” and insert:

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

**72. Section 200A inserted**

After section 200 insert:

**200A. Entry to premises without search warrant**

- (1) An authorised officer may enter any premises (including residential or business premises) for the purpose of determining whether an education and care service is operating without a service approval at or from the premises, if —
  - (a) the authorised officer reasonably believes that a person is operating an education and care service in contravention of section 103 at the premises; and
  - (b) the occupier of the premises has consented in writing to the entry and inspection.
- (2) An authorised officer must not enter and search the premises under this section unless, before the occupier consents to the entry, the authorised officer has —
  - (a) produced the authorised officer's identity card for inspection; and
  - (b) informed the occupier —
    - (i) of the purpose of the search and the powers that may be exercised; and
    - (ii) that the occupier may refuse to consent to the entry and search or the taking of anything found during the search; and
    - (iii) that the occupier may refuse to consent to the taking of any copy or extract from a document found on the premises during the search.
- (3) An authorised officer who exercises a power of entry under this section may for the purposes of the investigation do any of the things referred to in clause 5(2)(a) to (e) of Schedule 2 as if a reference to that Schedule included a reference to this section.

**73. Section 201 amended**

In section 201(3) delete “principal office or any other business premises of an approved provider” and insert:

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

**74. Section 202 amended**

In section 202(1) and (3) delete “section 199 or 200” and insert:

section 199, 200 or 200A

**75. Section 206 amended**

In section 206(4) in the definition of *specified person* paragraph (a) delete “a certified supervisor” and insert:

a nominated supervisor

**76. Section 225 amended**

In section 225(1):

(a) delete paragraph (g) and insert:

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

(b) in paragraph (l)(i) delete “parents” and insert:



**80. Section 269 replaced**

Delete section 269 and insert:

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

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

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

\$20 000, in any other case.

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

Penalty: \$2 000.

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

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

\$20 000, in any other case.



**82. Sections 271 and 272 replaced**

Delete sections 271 and 272 and insert:

**271. Disclosure of information to other authorities**

- (1) The National Authority may disclose information in respect of an education and care service for a purpose listed in subsection (4), to —
  - (a) a relevant Commonwealth Government Department; or
  - (b) any State or Territory Government Department; or
  - (c) any Commonwealth, State or Territory public authority; or
  - (d) any State or Territory local authority; or
  - (e) a Regulatory Authority of a participating jurisdiction.
- (2) The Regulatory Authority may disclose information in respect of an education and care service for a purpose listed in subsection (4), to —
  - (a) a relevant Commonwealth Government Department; or
  - (b) any State or Territory Government Department; or
  - (c) any Commonwealth, State or Territory public authority; or
  - (d) any State or Territory local authority; or
  - (e) a Regulatory Authority of another participating jurisdiction.
- (3) The National Authority, the Regulatory Authority and any Government Department, public authority or local authority may disclose information to each other in respect of an education and care service for a purpose listed in subsection (4).

- (4) The purposes for disclosure of information under this section are —
- (a) the disclosure is reasonably necessary to promote the objectives of the national education and care services quality framework; or
  - (b) the disclosure is for the purposes of enabling or assisting the other entity to perform or exercise any of its functions or powers under this Law; or
  - (c) the disclosure is for the purposes of research or the development of National, State or Territory policy with respect to education and care services; or
  - (d) the disclosure is for a purpose relating to the funding of education and care services; or
  - (e) the disclosure is for a purpose relating to the payment of benefits or allowances to persons using education and care services, provided the disclosure of information is not otherwise prohibited by law.
- (5) The Regulatory Authority must disclose to the Regulatory Authorities of other participating jurisdictions the suspension or cancellation of a working with children check, working with children card or teacher registration of a nominated supervisor of which it is notified under this Law.
- (6) The Regulatory Authority may disclose to the head of the government department responsible for the administration of a working with children law, any prohibition notice given under this Law as applying in any participating jurisdiction in respect of the person.
- (7) A disclosure of information under this section is subject to Division 1 and any protocol agreed for the purposes of this section by —
- (a) the National Authority, all participating jurisdictions and the Commonwealth; and
  - (b) subject to any protocol referred to in paragraph (a), the National Authority and the Regulatory Authority, or the National Authority, the Regulatory

Authority and any Regulatory Authority of another participating jurisdiction.

- (8) Information disclosed under this section for the purpose of research or the development of National, State or Territory policy with respect to education and care services must not include information that could identify or lead to the identification of an individual other than —
- (a) an approved provider or a nominated supervisor; or
  - (b) a family day care educator who has been suspended from providing education and care to children as part of a family day care service; or
  - (c) a person to whom a prohibition notice applies; or
  - (d) a person who is being prosecuted for an offence against this Law.

**272. Disclosure of information to education and care services**

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



**87. Section 305 amended**

In section 305 delete the definition of *declared certified supervisor*.

Note:

At the end of section 305 the following note is to be inserted:

Note: This section differs from section 305 of the national law as set out in the Schedule to the *Education and Care Services National Law Act 2010* (Victoria).

**88. Section 315 replaced**

Delete section 315 and insert:

**315. Certified supervisors**

Note: Section 315 of the national law as set out in the Schedule to the *Education and Care Services National Law Act 2010* (Victoria) does not apply as a law of WA.

**89. Part 15 Divisions 5 and 6 inserted**

At the end of Part 15 insert:

**Division 5 — Transitional provisions — *Education and Care Services National Law (WA) Amendment Act 2018***

**325. Definitions**

In this Division —

*2018 Act* means the *Education and Care Services National Law (WA) Amendment Act 2018*;

*commencement day* means the day on which the *Education and Care Services National Law (WA) Amendment Act 2018* section 89 comes into operation;

*repealed*, in relation to a section, means the section as in force before the section was repealed by the 2018 Act.

Note: These definitions and the provisions of this Division that use the definitions differ from the definitions and provisions in this Division of the national law as set out in the Schedule to the *Education and Care Services National Law Act 2010* (Victoria).

**326. Approved family day care venues**

- (1) In this section —  
*appointed day* means the day that is 6 months after the commencement day;  
*formerly approved family day care venue* means a family day care venue that, immediately before the commencement day, was an approved family day care venue.
- (2) Subject to subsection (3), a formerly approved family day care venue ceases to be an approved family day care venue on the appointed day unless, before the appointed day the Regulatory Authority, on application by the approved provider under section 54 (as amended by the 2018 Act), approves the venue as a family day care venue.
- (3) If, before the appointed day, the Regulatory Authority had not determined an application by an approved provider under section 54 (as amended by the 2018 Act) for approval of the venue, the formerly approved family day care venue continues to be an approved family day care venue until the application is determined.
- (4) Despite section 54(5), the Regulatory Authority must make a decision on an application made under section 54 for approval of a formerly approved family day care venue within 6 months of receiving the application.

**327. Declared approved family day care venues continue to be approved**

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

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

- (1) In this section —  
*appointed day* means the day that is 12 months after the commencement day.
- (2) This section applies to a family day care service if, immediately before the commencement day —
  - (a) the service was an approved family day care service; and
  - (b) the service approval included a condition referred to in section 51(2).
- (3) Despite the commencement of the 2018 Act, sections 51(2) and 163, as in force immediately before the commencement day, continue to apply to the approved family day care service until the appointed day, unless the Regulatory Authority earlier amends the service approval to impose a condition under section 55A.

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

- (1) This section applies to a family day care service if, immediately before the commencement day —
  - (a) the service was an approved family day care service; and
  - (b) the service approval included a condition requiring the service provide a specified minimum number of family day care co-ordinators.

- (2) Despite the commencement of the 2018 Act, section 163, as in force immediately before the commencement day, and the condition requiring the service provide a specified minimum number of family day care co-ordinators continue to apply to the approved family day care service until the condition is amended under section 54 or 55.

**330. Publication of information about certified supervisors**

- (1) The National Authority may publish information about any enforcement action taken under this Law before the commencement day in relation to any person who was a certified supervisor before that day, including —
- (a) the prosecution of any offence; and
  - (b) the acceptance of an undertaking; and
  - (c) the suspension or cancellation of a supervisor certificate.
- (2) This section expires on 31 December 2022.

Note: This section differs from section 330 of the national law as set out in the Schedule to the *Education and Care Services National Law Act 2010* (Victoria).

**330A. Repeal of show cause notice if written notice not given before commencement day**

- (1) This section applies if —
- (a) the Regulatory Authority has given a show cause notice under repealed section 124 to a certified supervisor; but
  - (b) the Regulatory Authority has not given the certified supervisor a written notice under repealed section 127 before the commencement day.
- (2) The show cause notice is taken to have been repealed by the Regulatory Authority on the commencement day.

Note: Section 330A does not form part of the national law as set out in the Schedule to the *Education and Care Services National Law Act 2010* (Victoria).

**330B. Effect of decisions made before commencement day under repealed section 125**

- (1) If, before the commencement day, the Regulatory Authority gave a certified supervisor a written notice under repealed section 127 of a decision under repealed section 125 to cancel the supervisor certificate but, immediately before the commencement day, the decision had not taken effect, then —
  - (a) the notice becomes, on the commencement day —
    - (i) if the certificate was cancelled on the ground set out in repealed section 123(a) — a prohibition notice under section 182(3)(a); or
    - (ii) if the certificate was cancelled on the ground set out in repealed section 123(b) or (c) — a prohibition notice under section 182(1);and
  - (b) the prohibition notice commences to have effect on the commencement day.
- (2) Subsection (3) applies if, before the commencement day —
  - (a) the Regulatory Authority decides to cancel a person's supervisor certificate under repealed section 125; and
  - (b) the Regulatory Authority gave the person a written notice under repealed section 127 of the decision under repealed section 125 to cancel the supervisor certificate; and
  - (c) the cancellation was in effect under repealed section 127 immediately before the commencement day.
- (3) The written notice becomes, on the commencement day —
  - (a) if the supervisor certificate was cancelled under repealed section 123(a) — a prohibition notice under section 182(3)(a); or

- (b) if the supervisor certificate was cancelled under repealed section 123(b) or (c) — a prohibition notice under section 182(1).
- (4) The Regulatory Authority must —
  - (a) take reasonable steps to locate a person given a notice to which subsection (2)(a) or (b) applies; and
  - (b) if the Regulatory Authority is able to locate the person — give the person the information, in writing, that would be required to be given —
    - (i) if subsection (1)(a)(i) or (3)(a) applies — under section 185(2) and (3), if the notice were a prohibition notice given under section 182(3)(a); and
    - (ii) if subsection (1)(a)(ii) or (3)(b) applies — under section 185(1) and (3), if the notice were a prohibition notice given under section 182(1).

Note: Section 330B does not form part of the national law as set out in the Schedule to the *Education and Care Services National Law Act 2010* (Victoria).

**330C. Continuation of reviews of decisions relating to supervisor certificates in particular circumstances**

- (1) In this section —  
*application period* means the period within which an application may be made under section 193(2).
- (2) If a relevant tribunal or court was hearing a review of a decision to cancel a supervisor certificate under repealed section 125 and the review had not been finally dealt with before the commencement day, the tribunal or court may continue to hear the review as if the review were a review of a decision to give a prohibition notice.
- (3) Subsection (4) applies if —
  - (a) the Regulatory Authority decided before the commencement day to cancel a person's supervisor certificate; and

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- (b) the person had not, before the commencement day, applied to the relevant tribunal or court for a review of the decision under section 193(1); and
  - (c) immediately before the commencement day the application period has not ended.
- (4) The person may, before the application period ends, apply for a review of the Regulatory Authority's decision as if the decision were a decision to give the person a prohibition notice.

Note: Section 330C does not form part of the national law as set out in the Schedule to the *Education and Care Services National Law Act 2010* (Victoria).

**331. Evidentiary certificates**

- (1) Despite the amendment of section 292 by the 2018 Act, a Regulatory Authority or the National Authority may continue to certify matters relating to any person who was a certified supervisor before the commencement day as if that section had not been amended.
- (2) This section expires on 31 December 2022.

Note: This section differs from section 331 of the national law as set out in the Schedule to the *Education and Care Services National Law Act 2010* (Victoria).

**Division 6 — Further transitional provisions — *Education and Care Services National Law (WA) Amendment Act 2018***

**332. Definitions**

In this Division —

**2018 Act** means the *Education and Care Services National Law (WA) Amendment Act 2018*;

**commencement day** means the day on which the *Education and Care Services National Law (WA) Amendment Act 2018* section 89 comes into operation.

Note: These definitions and the provisions of this Division that use the definitions differ from the definitions and provisions in this Division of the national law as set out in the Schedule to

the *Education and Care Services National Law Act 2010*  
(Victoria).

**333. Partial assessment and re-rating**

Note: Section 333 of the national law as set out in the Schedule to the *Education and Care Services National Law Act 2010* (Victoria) does not apply as a law of WA.

**334. Application for highest rating level made before commencement day**

- (1) This section applies if before the commencement day —
  - (a) an approved provider had applied for an education and care service to be assessed for the highest rating level under section 152; and
  - (b) the application had not been determined.
- (2) Despite its substitution by the 2018 Act, section 152(5), as in force immediately before the commencement day, continues to apply in respect of the application.
- (3) Section 153(2) applies for the purposes of the assessment of the approved education and care service, as if a reference —
  - (a) to the criteria published under subsection (1) were a reference to the criteria published under subsection (1) immediately before the commencement day; and
  - (b) to the National Quality Standard and the national regulations were a reference to the National Quality Standard and the national regulations as in force immediately before the commencement day.

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

- (1) This section applies in relation to an approved education and care service that was awarded the highest rating level —
  - (a) before the commencement day; or
  - (b) after the commencement day on an application referred to in section 334.

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- (2) Section 153(2) applies for the purposes of a reassessment under section 157 of the approved education and care service, as if a reference —
- (a) to the criteria published under subsection (1) were a reference to the criteria published under subsection (1) immediately before the commencement day; and
  - (b) to the National Quality Standard and the requirements of the national regulations were a reference to the National Quality Standard and the national regulations as in force immediately before the commencement day.
- (3) Despite its amendment by the 2018 Act, section 158 as in force immediately before the commencement day continues to apply to the revocation of the highest rating level and for the purposes of that section —
- (a) the criteria to be met are the criteria published under section 153(1) immediately before the commencement day; and
  - (b) the overall rating level is to be determined in accordance with the National Quality Standard as in force immediately before the commencement day.

**90. Various provisions amended**

In the provisions listed in the Table delete “any prescribed” and insert:

the prescribed

**Table**

s. 11(c)	s. 22(2)(b)
s. 37(2)(b)	s. 40(3)(b)

s. 59(2)(b)	s. 85(2)(b)
s. 88(b)	s. 95(b)
s. 139(2)(b)	s. 141(4)(c)

**Part 3 — *Spent Convictions Act 1988* amended**

**91. Act amended**

This Part amends the *Spent Convictions Act 1988*.

**92. Schedule 3 amended**

In Schedule 3 clause 1(5) in the Table delete item 6A and insert:

- 6A. A person who —
- (a) holds, or is applying for, a provider approval under the *Education and Care Services National Law (Western Australia)*; or
  - (b) has, or will have, management or control of an education and care service operated, or to be operated, by a person that —
    - (i) is not an individual; and
    - (ii) holds, or is applying for, a provider approval under the *Education and Care Services National Law (Western Australia)*.
- Sections 18,  
20 and 22 and  
Division 4

**Part 4 — *Working with Children (Criminal Record Checking) Act 2004* amended**

**93. Act amended**

This Part amends the *Working with Children (Criminal Record Checking) Act 2004*.

**94. Section 38 amended**

In section 38(3)(b)(ii) delete “a certified supervisor, a nominated supervisor or a person with management or control,” and insert:

a nominated supervisor or a person with management or control

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