

South Australia

# **Education and Early Childhood Services (Registration and Standards) (Amendment of Education and Care Services National Law Text) Regulations 2017**

under the *Education and Early Childhood Services (Registration and Standards) Act 2011*

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## Part 1—Preliminary

### 1—Short title

These regulations may be cited as the *Education and Early Childhood Services (Registration and Standards) (Amendment of Education and Care Services National Law Text) Regulations 2017*.

### 2—Commencement

These regulations will come into operation on the day on which Part 2 of the *Education and Care Services National Law Amendment Act 2017* of Victoria comes into operation.

### 3—Interpretation

In these regulations—

*Act* means the *Education and Early Childhood Services (Registration and Standards) Act 2011*;

*National Law* means the Education and Care Services National Law text.

### 4—Amendment of Education and Care Services National Law text

- (1) Pursuant to section 11 of the Act, the Education and Care Services National Law text is amended as set out in Part 2 of these regulations.
- (2) In these regulations, a provision referring to the amendment of a specified provision amends the provision of the Education and Care Services National Law text so specified.

## Part 2—Amendment of Education and Care Services National Law text

### 5—Definitions

In section 5(1) of the National Law—

- (a) insert the following definitions—

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

*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);

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

- (b) for the definition of *approved family day care venue* substitute—

*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;

- (c) for the definition of *family day care service* substitute—

*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.

- (d) for the definition of *Ministerial Council* substitute—

*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;

- (e) for the definition of *nominated supervisor* substitute—

*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.

- (f) for the definition of *office* substitute—

*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;
- (g) in the definition of *staff member*, for "the nominated supervisor" substitute "a nominated supervisor"
  - (h) the definitions of *certified supervisor* and *supervisor certificate* are repealed

## **6—Matters to be taken into account in assessing whether fit and proper person**

In section 13(2) of the National Law—

- (a) in paragraph (b), for "Law." substitute "Law; and";
- (b) after paragraph (b) insert—
  - (c) whether the person has the management capability to operate an education and care service in accordance with this Law; and
  - (d) any of the following actions taken under the A New Tax System (Family Assistance) (Administration) Act 1999 of the Commonwealth in relation to a child care service approved under that Act, operated by the person or in relation to which the person was a person with management or control—
    - (i) any sanction imposed under section 200 of that Act;
    - (ii) any suspension imposed under section 201A of that Act;
    - (iii) any infringement notice given under section 219TSI of that Act.

## **7—Regulatory Authority may seek further information**

In section 14(2) of the National Law, for "request and" substitute "request until"

## **8—Decision to suspend after show cause process**

For section 27(a) and (b) of the National Law substitute—

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

## **9—Death of approved provider**

- (1) For section 39(2) of the National Law substitute—
  - (2) A nominated supervisor or a person in day to-day charge of an education and care service of the approved provider must notify the Regulatory Authority of the approved provider's death within 7 days after that death.
- (2) In section 39(3) of the National Law—
  - (a) for "the nominated supervisor or any certified supervisor" substitute "that at least one nominated supervisor";
  - (b) for "day to day" substitute "day-to-day"

## **10—Decision on application**

For section 41(4)(b) of the National Law substitute—

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

## **11—Application for service approval**

In section 43(2) of the National Law, for "supervisor" substitute "supervisors"

## **12—Form of application**

- (1) For section 44(1)(d) of the National Law substitute—
  - (d) nominate one or more individuals to be nominated supervisors of the service; and
  - (da) include from each nominated individual (other than the approved provider) the written consent to the nomination; and

(2) For section 44(3) of the National Law substitute—

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

**Note—**

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

### **13—Determination of application**

For section 47(1)(e) of the National Law substitute—

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

### **14—New section 50A inserted**

After section 50 of the National Law insert—

#### **50A—Approval of a place as a family day care venue**

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

### **15—Conditions on service approval**

(1) For section 51(2) of the National Law substitute—

- (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) of the National Law insert—

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

- (4B) An approved provider is not required to comply with subsection (4A) if—
- (a) the maximum number of children is exceeded because a child is, or 2 or more children from the same family are, being educated and cared for by the education and care service in an emergency; and
  - (b) the approved provider is satisfied on reasonable grounds that this will not affect the health, safety and wellbeing of any other child who is attending the education and care service.

**Example—**

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.

**16—Copy of service approval to be provided**

In section 52(b) of the National Law, after "principal office" insert "of the service"

**17—Amendment of service approval on application**

- (1) After section 54(1) of the National Law insert—
  - (1A) An application under subsection (1) may include a request for the approval of a place (other than a residence) as a family day care venue for a family day care service.
- (2) In section 54(4) of the National Law, for "request and" substitute "request until"
- (3) For section 54(8) of the National Law substitute—
  - (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.

**18—New section 55A inserted**

After section 55 of the National Law insert—

**55A—Condition relating to family day care co ordinators**

- (1) Without limiting section 55, an amendment under that section may impose a condition on the service approval for a family day care service requiring the approved provider to ensure that there is a minimum of one qualified person employed or engaged as a family day care co-ordinator for each 15 family day care educators engaged by or registered with that service.
- (2) A condition may only be imposed under subsection (1) if—
  - (a) the family day care service has been operating for more than 12 months; and



- (b) the Regulatory Authority—
  - (i) has taken into account the approved provider's capability and compliance with this Law in respect of the family day care service; and
  - (ii) considers that family day care educators are not adequately monitored and supported by a family day care co-ordinator.
- (3) Section 163 does not apply if a condition is imposed under subsection (1) in respect of a family day care service.
- (4) A person is a qualified person under this section if the person has the qualifications prescribed by the national regulations.

### **19—Notice of change to nominated supervisor**

For section 56 of the National Law substitute—

#### **56—Notice of addition of nominated supervisor**

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

**Note—**

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

## **20—New section 56A inserted**

After section 56 of the National Law insert—

### **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.

## **21—Transfer may be subject to intervention by Regulatory Authority**

- (1) In section 62(3) of the National Law, for "The notice" substitute "Subject to subsection (5), the notice"
- (2) After section 62(4) of the National Law insert—
  - (5) The period within which notice must be given under subsection (3) does not apply where the Regulatory Authority has not been notified of the intended transfer of a service approval in accordance with section 59.

## **22—Decision in relation to suspension**

For section 72(a) and (b) of the National Law substitute—

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

## **23—Notice to parents of suspension or cancellation**

In section 84(1) of the National Law, for "or 81" substitute "or 82"

## **24—Powers of Regulatory Authority in considering application**

At the end of section 89 of the National Law insert—

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

## **25—Decision on application**

For section 91(4) of the National Law substitute—

- (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.

## **26—Regulatory Authority may seek further information**

At the end of section 96 of the National Law 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.

## **27—Decision on application**

For section 98(4) of the National Law substitute—

- (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.

## **28—New section 103A inserted**

After section 103 of the National Law 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:

- (a) \$20 000, in the case of an individual.
- (b) \$100 000, in any other case.

## **29—Part 4 repealed**

Part 4 of the National Law is repealed

## **30—Process for review**

For section 142(4) of the National Law substitute—

- (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.

## **31—Application for highest rating**

For section 152(5) of the National Law substitute—

- (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.

## **32—Revocation of highest rating level**

For section 158(b) of the National Law substitute—

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

**33—Offence to operate education and care service without nominated supervisor**

In section 161 of the National Law, for "a nominated supervisor" substitute "at least one nominated supervisor"

**34—New section 161A inserted**

After section 161 of the National Law insert—

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

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

Penalty:

- (a) \$5 000, in the case of an individual.
- (b) \$25 000, in any other case.

**35—Offence to operate education and care service unless responsible person is present**

For section 162(1)(b) and (c) of the National Law substitute—

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

**36—New section 162A inserted**

After section 162 of the National Law 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.

**37—Offence relating to appointment or engagement of family day care co-ordinators**

In section 163(1) of the National Law, for "one or more" substitute "the prescribed minimum number of"

**38—Offence relating to assistance to family day care educators**

For section 164(1)(b) and (c) of the National Law substitute—

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

### **39—New section 164A inserted**

After section 164 of the National Law insert—

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

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

Penalty:

- (a) \$10 000, in the case of an individual.
- (b) \$50 000, in any other case.

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

Penalty: \$2 000.

### **40—References to nominated supervisor**

- (1) In sections 165(2) and 166(2) of the National Law, for "The nominated" substitute "A nominated"
- (2) In section 178(1)(a) of the National Law, for "the nominated" substitute "a nominated"

### **41—Offence relating to unauthorised persons on education and care service premises**

- (1) For section 170(2), (3) and (4) of the National Law substitute—
- (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:

- (a) \$1 000, in the case of an individual.
  - (b) \$5 000, in any other case.
- (3) A nominated supervisor of the education and care service must ensure that a person does not remain at the education and care service premises while children are being educated and cared for at the premises, unless—
    - (a) the person is an authorised person; or

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

Penalty: \$1 000.

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

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

Penalty: \$1 000.

- (2) In section 170(5) of the National Law, in the definition of *unauthorised person*, for "unauthorised person means a person who is not" substitute "authorised person means a person who is"

#### **42—Offence to fail to display prescribed information**

For section 172(c) of the National Law substitute—

- (c) each nominated supervisor of the service;

#### **43—Offence to fail to notify certain circumstances to Regulatory Authority**

- (1) In section 173(2) of the National Law—

- (a) in paragraph (a) omit "or certified supervisor"

- (b) for paragraph (b) substitute—

- (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), for "ceasing" substitute "if the approved provider ceases"

- (2) For section 173(3) and (4) of the National Law substitute—

- (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.

#### **44—Offence to fail to notify certain information to Regulatory Authority**

- (1) For section 174(2)(b) of the National Law substitute—
  - (b) any complaints alleging—
    - (i) that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the approved education and care service; or
    - (ii) that this Law has been contravened;
- (2) Section 174(5) of the National Law is repealed.

#### **45—New section 174A inserted**

After section 174 of the National Law insert—

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

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

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

Penalty: \$2 000.

#### **46—Division 2 of Part 7 substituted**

For Division 2 of Part 7 of the National Law substitute—

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

##### **179A—Enforceable undertakings**

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



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

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

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

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

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

- (b) suspend the service approval under section 72 in relation to a matter that is the subject of the undertaking; or
  - (c) give a prohibition notice under section 182 in relation to a matter that is the subject of the undertaking.
- (3) If a person complies with the requirements of an undertaking under section 179A(4), the Regulatory Authority must not give a prohibition notice under section 182 in relation to a matter that is the subject of the undertaking.

### **181—Failure to comply with enforceable undertakings**

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

- (5) If the relevant tribunal or court determines that a person has failed to comply with a term of an undertaking under section 179A(4), the Regulatory Authority may, without further notice, give a prohibition notice under section 182 in relation to a matter that is the subject of the undertaking.
- (6) Proceedings referred to in subsection (3) may be brought within 6 months of the determination or within 2 years of the date of the alleged offence, whichever occurs last.

#### **47—Grounds for issuing prohibition notice**

- (1) In section 182(2) of the National Law—
  - (a) for paragraph (b) substitute—
    - (b) a nominated supervisor;
  - (b) for paragraph (g) substitute—
    - (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) of the National Law 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.
- (3) The heading to section 182 is to read: Grounds for giving prohibition notice

#### **48—Deciding whether to issue prohibition notice**

- (1) After section 184(2) of the National Law insert—
  - (3) The Regulatory Authority may accept an undertaking from a person under section 179A instead of giving a prohibition notice under this Division.
- (2) The heading to section 184 is to read: Deciding whether to give prohibition notice

## **49—New section 185 substituted**

For section 185 of the National Law substitute—

### **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.

## **50—Cancellation of prohibition notice**

After section 186(4) of the National Law 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.

## **51—Person must not contravene prohibition notice**

- (1) In section 187 of the National Law—
  - (a) after "notice" insert "under section 182(1)";
  - (b) in paragraph (b), for "a supervisor, educator" substitute "an educator"

- (2) At the end of section 187 of the National Law 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.

### **52—Offence to engage person to whom prohibition notice applies**

- (1) In section 188 of the National Law, for "a supervisor, educator" substitute "an educator".
- (2) At the end of section 188 of the National Law 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:

- (a) \$20 000, in the case of an individual.
- (b) \$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:

- (a) \$20 000, in the case of an individual.
- (b) \$100 000, in any other case.

### **53—New section 188A inserted**

In Division 3 of Part 7, after section 188 of the National Law 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.

### **54—References to supervisors and supervisor certificates**

- (1) In section 190 of the National Law—
  - (a) for ", a service approval or a supervisor certificate" (wherever occurring) substitute "or a service approval";
  - (b) paragraph (d)(iii) is repealed
- (2) Section 192(b)(v) of the National Law is repealed
- (3) In section 206(4) of the National Law, in the definition of specified person, for "a certified supervisor" substitute "a nominated supervisor"
- (4) For section 261(2)(b) and (c) of the National Law substitute—
  - (b) subject to the Privacy Act 1988 of the Commonwealth, to collect, hold and use information about providers of education and care services, family day care educators and nominated supervisors;
  - (c) to maintain and publish registers of approved providers and approved education and care services;
- (5) In section 292 of the National Law—
  - (a) paragraph (a)(iii) is repealed;
  - (b) in paragraph (d) omit "or a certified supervisor";
  - (c) in paragraph (g) omit "or supervisor certificate"
- (6) In section 301(3)(a) of the National Law omit "and certificates"

### **55—Powers of entry for investigating approved education and care service**

For section 199(4)(a) of the National Law substitute—

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

## **56—Powers of entry to business premises**

In section 200(1) of the National Law, for "principal office or any other business premises of an approved provider" substitute "principal office of the approved provider of the service or any other business office of the approved provider of the service"

## **57—New section 200A inserted**

After section 200 of the National Law 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.

## **58—Entry to premises with search warrant**

In section 201(3) of the National Law, for "principal office or any other business premises of an approved provider" substitute "principal office of the approved provider of the service or any other business office of the approved provider of the service"

### **59—Seized items**

In section 202 of the National Law, for "section 199 or 200" (wherever occurring) substitute "section 199, 200 or 200A"

### **60—Functions of National Authority**

In section 225(1) of the National Law—

(a) for paragraph (g) substitute—

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

(b) for paragraph (o) substitute—

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

### **61—Functions of chief executive officer**

In section 249(1) of the National Law, for "day to day" substitute "day-to-day"

### **62—Section 268 repealed**

Section 268 of the National Law is repealed

### **63—Section 269 substituted**

For section 269 of the National Law substitute—

#### **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:

- (a) \$4 000, in the case of an individual.
  - (b) \$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:

- (a) \$4 000, in the case of an individual.
- (b) \$20 000, in any other case.

#### **64—Publication of information**

- (1) In section 270(1) of the National Law, for "certified" substitute "nominated"
- (2) For section 270(2)(a) of the National Law substitute—
  - (a) must publish on its website the register of approved providers; and
- (3) In section 270(5)(a) of the National Law omit "or certificates"
- (4) In section 270(6) of the National Law—
  - (a) in paragraph (a), for "certified" substitute "nominated";
  - (b) in paragraph (b), for "Law." substitute "Law; or";
  - (c) after paragraph (b) insert—
    - (c) if the Regulatory Authority is satisfied that it is in the public interest to do so, a person with management or control of an education and care service.

#### **65—Sections 271 and 272 substituted**

For sections 271 and 272 of the National Law substitute—

##### **271—Disclosure of information to other authorities**

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

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

- (b) a family day care educator who has been suspended from providing education and care to children as part of a family day care service; or
- (c) a person to whom a prohibition notice applies; or
- (d) a person who is being prosecuted for an offence against this Law.

### **272—Disclosure of information to education and care services**

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

### **66—When proceedings may be brought**

In section 284 of the National Law, for "Proceedings" substitute "Subject to section 181(6), proceedings"

### **67—Infringement offences**

In section 291(1)(a) of the National Law, for "173 or 176" substitute "173, 176 or 269"

## 68—New Division 5 inserted in Part 15

After Division 4 of Part 15 of the National Law insert—

### **Division 5—Transitional provisions—Education and Care Services National Law Amendment Act 2017**

#### **325—Definitions**

In this Division—

*2017 Act* means the Education and Care Services National Law Amendment Act 2017;

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

#### **326—Approved family day care venues**

(1) In this section—

*appointed day* means the day that is 6 months after the commencement day;

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

- (2) Subject to subsection (3), a formerly approved family day care venue ceases to be an approved family day care venue on the appointed day unless, before the appointed day the Regulatory Authority, on application by the approved provider under section 54 (as amended by the 2017 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 2017 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 2017 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 2017 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 2021.

### **331—Evidentiary certificates**

- (1) Despite the amendment of section 292 by the 2017 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 2021.

### **69—New Division 6 inserted in Part 15**

After Division 5 of Part 15 of the National Law insert—

### **Division 6—Further transitional provisions—Education and Care Services National Law Amendment Act 2017**

#### **332—Definitions**

In this Division—

*2017 Act* means the Education and Care Services National Law Amendment Act 2017;

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

#### **333—Partial assessment and re-rating**

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

*relevant day* means—

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

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

- (1) This section applies if before the commencement day—
  - (a) an approved provider had applied for an education and care service to be assessed for the highest rating level under section 152; and
  - (b) the application had not been determined.
- (2) Despite its substitution by the 2017 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.
- (2) Section 153(2) applies for the purposes of a reassessment under section 157 of the approved education and care service, as if a reference—
  - (a) to the criteria published under subsection (1) were a reference to the criteria published under subsection (1) immediately before the commencement day; and
  - (b) to the National Quality Standard and the requirements of the national regulations were a reference to the National Quality Standard and the national regulations as in force immediately before the commencement day.
- (3) Despite its amendment by the 2017 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

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- (b) the overall rating level is to be determined in accordance with the National Quality Standard as in force immediately before the commencement day.

**Note—**

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

**Made by the Governor**

being satisfied that the amendments made by these regulations correspond, or substantially correspond, to amendments made by the Parliament of Victoria to the *Education and Care Services National Law* set out in the Schedule to the *Education and Care Services National Law Act 2010* of Victoria and that such amendments should be made to the *Education and Care Services National Law (South Australia)* and the with the advice and consent of the Executive Council  
on 12 September 2017

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