2025

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

ELEVENTH ASSEMBLY

EARLY CHILDHOOD LEGISLATION AMENDMENT (CHILD SAFETY) BILL 2025 (VIC)

AS ADOPTED BY THE

EDUCATION AND CARE SERVICES NATIONAL LAW (ACT) ACT 2011

EXPLANATORY STATEMENT

Presented by
YVETTE BERRY MLA
MINISTER FOR EDUCATION AND EARLY CHILDHOOD
DECEMBER 2025

Early Childhood Legislation Amendment (Child Safety) Bill 2025 (Vic)

To amend the Education and Care Services National Law in the Schedule to the *Education and Care Services National Law Act 2010* (Vic), as applied by the law of the States and Territories.

EXPLANATORY STATEMENT

Overview

1. The National Quality Framework (**NQF**) is a national scheme for the regulation of early childhood education and care (ECEC) services and includes the Education and Care Services National Law (**National Law**) and *Education and Care Services National Regulations* (**National Regulations**).

2. The NQF operates as a national applied law scheme. The National Law is enacted by Victoria as the Schedule to the *Education and Care Services National Law Act 2010* (Vic), and the National Regulations are hosted by NSW.

3. The National Law is adopted in the Australian Capital Territory (ACT) by the *Education and Care Services National Law (ACT) Act 2011 (***Adopting Act**).

4. Under section 220 of the National Law, the Ministerial Council (Education Ministers Meeting, or EMM) has the function of monitoring the implementation and operation of, and recommending or approving amendments to, the National Law.

5. In December 2023, the Australian Children's Education and Care Quality Authority (ACECQA) published the Review of Child Safety Arrangements under the National Quality Framework (CSR).

6. The CSR made 16 recommendations to strengthen national approaches for improving child safe cultures, safer online environments, more effective information sharing systems across jurisdictions, and building workforce knowledge and capabilities in the education and care sector.

7. In February 2024, EMM agreed to the implementation of recommendations from the CSR, subject to expert advice, broad consultation, and regulatory impact analysis. After targeted stakeholder consultation, EMM agreed to progress an initial tranche of recommendations, with others to undergo public consultation and comprehensive regulatory impact analysis.

8. Initial legislative amendments to the *Education and Care Services National Amendment Regulations 2025* were tabled in the Legislative Assembly on 26 June 2025.

9. Remaining recommendations proceeded to public consultation via Consultation Regulation Impact Statement open from April to June 2025. EMM endorsed the Decision Regulation Impact Statement (DRIS) on 22 August 2025, published by the Office of Regulatory Impact Analysis. In August and

October 2025, EMM also agreed to additional reforms recommended by recent reviews undertaken in New South Wales and Victoria, identified in paragraph 12.

10. On 7 November 2025, EMM approved the Early Childhood Legislation Amendment (Child Safety) Bill 2025 (**the Bill**) for presentation to Victoria's Cabinet ahead of introduction to Parliament.

11. Parts 1 to 4 and Part 6 of the Bill apply to the National Law. Part 5 applies to Victoria's application Act only.

12. The Bill amends the National Law to implement reforms in the following areas:

    CSR Reforms

    (a) Mandatory child protection and child safety training;

    (b) Use of digital devices;

    (c) Expanded information sharing;

    (d) New offence of inappropriate conduct;

    (e) Additional regulatory tools to respond to individual conduct, being suspension, supervision and training directions;

    (f) Provisions to support regulation of related corporate providers;

    (g) Entry powers for authorised officers in Family Day Care (FDC) services;

    (h) Amended limitation periods to commence prosecutions;

    Additional Reforms

    (i) Paramountcy principle;

    (j) Establishment of the National Early Childhood Worker Register;

    (k) Increased penalties to be more commensurate with other care sectors;

    (l) Expansion of offences subject to Penalty Infringement Notices

13. The National Early Childhood Worker Register in the form of a national registration system for educators, was initially proposed as Focus Action FA1-6 in *Shaping our Future*, the National Children's Education and Care Workforce Strategy (2022-2031).

14. The detailed clause notes in this Explanatory Statement align with the Victorian Explanatory Memorandum, to support national consistency.

Tabling and Commencement

15. Of the Parts of the Bill applying to the National Law:

(a) Parts 1, 2 and 6 come into operation on the day after the Bill receives Royal Assent;

(b) Part 3 comes into operation on 2 January 2026;

(c) The remaining provisions come into operation on 27 February 2026 or by earlier proclamation.

16. Section 6 of the Adopting Act requires presentation of any law amending the National Law to the Legislative Assembly as a disallowable instrument. If the amending law is not presented (or is disallowed), it does not apply in the ACT. This provision has the effect that amendments must be presented before commencement for the ACT to align with other participating jurisdictions.

17. To ensure commencement dates will align nationally, the Bill has been presented to the Legislative Assembly before Royal Assent, which will take place during the disallowance period.

Publication

18. The Bill was introduced to Victoria's Parliament on 12 November 2025. Once the Bill receives Royal Assent, it will be published on Victoria's Legislation website.

CONSISTENCY WITH HUMAN RIGHTS

19. The *Human Rights Act 2004* (HR Act) applies to the *Education and Care Services National Law (ACT)*.

Rights Engaged

The amendments in the Bill promote section 11 (Protection of the family and children) and section 12 (Privacy).

The amendments in the Bill limit section 12 (Privacy) section 21 (Fair trial) and section 27B (Work)

Rights Promoted

Section 11(2) Protection of the family and children

Built into the ACT National Law is an obligation upon the Regulatory Authority to carry out its functions in a way that protects children.

Section 3 of the National Law sets out objectives and guiding principles of the Law, including the objectives at sections 3(2)(a), (b) and (c):

(a) to ensure the safety, health and wellbeing of children attending education and care services;

(b) to improve the educational and developmental outcomes for children attending education and care services;

(c) to promote continuous improvement in the provision of quality education and care services.

There are two relevant guiding principles at sections 3(3)(a) and (f):

(d) that the rights and best interests of the child are paramount;

(f) that best practice is expected in the provision of education and care services.

18. It is relevant to consider the Convention on the Rights of the Child (CRC), ratified by Australia on 17 December 1990. The CRC exists, as does the National Law, to protect children due to their inherent vulnerability.

19. Article 3 of the CRC states that, in all actions concerning children, the best interests of the child shall be a primary consideration. Parties to the CRC are further required to ensure that institutions, services, and facilities responsible for the care or protection of children conform with established standards, particularly regarding safety, health, suitability of staff and supervision.

20. Article 19 of the CRC requires participating countries to take all legislative and administrative steps to protect children and young people from all forms of physical and mental violence, injury or abuse, neglect, or exploitation.

21. As the CRC notes, by reason of their physical and mental immaturity, children need special safeguards and care, including appropriate legal protection.

22. The Bill promotes protection of children by:

(a) further embedding the principle that the safety, rights and best interests of children are the paramount consideration in the operation of an ECEC service and delivery of ECEC services to children. This paramount consideration applies to providers, persons with management or control, persons in day-to-day charge, nominated supervisors, staff members and volunteers;

(b) implementing controls around use and possession of digital devices with image or video capture or storage capability;

(c) new provisions to better respond to inappropriate conduct towards children;

(d) ensuring that risks in and near family day care residences are appropriately addressed;

(e) expanded information sharing around individuals involved in ECEC;

(g) provisions to improve regulation of corporate providers, including related provider groups

22. The Bill promotes children's privacy by placing controls on capture, storage and transmission of images of children. The National Regulations require documentation of children's learning and participation in an education program, often achieved using digital images and videos. The amendments in Clause 81, requiring the use of service-supplied and service-issued devices to capture, store or transmit images of children, and prohibition on control and possession of

personal devices whilst working directly with children, promotes a child's right to information privacy.

Rights Limited

Section 12 HRA – Right to Privacy

Clauses 7, 8, 9 and 10 – Disclosure of information to approved providers and recruitment agencies

1. *Nature of the right and the limitation (s 28(2)(a) and (c))*

The right to privacy provides that everyone has the right not to have their privacy, family, home or correspondence interfered with unlawfully or arbitrarily. Amendments in the Bill permit Regulatory Authorities to obtain relevant information from recruitment agencies for the purposes of monitoring compliance with the National Law, or where there is a reasonable suspicion of an offence. These provisions mirror existing provisions for obtaining information from approved providers and other specified persons. This information may include personal information about individuals. Amendments also permit Regulatory Authorities to share personal information with approved providers and recruitment agencies. Regulatory Authorities may share information about a current prohibition notice, or an enforceable undertaking that currently applies to an individual.

2. *Legitimate purpose (s 28(2)(b))*

The legitimate purpose of the amendments is to ensure that prohibition notices and enforceable undertakings issued to individuals are complied with and that Regulatory Authorities can obtain information essential to carrying out their functions. Prohibition notices operate nationally to prohibit an individual from being involved in ECEC in any capacity. Enforceable undertakings often require an individual to work under specified conditions, such as supervision by an appropriately qualified person, or not working with children until additional training is complete. Existing provisions permit disclosure of prohibition notices to providers on request. The amendments in the Bill are essential to prevent providers employing and recruitment agencies supplying staff who are prohibited and to ensure terms of enforceable undertakings are met. Approved providers are already required to maintain a staff record for agency staff, but non-compliance is common and impacts Regulatory Authorities' capacity to monitor compliance and investigate suspected offences. The amendments ensure Regulatory Authorities are able to obtain relevant information.

3. *Rational connection between the limitation and the purpose (s 28(2)(d))*

Information sharing is necessary to help ensure that individuals who are not currently safe to work with children are prevented from engaging in the education and care sector, and to ensure that prohibition notices and enforceable undertakings are complied with. Approved providers are able to obtain information about prohibition notices under existing provisions, but they rely on a request from the approved provider. Under existing provisions, approved providers are unable to obtain information about whether an employed individual is subject to an enforceable undertaking. The information sharing provisions have been extended to recruitment agencies who have an agreement with an individual to procure education and care related work. It is common practice for providers to obtain staff from recruitment agencies under labour hire arrangements, with little information about that individual. Agency staff may work across many services, for many different providers, with reduced oversight.

4. *Proportionality (s 28(2)(e))*

There is no less restrictive way to ensure that prohibition notices and enforceable undertakings are complied with and that providers are aware of those particular risks associated with individuals working in the services they operate. Without the amendments, sharing this information is unlawful, and risk of harm to children from potentially unsafe individuals remains. Amendments to compel production of relevant information from recruitment agencies are necessary to avoid disclosure by recruitment agencies to Regulatory Authorities being unlawful under privacy legislation.

<u>Clauses 95 and 95 – Authorised Officers' rights of entry to family day care service premises</u>

1 *Nature of the right and the limitation (s 28(2)(a) and (c))*

The right to privacy provides that everyone has the right not to have their privacy, family, home or correspondence interfered with unlawfully or arbitrarily. Amendments to the National Law permit Authorised Officers to access areas of FDC residences not ordinarily used for providing education and care to children, such as private bedrooms, as well as areas near the residences, such as garages.

2. *Legitimate purpose (s 28(2)(b))*

The legitimate purpose of the amendment is to facilitate management of risk to children from physical environments when attending FDC services. Children sometimes access areas outside the service premises, such as other areas of the residence, or near the residence, and have sustained injuries or been exposed to hazards, such as chemicals stored in a shed.

3. *Rational connection between the limitation and the purpose (s 28(2)(d))*

Authorised officers are already permitted to access service premises, being those parts of a residence used for providing a FDC service. Access to surrounding areas is necessary to ensure the safety, health and wellbeing of children attending FDC services. Not all situations justify the intervention of police exercising their rights of entry and may be appropriately managed by Regulatory Authorities, so entry is justified.

4. Proportionality (s 28(2)(e))

There is no less restrictive way to facilitate Authorised Officer access to areas outside the FDC service premises. Entry is with consent of the occupier, with an offence for unreasonably withholding consent if the proposed entry is for investigative purposes. The relevant threshold is where the authorised officer reasonably suspects an offence against the National Law may have been or may be being committed. Entry for monitoring compliance with the National Law requires consent, with no offence attached if consent is withheld.

<u>Clause 107—New Division 4A of Part 13—National Early Childhood Worker Register</u>

1. *Nature of the right and the limitation (s 28(2)(a) and (c))*

The right to privacy provides that everyone has the right not to have their privacy, family, home or correspondence interfered with unlawfully or arbitrarily. Amendments in the Bill will establish a National Early Childhood Worker Register (National Register), to be created and maintained by the National Authority. The National Register will contain personal information about nominated supervisors, staff members and volunteers, including names, dates of birth and employment details. This information will be uploaded to the National Register by approved providers and will be accessible by the National Authority and Regulatory Authorities. Approved providers will be able to access the National Register to the extent that it applies to services they operate.

2. *Legitimate purpose (s 28(2)(b))*

The legitimate purpose of the amendment is to better facilitate information sharing amongst specified government entities, including Regulatory Authorities and Working with Children Check agencies, within and across jurisdictions. Effective information sharing is essential for managing risk posed by individuals who are not safe or need additional training to be working with children. The National Register will also facilitate monitoring of potentially unsafe individuals moving between services and participating jurisdictions.

3. *Rational connection between the limitation and the purpose (s 28(2)(d))*

Existing provisions require approved providers to hold personal information in staff and volunteer records, which must be available for immediate inspection by the Regulatory Authority. The National Register is effectively a digital national staff and volunteer record to enable Regulatory Authorities to swiftly access information they can already access under existing powers. Prompt access will facilitate risk management and cross-agency collaboration, including national regulatory coordination where needed. Information can only be used and shared for specified purposes, with the *Privacy Act 1988* (Cth) applying, and offences in place for unlawful disclosure. The National Authority requires access to the personal information in order to establish and maintain the National Register.

4. *Proportionality (s 28(2)(e))*

The information in the National Register is already accessible by Regulatory Authorities under existing provisions, but this does not facilitate monitoring of high-risk individuals who may move across services and jurisdictions, including individuals subject to enforcement action. Including this information in the National Register is the only reasonable way to enable Regulatory Authorities to access essential information promptly, and share with relevant agencies, such as Working with Children Check agencies, to manage risk to children.

<u>Section 21 HRA—Fair Trial</u>

<u>Clause 11 — When proceedings may be brought</u>

1. *Nature of the right and the limitation (s 28(2)(a) and (c))*

The right to fair trial provides that everyone has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing. The Bill amends the two-year limitation period in section 284 so that it commences on the day on which the person bringing proceedings becomes aware of the alleged offence. The Bill further includes a ‘stop the clock’ provision where action under the Law must be suspended due to a concurrent investigation or proceeding relating to the same conduct under another Act.

2. *Legitimate purpose (s 28(2)(b))*

The legitimate purpose of the amendments is to protect the safety and wellbeing of children, ensuring administration of justice for victim-survivors and accountability for perpetrators. It promotes the best interests of children.

3. *Rational connection between the limitation and the purpose (s 28(2)(d))*

The current limitation period does not account for delays in reporting and investigation of alleged offences such as child abuse or failing to protect children from harm or hazards. For example, the Royal Commission into Institutional Responses to Child Sexual Abuse found that it takes an average of 24 years for survivors to disclose childhood abuse. Statutory time limits are increasingly being removed for certain historical sexual offences against children. There may be additional delays in providers reporting alleged offences to the Regulatory Authority.

Additionally, criminal investigations and proceedings take precedence over regulatory proceedings and may continue for years. This may easily prevent the Regulatory Authority from acting due to being time-barred. A criminal investigation may not result in charges for a variety of reasons, and so a perpetrator may remain unaccountable and children remain at risk. The ‘stop the clock’ amendment ensures that the Regulatory Authority is not unfairly prevented from prosecuting serious breaches simply because another investigation or proceeding is underway.

4. *Proportionality (s 28(2)(e))*

The majority of prosecutions under the National Law are against entities that are not natural persons and have no human rights. Prospective defendants have assumed roles within the ECEC sector, with obligations to demonstrate their compliance with the National Law. The proposed limitation period does not cover conduct before 1 January 2012, when the National Law commenced. Penalties are pecuniary and do not extend to imprisonment. To the extent that an accused person is unable to receive a fair hearing or usual rights, courts retain the discretion to stay an unfair prosecution (such as due to unreasonable delay, unavailability of key witnesses, or deterioration of exculpatory evidence).

<u>Section 27B HRA — Right to work and work-related rights</u>

<u>Clause 84 — New Sections 178A and 178B Suspension Directions</u>

1. *Nature of the right and the limitation (s 28(2)(a) and (c))*

The right to work and other work-related rights provides that everyone has the right to work, including the right to choose their occupation or profession freely, and is entitled to enjoy those rights without discrimination. The right to work will be limited by the Regulatory Authority's ability to issue suspension directions, which require an approved provider to suspend the provision of education and care by a specific individual.

2. *Legitimate purpose (s 28(2)(b))*

The legitimate purpose of the amendment is to enable Regulatory Authorities to manage risk to children posed by individuals who may not meet the threshold of risk required for a prohibition notice.

3. *Rational connection between the limitation and the purpose (s 28(2)(d))*

Regulatory Authorities currently have the ability to prohibit individuals who may pose an unacceptable risk of harm to children or agree to an enforceable undertaking where risk may be adequately managed by specified measures. The purpose of the suspension direction is to allow Regulatory Authorities to act to ensure that any individual who poses a lower level of risk to children is unable to work with children until, for example, additional training is undertaken. Under existing provisions, the Regulatory Authority is able to direct a family day care provider to suspend education and care by a family day care educator. This provision allows the same for individuals working in centre-based services.

4. *Proportionality (s 28(2)(e))*

The ability to issue a suspension direction to an approved provider allows the Regulatory Authority to manage risk to children whilst the subject individual undertakes, for example, additional training or mentoring to become safe to work directly with children. The suspension direction is subject to a show cause process unless there is immediate risk to children and the suspension direction is necessary to protect the safety, health or wellbeing of children. Suspension directions are also subject to internal and external review rights.

<u>Strict Liability Offences</u>

Clauses 5, 78, 79, 81, 84, 96, 100 and 107 of the Bill create new strict liability offences for approved providers, nominated supervisors, staff members and volunteers (as the case may be). Clause 80 creates a strict liability offence that only applies to corporate providers and human rights do not apply. All offences relate to new measures to manage known risks to safety, health and wellbeing of children.

International human rights jurisprudence has found that strict liability offences are not inherently a breach of human rights.

Under section 7 of the *Adopting Act,* the *Criminal Code 2002* is excluded from application to the National Law. Consequently, the presumptions of interpretation in the ACT Criminal Code do not apply to the offences set out in the Bill.

All statutory offences in the National Law are drafted in a manner that do not specifically characterise the mental or physical elements of the offence. The characterisation of offences relies upon common law interpretation.

It is EMM's intention that all offences set out in the National Law and Regulations are strict liability. This includes the offences set out in the Bill. However, the ultimate arbiter of the characterisation of the offence will be a relevant Court. Therefore, a presumption exists that all offences under the National Law are interpreted as strict liability, unless determined otherwise.

An accepted argument against a limitation of human rights in the context of strict liability offences is that strict liability offences are crafted to address unlawful behaviour in a context where the person or entity knows, or ought to know, their legal obligations.

This concept, known as the licensing concept or approach, is discussed by Cory J (judgment of L'Heureux-Dube and Cory JJ) in *R v Wholesale Travel Group Inc* [1991] 3 SCR 154 at [55]:

> *The licensing concept rests on the view that those who choose to participate in regulated activities have, in doing so, placed themselves in a responsible relationship to the public generally and must accept the consequences of that responsibility. Therefore, it is said, those who engage in regulated activity should, as part of the burden of Responsible conduct attending participation in the regulated field, be deemed to have accepted certain terms and conditions applicable to those who act within the regulated sphere. Foremost among these implied terms is an undertaking that the conduct of the regulated actor will comply with and maintain a certain minimum standard of care. [p. 93]*

The new offences in the Bill will apply to individuals who are regulated under the National Law. Individuals seeking to be involved in the ECEC sector must apply in some form to join the sector, are assessed for suitability in some form, must be appropriately qualified where relevant and are obliged to familiarise themselves with their obligations under the National Law. There is a community expectation that the education and care of children is closely monitored and proactively regulated.

The strict liability offences meet a legitimate aim, namely the protection of the safety, health and wellbeing of children attending education and care services. The offences are also proportionate in the context of the high degree of knowledge expected of participants in the ECEC sector.

Additionally, all statutory enforcement actions are subject to review rights and, where appropriate, show cause processes.

ACT Regulatory Impact

20. Section 7 of the Adopting Act operates to exclude section 34 of the *Legislation Act 2001* from application. Accordingly, a regulatory impact statement is not required.

21. The public consultation process was undertaken by Deloitte in conjunction with the National Voice for Aboriginal and Torres Strait Islander Children (SNAICC). The Office of Impact Analysis was continuously engaged throughout the process. The consultation approach is outlined in chapter 3 of the DRIS and included:

(a) Pre-CRIS Consultation with experts such as academics, National Office for Child Safety, the e-Safety Commissioner, jurisdictional children's Commissioners, peak bodies, law enforcement agencies, state and territory Regulatory Authorities, and others;

(b) Public consultation, advertised through numerous national and ACT Government channels. ACT information webinar invitations and feedback options were sent directly to all ECEC providers operating in the ACT, unions, First Nations organisations, and peak bodies, including those representing families.

22. Relevant ACT government agencies and officeholders were invited to attend the information webinar, including the ACT Human Rights Commissioner, Access Canberra (Working with Vulnerable People), the Senior Practitioner, ACT Ombudsman, ACT Disability Reference Group, ACT Aboriginal and Torres Strait Islander Elected Body, and Teacher Quality Institute. Some were also invited to the ACT virtual forum hosted by Deloitte, for which space was limited.

23. A comprehensive regulatory impact analysis for each reform is contained in Chapters 5-10 of the DRIS, with Chapter 4 providing details of each approach taken.

DETAILED NOTES

Part 1 - Preliminary

Clause 1 Purposes

Clause 1 sets out the main purposes of the Bill.

The Bill's main purposes are to amend the National Law —

- in relation to the disclosure of information to approved providers and recruitment agencies; and
- in relation to the period in which a proceeding for an offence against the National Law may be commenced; and
- to triple the maximum penalty amounts for offences against the National Law; and
- to provide for new infringement offences; and
- to provide that the safety, rights and best interests of children is the paramount consideration in the operation of an education and care service and the delivery of education and care services to children; and
- in relation to related providers of approved providers and applicants for provider approval; and
- in relation to the mandatory completion of child protection training and child

safety training; and

- to provide for new offences relating to inappropriate conduct; and
- to require an approved provider that is a body corporate to notify the Regulatory Authority in relation to a change of the approved provider's ownership or voting rights; and
- to regulate the use of devices in education and care services; and
- to provide that the Regulatory Authority may direct—
    - an approved provider to suspend the provision of education and care by a staff member (other than a family day care educator) or volunteer; and
    - an approved provider to suspend the provision of education and care by a nominated supervisor; and
    - an approved provider to ensure that a staff member (other than a family day care co-ordinator) or volunteer is directly supervised while providing education and care; or
    - a nominated supervisor, staff member or volunteer to complete training; and
- to provide for new powers of entry for authorised officers in relation to a family day care service and the business premises of a related provider of an approved provider; and
- to establish and provide for the National Early Childhood Worker Register;
- to make Victorian specific modifications to the Education and Care Services National Law (Victoria) including
    - modifications that confer a range of powers on the Minister, including a power to issue guidelines about any matter relating to the delivery of education and care services to children and a power to give directions to approved providers; and
    - modifications that confer a range of Victorian specific enforcement powers on the Regulatory Authority including powers to give prohibition notices and directions, a power to close education and care services and family day care services because of an emergency event, a power to conduct disciplinary proceedings against relevant persons and powers to publish and disclose certain specified information; and
    - modifications that confer jurisdiction on the relevant tribunal or court under the Law to make orders of a disciplinary nature against relevant persons; and
    - modifications that prohibit approved providers from entering into, or being a party to, contracts of insurance to indemnify certain persons, including approved providers, in respect of the payment of any criminal fine, or disciplinary penalty imposed by the relevant tribunal or court, for

contraventions of the National Law or the national regulations; and

   - modifications that impose higher maximum penalties for large providers for certain offences against the National Law and enable the imposition of higher maximum penalties for large providers for certain offences against the national regulations; and

- to make other amendment to improve the operation of the Act; and
- to make other minor and consequential amendments to improve the operation of the National Law.

Clause 2 Commencement

Clause 2 is the commencement provision.

Subclause (1) provides that Parts 1, 2 and Division 1 of Part 5, section 124 and Part 6 come into operation on the day after the day on which the Bill receives the Royal Assent.

Subclause (2) provides that Part 3 and Division 2 of Part 5 come into operation on 2 January 2026.

Subclause (3) provides that, subject to subclause (4), the remaining provisions of Bill come into operation on day or days to be proclaimed.

Subclause (4) provides that if a provision referred to in subsection (3) does not come into operation before 27 February 2026, it comes into operation on that day.

Part 2 – Amendments to the Education and Care services National Law relating to offences, recruitment agencies and powers of the Regulatory Authority

Clause 3 Definitions

Clause 3 inserts the following new definitions into section 5(1) of the National Law—

education and care related work means work in or as part of an education and care service involving the provision of education and care;

recruitment agency means a person that carries on (whether or not with a view to profit and whether or not in conjunction with any other business) the business of procuring education and care related work for individuals seeking such work (whether or not the business includes procuring any other kind of work for those individuals or any other individuals).

This definition is broad to ensure it sufficiently captures all businesses and organisations that provide agency educators to host providers under labour hire agreements, regardless of the business form or corporate structure of the entity.

Clause 4 Heading to section 188A substituted

Clause 4 substitutes the heading to section 188A of the National Law, which is currently “False or misleading information about prohibition notice”, with “Offence to give false or misleading information to approved provider about prohibition notice".

Clause 5 New section 188B inserted

Clause 5 inserts new section 188B after section 188A of the National Law that makes it an offence for a specified person who is subject to a prohibition notice under section 182 to make a false or misleading statement to a recruitment agency about the content or existence of the prohibition notice. This includes both inclusions and omissions that are false or misleading in any material particular. New section 188B(2) provides that for the purposes of new section 188B ***specified person*** means an individual who has entered into an agreement with a recruitment agency for the agency to procure for that individual education and care related work.

The maximum penalty for the offence against new section 188B is $20,400.

Clause 6 Heading to section 206 substituted

Clause 6 substitutes the heading to section 206 of the National Law to refer to "Power of authorised officers to obtain information, documents and evidence from approved providers, nominated supervisors, staff members and volunteers".

Clause 7 New section 206A inserted

Clause 7 inserts new section 206A after section 206 of the National Law.

New section 206A(1) provides an authorised officer may issue a written notice requiring a recruitment agency to provide to the authorised officer any relevant information specified in the notice for the purposes of monitoring compliance with the National Law, within the time and in the manner specified in the notice.

New section 206A(2) provides the time specified in the notice must not be less than 14 days from the date the notice is issued.

Clause 8 Power of Regulatory Authority to obtain information, documents and evidence by notice

Clause 8 substitutes section 215(6) to provide that in section 215 ***specified person*** means:

- a person who is or has been an approved provider, a nominated supervisor or a staff member of, or a volunteer at, an approved education and care service; or
- a person who is or has been a family day care educator; or
- a recruitment agency.

The inclusion of a recruitment agency in this definition ensures that the powers of the Regulatory Authority under section 215 to obtain information, documents and evidence by notice extend to information about agency staff who are engaged under a labour hire arrangement through a recruitment agency. This will enable the Regulatory Authority to obtain additional information about agency staff.

Clause 9 Disclosure of information to approved providers

Clause 9 substitutes section 272(1) of the National Law to provide that the National Authority or the Regulatory Authority may disclose the following information to an approved provider if the National Authority or Regulatory Authority considers on reasonable grounds that the information may assist the provider to comply with the National Law:

- whether an individual who is employed, appointed or engaged by the approved provider has given an enforceable undertaking under section 179A that is in force, including information about:
    - the provisions of the National Law that the individual has contravened or is alleged to have contravened;
    - the actions the individual must take or refrain from taking to comply with the enforceable undertaking;
    - whether the individual is complying with the enforceable undertaking;
- whether an individual who is employed, appointed or engaged by the approved provider is subject to a prohibition notice that is in force under the National Law as applying in any participating jurisdiction;
- whether a family day care educator employed, appointed or engaged by the approved provider has been suspended from providing education and care to children under section 178.

Clause 10 New section 272A inserted

Clause 10 inserts new section 272A after section 272 of the National Law to provide the Regulatory Authority with appropriate powers to share information with recruitment agencies regarding agency educators.

Section 272A provides that the National Authority or the Regulatory Authority may disclose the following information to a recruitment agency for the purposes of promoting the objectives of the National Quality Framework:

- whether a specified person has given an enforceable undertaking under section 179A that is in force, including information about the following—
    - the provisions of the National Law that the specified person has contravened or is alleged to have contravened;
    - the actions that the specified person must take or refrain from taking to comply with the enforceable undertaking;
    - whether the specified person is complying with the enforceable undertaking;
- whether a specified person is subject to a prohibition notice that is in force under the National Lawas applying in any participating jurisdiction;
- whether a specified person has been suspended from providing education and care to children as part of a family day care service under section 178.

Section 272A provides the disclosure of information under section 272A(1) is limited to that which is permitted under Division 1 of Part 13 of the National Law as well as any protocol agreed to by

- the National Authority, all participating jurisdictions and the Commonwealth; and
- subject to any protocol determined by the above parties, the National Authority and the Regulatory Authority or the National Authority, the Regulatory Authority and any Regulatory Authority of another participating jurisdiction.

Subclause (3) defines ***specified person*** to mean an individual who has entered into an agreement with a recruitment agency for the agency to procure for that individual education and care related work.

Clause 11 Section 284 amended

Clause 11 amends section 284 to change the limitation period for the commencement of proceedings from within 2 years of the date of the alleged offence to within 2 years after the date on which a person referred to in section 283(1) of the National Law becomes aware of the alleged offence, or where action taken by the Regulatory Authority in relation to the alleged offence is suspended during a concurrent investigation or proceeding under another Act, within 2 years after the finalisation of that investigation or proceeding.

Subclause (1) substitutes “brought” with “commenced” in the heading to section 284 of the National Law.

Subclause (2) amends section 284 by—

- inserting “and subsection (3)” after “181(6);
- inserting “by a person referred to in section 283(1)” after “commenced”; and
- substituting “of the date of the alleged offence” with “after the date on which the person becomes aware of the alleged offence”.

Subclause (3) inserts new subsections (2) and (3) into section 284—

- New section 284(2) provides that the date when proceedings may be commenced by the persons listed in section 283(1) is the date on which the person becomes aware of the alleged offence, whether the date is before, on or after the commencement of clause 11 of the Bill.
- New section 284(3) is a “stop the clock” mechanism which suspends the 2-year limit set out in section 284(1) on commencing proceedings during a period in which a concurrent investigation or proceedings under another Act are taking place (for example, during a police investigation which prevents the Regulatory Authority from concurrently investigating relevant matters).

Clause 12 New section 324A inserted

Clause 12 inserts new section 324A after section 324 of the National Law to make provision for the making of transitional regulations.

New section 324A(1) provides that the Ministerial Council may make regulations containing transitional provisions, including matters of an application or savings nature, arising from the enactment of the Bill, including any repeals or amendments made by or as a result of the enactment of the Bill. This provision is necessary to ensure that there is sufficient power for the Ministerial Council to make regulations about matters which arise following passage of the Bill and commencement and to provide for the orderly implementation of the changes as a result of the amendments in the Bill.

New section 324A(2) provides that regulations made under section 324A may—

- be retrospective in effect to the day on which the Bill receives the Royal Assent; and
- be of limited or general application; and
- differ according to time, place or circumstances; and
- leave any matter or thing to be decided by a specified person or class of person.

New section 324A(3) provides regulations under section 324A have effect despite anything to the contrary in any Act (other than the National Law) or in any subordinate instrument.

New section 324A(4) provides section 324A is repealed on the second anniversary of its commencement.

Part 3 — Amendments to the Education and Care Services National Law relating to penalties and infringement offences

Clause 13 Conditions on provider approval

Clause 13 increases the maximum penalty for the offence against section 19(4) of the National Law from $11,400 to $34,200 in the case of an individual and from $57,400 to $172,200 in any other case.

Clause 14 Notice to parents of suspension or cancellation

Clause 14 increases the maximum penalty for the offence against section 36(3) of the National Law from $3,400 to $10,200 in the case of an individual and from $17,200 to $51,600 in any other case.

Clause 15 Conditions on service approval

Clause 15 increases the maximum penalty for the offence against section 51(8) of the National Law from $11,400 to $34,200 in the case of an individual and from $57,400 to $172,200 in any other case.

Clause 16 Confirmation of transfer

Clause 16 increases the maximum penalty for the offence against section 68(1) of the National Law from $4,500 to $13,500 in the case of an individual and from $22,900 to $68,700 in any other case.

Clause 17 Notice to parents

Clause 17 increases the maximum penalty for the offence against section 69(1) of the National Law from $3,400 to $10,200 in the case of an individual and from $17,200 to $51,600 in any other case.

Clause 18 Notice to parents of suspension or cancellation

Clause 18 increases the maximum penalty for the offence against section 84(3) of the National Law from $3,400 to $10,200 in the case of an individual and from $17,200 to $51,600 in any other case.

Clause 19 Offence to provide an education and care service without service approval

Clause 19 increases the maximum penalty for the offence against section 103(1) of the Education and Care Services National Law from $22,900 to $68,700 in the case of an individual and from $114,900 to $344,700 in any other case.

Clause 20 Offence relating to places where education and care is provided as part of a family day care service

Clause 20 increases the maximum penalty for the offence against section 103A of the National Law from $22,900 to $68,700 in the case of an individual and from $114,900 to $344,700 in any other case.

Clause 21 Offence to advertise education and care service without service approval

Clause 21 increases the maximum penalty for the offence against section 104(1) of the National Law from $6,800 to $20,400 in the case of an individual and from $34,400 to $103,200 in any other case.

Clause 22 Offence to operate education and care service without nominated supervisor

Clause 22 increases the maximum penalty for the offence against section 161 of the National Law from $5,700 to $17,100 in the case of an individual and from $28,700 to $86,100 in any other case.

Clause 23 Offence for nominated supervisor not to meet prescribed minimum requirements

Clause 23 increases the maximum penalty for the offence against section 161A of the National Law from $5,700 to $17,100 in the case of an individual and from $28,700 to $86,100 in any other case.

Clause 24 Offence to operate education and care service unless responsible person is present

Clause 24 increases the maximum penalty for the offence against section 162(1) of the National Law from $5,700 to $17,100 in the case of an individual and from $28,700 to $86,100 in any other case.

Clause 25 Offence relating to appointment or engagement of family day care co-ordinators

Clause 25 increases the maximum penalty for the offence against section 163(1) of the National Law from $5,700 to $17,000 in the case of an individual and from $28,700 to $86,100 in any other case.

Clause 26 Offence relating to assistance to family day care educators

Clause 26 increases the maximum penalty for the offence against section 164(1) of the National Law from $5,700 to $17,100 in the case of an individual and from $28,700 to $86,100 in any other case.

Clause 27 Offence relating to the education and care of children by family day care service

Clause 27 increases the maximum penalty for the offence against—

- section 164A(1) of the National Law from $11,400 to $34,200 in the case of an individual and from $57,400 to $172,200 in any other case; and
- section 164A(2) of the National Law from $2,200 to $6,600.

Clause 28 Offence to inadequately supervise children

Clause 28 increases the maximum penalty for the offence against—

- section 165(1) of the National Law from $11,400 to $34,200 in the case of an individual and from $57,400 to $172,200 in any other case; and
- section 165(2) of the National Law from $11,400 to $34,200; and
- section 165(3) of the National Law from $11,400 to $34,200.

Clause 29 Offence to use inappropriate discipline

Clause 29 increases the maximum penalty for the offence against—

- section 166(1) of the National Law from $11,400 to $34,200 in the case of an individual and from $57,400 to $172,200 in any other case; and
- section 166(2) of the National Law from $11,400 to $34,200; and
- section 166(3) of the National Law from $11,400 to $34,200; and
- section 166(4) of the National Law from $11,400 to $34,200.

Clause 30 Offence relating to protection of children from harm and hazards

Clause 30 increases the maximum penalty for the offence against—

- section 167(1) of the National Law from $11,400 to $34,200 in the case of an individual and from $57,400 to $172,200 in any other case; and
- section 167(2) of the National Law from $11,400 to $34,200; and
- section 167(3) of the National Law from $11,400 to $34,200.

Clause 31 Offence relating to required programs

Clause 31 increases the maximum penalty for the offence against—

- section 168(1) of the National Law from $4,500 to $13,500 in the case of an individual and from $22,900 to $68,700 in any other case; and
- section 168(2) of the National Law from $4,500 to $13,500.

Clause 32 Offence relating to staffing requirements

Clause 32 increases the maximum penalty for the offence against—

- section 169(1) of the National Law from $11,400 to $34,200 in the case of an individual and from $57,400 to $172,200 in any other case; and
- section 169(2) of the National Law from $11,400 to $34,200 in the case of an individual and from $57,400 to $172,000 in any other case; and
- section 169(3) of the National Law from $11,400 to $34,200; and
- section 169(4) of the National Law from $11,400 to $34,200; and
- section 169(5) of the National Law from $11,400 to $34,200.

Clause 33 Offence relating to unauthorised persons on education and care service premises

Clause 33 increases the maximum penalty for the offence against—

- section 170(2) of the National Law from $1,100 to $3,300 in the case of an individual and from $5,700 to $17,100 in any other case; and
- section 170(3) of the National Law from $1,100 to $3,300; and
- in section 170(4) of the Education and Care Services National Law from $1,100 to $3,300.

Clause 34 Offence relating to direction to exclude inappropriate persons from education and care service premises

Clause 34 increases the maximum penalty for the offence against section 171(2) of the National Law from $11,400 to $34,200 in the case of an individual and from $57,400 to $172,200 in any other case.

Clause 35 Offence to fail to display prescribed information

Clause 35 increases the maximum penalty for the offence against—

- section 172(1) of the National Law from $3,400 to $10,200 in the case of an individual and from $17,200 to $51,600 in any other case; and
- section 172(2) of the National Law from $3,400 to $10,200 in the case of an individual and from $17,200 to $51,600 in any other case.

Clause 36 Offence to fail to notify certain circumstances to Regulatory Authority

Clause 36 increases the maximum penalty for the offence against—

- section 173(1) of the National Law from $4,500 to $13,500 in the case of an individual and from $22,900 to $68,700 in any other case; and

- section 173(2) of the National Law from $4,500 to $13,500 in the case of an individual and from $22,900 to $68,700 in any other case.

Clause 37 Offence to fail to notify certain information to Regulatory Authority

Clause 37 increases the maximum penalty for the offence against—

- section 174(1) of the National Law from $4,500 to $13,500 in the case of an individual and from $22,900 to $68,700 in any other case; and
- section 174(2) of the National Law from $4,500 to $13,500 in the case of an individual and from $22,900 to $68,700 in any other case.

Clause 38 Family day care educator to notify certain information to approved provider

Clause 38 increases the maximum penalty for the offence against section 174A of the National Law from $2,200 to $6,600.

Clause 39 Offence relating to requirement to keep enrolment and other documents

Clause 39 increases the maximum penalty for the offence against—

- section 175(1) of the National Law from $4,500 to $13,500 in the case of an individual and from $22,900 to $68,700 in any other case; and
- section 175(3) of the National Law from $4,500 to $13,500.

Clause 40 Compliance directions

Clause 40 increases the maximum penalty for the offence against section 176(3) of the National Law from $2,200 to $6,600 in the case of an individual and from $11,400 to $34,200 in any other case.

Clause 41 Compliance notices

Clause 41 increases the maximum penalty for the offence against section 177(3) of the National Law from $6,800 to $20,400 in the case of an individual and from $34,400 to $103,200 in any other case.

Clause 42 Notice to suspend education and care by a family day care educator

Clause 42 increases the maximum penalty for the offence against section 178(7) of the National Law from $6,800 to $20,400 in the case of an individual and from $34,400 to $103,200 in any other case.

Clause 43 Emergency action notices

Clause 43 increases the maximum penalty for the offence against section 179(3) of the National Law from $6,800 to $20,400 in the case of an individual and from $34,400 to $103,200 in any other case.

Clause 44 Person must not contravene prohibition notice

Clause 44 increases the maximum penalty for the offence against—

- section 187(1) of the National Law from $22,900 to $68,700; and
- section 187(2) of the National Law from $22,900 to $68,700.

Clause 45 Offence to engage person to whom prohibition notice applies

Clause 45 increases the maximum penalty for the offence against—

- section 188(1) of the National Law from $22,900 to $68,700 in the case of an individual and from $114,900 to $344,700 in any other case; and
- section 188(2) of the National Law from $22,900 to $68,700 in the case of an individual and from $114,900 to $344,700 in any other case; and
- section 188(3) of the National Law from $22,900 to $68,700 in the case of an individual and from $114,900 to $344,700 in any other case.

Clause 46 False or misleading information about prohibition notice

Clause 46 increases the maximum penalty for the offence against section 188A of the National Law from $6,800 to $20,400.

Clause 47 Identity card

Clause 47 increases the maximum penalty for the offence against—

- section 196(3) of the National Law from $1,100 to $3,300; and
- section 196(5) of the National Law from $1,100 to $3,300.

Clause 48 Offence to obstruct authorised officer

Clause 48 increases the maximum penalty for the offence against section 207 of the National Law from $9,100 to $27,300 in the case of an individual and from $45,900 to $137,700 in any other case.

Clause 49 Offence to fail to assist authorised officer

Clause 49 increases the maximum penalty for the offence against section 208 of the National Law from $9,100 to $27,300 in the case of an individual and from $45,900 to $137,700 in any other case.

Clause 50 Offence to destroy or damage notices or documents

Clause 50 increases the maximum penalty for the offence against section 209 of the National Law from $9,100 to $27,300 in the case of an individual and from $45,900 to $137,700 in any other case.

Clause 51 Offence to impersonate authorised officer

Clause 51 increases the maximum penalty for the offence against section 210 of the National Law from $9,100 to $27,300.

Clause 52 Offence to fail to comply with notice or requirement

Clause 52 increases the maximum penalty for the offence against section 217 of the National Law from $9,100 to $27,300 in the case of an individual and from $45,900 to $137,700 in any other case.

Clause 53 Offence to hinder or obstruct Regulatory Authority

Clause 53 increases the maximum penalty for the offence against section 218 of the National Law from $9,100 to $27,300 in the case of an individual and from $45,900 to $137,700 in any other case.

Clause 54 Register of family day care educators, co-ordinators and assistants

Clause 54 increases the maximum penalty for the offence against—

- section 269(1) of the National Law from $4,500 to $13,500 in the case of an individual and from $22,900 to $68,700 in any other case; and
- section 269(2) of the National Law from $2,200 to $6,600 in the case of an individual and from $11,400 to $34,200 in any other case; and
- section 269(3) of the National Law from $4,500 to $13,500 in the case of an individual and from $22,900 to $68,700 in any other case; and
- section 269(4) of the National Law from $4,500 to $13,500 in the case of an individual and from $22,900 to $68,700 in any other case; and

Clause 55 Duty of confidentiality

Clause 55 increases the maximum penalty for the offence against section 273(1) of the National Law from $5,700 to $17,100.

Clause 56 Infringement offences

Clause 56 substitutes paragraph (a) of section 291(1) of the National Law to provide that an authorised officer or other person authorised by the Regulatory Authority may serve an infringement notice on a person for contravention of section 36(3), 68(1), 69(1), 84(3), 161, 161A, 162(1), 163(1), 170(2), (3) or (4), 172, 173, 174(1) or (2), 175(1) or (3), 176(3), 177(3), 178(7), 179(3), 217 or 269 of the National Law.

Clause 57 False or misleading information or documents

Clause 57 increases the maximum penalty for the offence against section 295(1) of the National Law from $6,800 to $20,400 in the case of an individual and from $34,400 to $103,200 in any other case.

Clause 58 Protection from reprisal

Clause 58 increases the maximum penalty for the offence against section 297(1) of the National Law from $11,400 to $34,200 in the case of an individual and from $57,400 to $172,200 in any other case.

Clause 59 National regulations

Clause 59 increases the maximum penalty for the offence against section 301(4)(g) of the National Law from $2,200 to $6,600.

Clause 60 Information retention and sharing

Clause 60 increases the maximum penalty for the offence against section 322(3) of the National Law from $4,500 to $13,500 in the case of an individual and from $22,900 to $68,700 in any other case.

Part 4 — Other amendments to the Education and Care Services National Law

Clause 61 New section 2A inserted

2A Paramount consideration—safety, rights and best interests of children

Clause 61 inserts new section 2A into the National Law establishing the safety, rights and best interests of children as the paramount consideration in an education and care service.

New section 2A(1) provides that the safety, rights and best interests of children is the paramount consideration in the operation of an education and care service and the delivery of education and care services to children (the ***paramount consideration***).

New section 2A(2) provides that the following persons must have regard to and apply the paramount consideration in making any decision or taking action in relation to the operation of an education and care service and the delivery of education and care services to children —

- an approved provider of an education and care service;
- a person with management or control of an education or care service;
- a person in day-to-day charge of an education and care service;
- a nominated supervisor of an education and care service;
- a staff member of an education and care service;
- a volunteer at an education and care service.

It is intended that the paramount consideration will operate despite any inconsistency with any contract of employment or instrument of appointment of persons specified in new section 2A(2) and any contract or instrument will be ineffective to the extent that it purports to vary or remove the obligation.

New section 2A(3) provides that for the purposes of section 2A—

- if an approved provider is a body corporate, the constitution or rules of the body corporate is taken to include a provision requiring the body corporate to have regard to and apply the paramount consideration; and
- if an approved provider is an eligible association, the constitution or the rules of the eligible association is taken to include a provision requiring the eligible

association to have regard to and apply the paramount consideration; and

- if an approved provider is a partnership, the partnership agreement is taken to include a provision requiring the partnership to have regard to and apply the paramount consideration.

It is intended that if the constitution or rules of the body corporate, eligible association, or the partnership agreement, are inconsistent or avoid compliance with the paramount consideration, the relevant provisions of the constitution, rules or agreement are of no effect.

New section 2A(4) provides that sections 2A(2)(a) and (b) and (3)(a) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act 2001 of the Commonwealth in relation to provisions of that Act.

It is necessary to displace Corporations Act 2001 of the Commonwealth to avoid any inconsistency in obligations that approved providers regulated under the Corporations Act 2001 of the Commonwealth have, and in particular the legal duties of directors under sections 180 to 186 of that Act, with the paramount consideration.

Displacing the Corporations Act 2001 of the Commonwealth for the purposes of new section 2A(2)(a) and (b) and (3)(a) is intended to ensure that director to give the paramount consideration primacy over all others when exercising their director's duties and ensures that the obligation under new section 2A(2)(a) and (b) and (3)(a) does not fetter any obligations imposed by the Corporations Act 2001 of the Commonwealth to act in the prescribed manner.

Clause 62 Objectives and guiding principles

Clause 62 substitutes paragraph (a) of section 3(3)(a) of the National Law, which is currently "that the rights and best interests of the child are paramount", with "the paramount consideration set out in section 2A(1)".

Clause 63 Definitions

Clause 63 Subclause (1) inserts new definitions into section 5(1) of the National Law—

- ***excursion*** means an outing organised by an education and care service to and from a destination outside of the education and care service premises, but does not include an outing organised by an education and care service provided at a school if—
    - the children taking part in the excursion leave the education and care service premises in the company of an educator; and
    - the children do not leave the school;
- ***former provider*** means a person who held a provider approval that is surrendered, suspended or cancelled under the National Law;
- ***National Early Childhood Worker Register*** means the register established

under section 269B;

- ***related provider*** has the meaning given by section 5B;
- ***related provider determination*** means a determination made under section 5C(1)(a) or (b).
- ***systemic risk***, in relation to an applicant for provider approval, an approved provider, a related provider of an applicant for provider approval or a related provider of an approved provider, has the meaning given by section 5D.

Subclause (2) substitutes “section 182(1) or 182(3)” with “section 182(1), (3) or (4) in the definition of ***prohibition notice*** in section 5(1) of the National Law.

Clause 64 New sections 5B, 5C and 5D inserted

Clause 64 inserts new sections 5B, 5C and 5D after section 5A of the National Law in relation to the meaning of ***related provider*** and ***systemic risk*** and related provider determinations.

It is intended that related provider determinations will ensure that misconduct or systemic non-compliance across provider networks cannot be concealed through the use of complex ownership or governance structures or through ‘phoenixing’. These provisions will capture any approved provider, not just large child care providers that are currently captured under the definition of related provider under section 4A(3) of A New Tax System (Family Assistance) (Administration) Act 1999 of the Commonwealth. The related provider determination provisions enable the Regulatory Authority to take action under the National Law where the approved provider has engaged in conduct that may systemically affect other providers in their network.

<u>5B Who is a *related provider?*</u>

New section 5B provides that a ***related provider*** means a person who is—

- a related provider within the meaning of section 4A(3) of the A New Tax System (Family Assistance) (Administration) Act 1999 of the Commonwealth; or
- an approved provider who is determined to be related to another approved provider or an applicant for a provider approval under a related provider determination; or
- a former provider who is determined to be related to an approved provider or an application for a provider approval under the related provider determination.

<u>5C Related provider determination</u>

New section 5C(1) provides that the Regulatory Authority may determine that—

- one or more approved providers or former providers are related to an applicant for a provider approval; or
- one or more approved providers or former providers are related to each other.

New section 5C(2) provides that the Regulatory Authority must not make a related provider determination under section 5C unless it is satisfied that prescribed circumstances apply.

New section 5C(3) provides a related provider determination must—

- set out the reasons for the determination; and
- be given in accordance with the national regulations to—
  - in the case of a determination under section 5C(1)(a), the applicant for a provider approval and each approved provider or former provider who is determined to be related to the applicant; or
  - in the case of a determination under section 5C(1)(b), each approved provider or former provider who is determined to be related to each other.

New section 5C(4) provides that the Regulatory Authority may revoke a related provider determination if it is satisfied that the circumstances prescribed for the purposes of section 5C(2) no longer apply.

<u>5D What is a *systemic risk?*</u>

New section 5D(1) provides that in the National Law, a ***systemic risk*** arises in relation to—

- an applicant for a provider approval if the applicant is granted the provider approval and there is—
  - a risk to the safety, health or wellbeing of a child or children to be educated and cared for by an education and care service proposed to be operated by the applicant; or
  - a risk of the applicant contravening the National Law or the national regulations; or
- an approved provider if there is—
  - a risk to the safety, health or wellbeing of a child or children being educated and cared for by an education and care service operated by the provider; or
  - a risk of the provider contravening the National Law or national regulations; or
- a related provider of an applicant for a provider approval or a related provider of an approved provider if there is—
  - a risk to the safety, health or wellbeing of a child or children being educated and cared for by an education and care service operated by the related provider; or
  - a risk of the related provider contravening the National Law or national regulations.

New section 5D(2) provides that in determining whether there is a systemic risk the

Regulatory Authority may have regard to the following—

- the nature of the risk;
- whether the risk is connected to, or as a result of, the governance, ownership or operation of an approved provider or one or more related providers of the approved provider;
- whether the risk is shared between an approved provider and any related provider of the approved provider;
- how the risk affects an approved provider and any related provider of the approved provider;
- any other matter the Regulatory Authority considers relevant.

Clause 65 Matters to be taken into account in assessing whether fit and proper person

Clause 65 Subclause (1) inserts new subsection (2A) after section 13(2) of the National Law which provides that, without limiting sections 13(1) and (2), the Regulatory Authority may have regard to the matters in subsections (1) and (2) in respect of any related provider of the applicant if the Regulatory Authority is satisfied that there may be a systemic risk in relation to the applicant or the related provider of the applicant.

Subclause (2) substitutes "or (2)" with ",(2) or (2A)" in section 13(3) of the National Law.

Clause 66 Amendment of provider approval by Regulatory Authority

Clause 66 inserts new subsection (2A) after section 23(2) of the National Law which provides that, without limiting section 23(1) and (2), the Regulatory Authority may amend an approved provider's provider approval, vary a condition on an approved provider's provider approval or impose a new condition on an approved provider's provider approval if the Regulatory Authority is satisfied that—

- there is a systemic risk in relation to the approved provider or a related provider of the approved provider; and
- the amendment of the provider approval, the variation of the condition on the provider approval or the imposition of the new condition on the provider approval is reasonably necessary to address the systemic risk.

Clause 67 Grounds for suspension of provider approval

Clause 67 inserts new subsection (2) at the end of section 25 of the National Law which provides that, without limiting section 25(1), the Regulatory Authority may suspend an approved provider's provider approval if one or more grounds set out in section 25(1) apply to a related provider of the approved provider and the Regulatory Authority is satisfied that—

- there is a systemic risk in relation to the approved provider or a related provider of the approved provider; and

- the suspension of the provider approval is reasonably necessary to address the systemic risk.

Clause 68 Decision to suspend after show cause process

Clause 68 substitutes “section 25(a)” with “section 25(1)(a)” in section 27(a).

Clause 69 Grounds for cancellation of provider approval

Clause 69 inserts new subsection (2) at the end of section 31 of the National Law which provides that, without limiting section 31(1), the Regulatory Authority may cancel an approved provider’s provider approval if one or more grounds set out in section 31(1) apply to a related provider of the approved provider and the Regulatory Authority is satisfied that—

- there is a systemic risk in relation to the approved provider or the related provider of the approved provider; and

- the cancellation is necessary to address the systemic risk.

Clause 70 Regulatory Authority may seek further information

Clause 70 subclause (1) inserts new subsection (1A) after section 45(1) of the National Law which provides that the Regulatory Authority may ask a related provider of an applicant for a service approval to provide any further information that is reasonably required for the purposes of assessing the application.

Subclause (2) substitutes “applicant” with “applicant or a related provider of the applicant” in section 45(2) of the National Law.

Clause 71 Determination of application

Clause 71 inserts new subsection (2A) after section 47(2) of the National Law which provides that the Regulatory Authority may have regard to the history of compliance of a related provider of an applicant for a service approval with the National Law or National Law as applying in any participating jurisdiction, including in relation to any education and care service operated by the related provider, if the Regulatory Authority is satisfied there is a systemic risk in relation to the applicant or the related provider.

Clause 72 Grounds for refusal

Clause 72 inserts new subsection (1A) after section 49(1) of the National Law which provides that the Regulatory Authority may refuse to grant a service approval on a ground set out in section 47(2A).

Clause 73 Amendment of service approval by Regulatory Authority

Clause 73 inserts new subsection (2A) after section 55(2) of the National Law to provide that, without limiting section 55(1) and (2), the Regulatory Authority may amend an approved provider’s service approval, vary a condition on an approved provider’s service approval or impose a new condition on an approved provider’s service approval if the Regulatory Authority is satisfied that—

- there is a systemic risk in relation to the approver provider or a related provider of the approved provider; and

- the amendment, variation, or new condition is reasonably necessary to address that systemic risk.

Clause 74 Grounds for suspension of service approval

Clause 74 inserts new subsection (2) at the end of section 70 of the National Law which provides that, without limiting section 70(1), the Regulatory Authority may suspend an approved provider's service approval if one or more of the grounds set out in section 70(1) apply to a related provider of the approved provider and the Regulatory Authority is satisfied that—

- there is a systemic risk in relation to the approved provider or the related provider; and
- the suspension is reasonably necessary to address the systemic risk.

Clause 75 Decision in relation to suspension

Clause 75 substitutes "section 70(a)" with "section 70(1)(a)" in section 72(a).

Clause 76 Grounds for cancellation of service approval

Clause 76 inserts new subsection (2) at the end of section 77 of the National Law which provides that, without limiting section 77(1), the Regulatory Authority may cancel an approved provider's service approval if one or more grounds set out in section 77(1) apply to a related provider of the approved provider and the Regulatory Authority is satisfied that—

- there is a systemic risk in relation to the approved provider or the related provider of the approved provider; and
- the cancellation is reasonably necessary.

Clause 77 Matters to be considered

Clause 77 inserts new paragraph (ab) after section 90(a) of the National Law which provides that in considering whether to grant a service waiver, the Regulatory Authority may have regard to the history of compliance of a related provider of the applicant with the National Law or the National Law as applying in any participating jurisdiction, including in relation to any education and care service operated by the related provider of the applicant.

Clause 78 Section 162A substituted and new section 162B inserted

<u>162A</u> <u>Child Protection training</u>

Clause 78 substitutes section 162A of the National Law to provide that an approved provider of an education and care service must ensure that all nominated supervisors, persons in day-to-day charge, staff members and volunteers who work in education and care services must complete prescribed child protection training within the prescribed period.

This clause expands the scope of roles within an education and care service that are subject to mandatory child protection training provisions and ensure that individuals working with children across all levels of the organisation are well equipped to respond to child protection risks and improve child safety capability in the sector.

The expanded list of persons in section 162A now covers—

- a nominated supervisor of the service;
- a person in day-to-day charge of the service;
- a staff member of the service;
- a volunteer at the service.

A failure to comply is an offence with a maximum penalty of $6,600 for individuals and $34,000 in any other case.

<u>162B</u> <u>Child safety training</u>

Clause 78 also inserts new section 162B after new section 162A of the National Law to provide that an approved provider of an education and care service must ensure that the following persons complete prescribed child safety training within the prescribed period—

- a person with management and control of the service;
- a nominated supervisor of the service;
- a person in day-to-day charge of the service;
- a staff member of the service;
- a volunteer at the service.

Failure to comply is an offence with a maximum penalty of $6,600 in the case of an individual or $34,200 in any other case.

Section 162B is intended to complement section 162A to ensure those working at all levels in education and care services have the capacity and knowledge to recognise and respond to child safety risks.

Existing provisions in the National Law are limited to mandatory child protection training which is only one aspect of child safety. New section 162B provides a nationally consistent approach to ensure that all workers in education and care services, including those who do not work directly with children, are trained in child safety.

Clause 79 New section 166A inserted

<u>166A</u> <u>Offences relating to inappropriate conduct</u>

Clause 79 inserts new section 166A after section 166 of the National Law which sets out new offences relating to inappropriate conduct at an education or care service. Whether conduct constitutes inappropriate conduct is an objective test.

New section 166A(1) provides that an approved provider of an education and care service must ensure that no child is subjected to conduct that a reasonable person would consider to be inappropriate in an education and care service while that child is being educated and cared for by the service.

Failure to comply is an offence, with a maximum penalty of $34,200 in the case of an individual or $172,000 in any other case.

New section 166A(2) provides that a nominated supervisor of an education and care service must ensure that no child is subjected to conduct that a reasonable person would consider to be inappropriate in an education and care service while that child is being educated and cared for by the service.

Failure to comply is an offence, with a maximum penalty of $34,200.

New sections 166A(1) and (2) provide that an approved provider and a nominated supervisor are liable for an offence if another person (for example, a staff member) subjects a child to conduct that a reasonable person would consider to be inappropriate and the approved provider or nominated supervisor has failed to prevent the inappropriate conduct from occurring.

New section 166A(3) provides that an approved provider of an education and care service must not subject a child being educated or cared for by the service to conduct that a reasonable person would consider to be inappropriate in an education and care service.

Failure to comply is an offence, with a maximum penalty of $34,200.

New section 166A(4) provides that a nominated supervisor of an education and care service must not subject a child being educated or cared for by the service to conduct that a reasonable person would consider to be inappropriate in an education and care service.

Failure to comply is an offence, with a maximum penalty of $34,200.

New section 166A(5) provides that a staff member of an education and care service must not subject a child being educated or cared for by the service to conduct that a reasonable person would consider to be inappropriate in an education and care service.

Failure to comply is an offence, with a maximum penalty of $34,200.

New section 166A(6) provides that a volunteer at an education and care service must not subject a child being educated or cared for by the service to conduct that a reasonable person would consider to be inappropriate in an education and care service.

Failure to comply is an offence, with a maximum penalty of $34,200.

New section 166A(7) provides that for the purposes of sections 166A(1) to (6) whether or not a reasonable person would consider the conduct to be inappropriate in an education and care service depends on the circumstances.

New section 166A(8) provides that—

- for the purposes of section 166A(7), the ‘circumstances’ may include any of the following—
    - whether the conduct is generally accepted practice in the provision of education and care;
    - whether the conduct is likely to cause or result in harm (including emotional, psychological or physical harm) or injury to a child or children enrolled at the service;
    - the child’s age and stage of development;
    - whether the conduct is sexual, aggressive or violent; and
- it is immaterial whether—
    - the child has consented to being subjected to the conduct; or
    - the person subjecting the child to the conduct believes the child has consented to being subjected to the conduct; or
    - the person subjecting the child to the conduct is related to the child.

New section 166A(8) is intended to make clear that the circumstances in section 166A(8)(a) are factors for the court to consider in determining whether a reasonable person would consider the conduct to be inappropriate in an education and care service.

New section 166A(9) provides for the purposes of section 166A, filming, recording, taking or otherwise capturing an image of a child is considered to be subjecting a child to conduct.

New section 166A(10) provides that for the purposes of section 166A, the conduct may be constituted by conduct—

- engaged in on a single occasion; or
- engaged in on a number of occasions over a period of time; or
- that is part of an ongoing pattern.

New section 166A(11) provides that in section 166A ***conduct*** means—

- an act; or
- an omission to perform an act.

It is intended that conduct includes acts or omissions that occur in person, whether directly or indirectly, by various means of communication, including electronic or verbal communication, by electronic capture including photography or recording; or through a series of acts or omissions where a particular instance may not be inappropriate but cumulatively would be considered by a reasonable person to be inappropriate in an education and care service.

Clause 80 Offence to fail to notify certain circumstances to Regulatory Authority

Clause 80 subclause (1) inserts new subsection (1A) after section 173(1) of the National Law to require approved providers that are bodies corporate to notify the Regulatory Authority if 50 per cent or more of the approved provider's ownership or voting rights is acquired. Failure to comply is an offence with a maximum penalty of $68,700.

Subclause (2) substitutes the reference to "or (2)" in section 173(3) of the National Law with ",(1A) or (2)".

Subclause (3) inserts new subsection (4A) after section 173(4) of the National Law which provides that a notice under section 173(1A) must be provided to the Regulatory Authority that granted the provider approval within 7 days after the date on which 50 per cent or more of the approved provider's ownership or voting rights is acquired.

It is intended that these provisions will better enable the Regulatory Authority to monitor the creation or expansion of approved providers that may compromise child safety. These provisions will also provide the Regulatory Authority with visibility of the change of management or control of bodies corporate that will enable it to intervene if the entity acquiring an approved provider poses a risk to child safety (for example, if it has a poor record of compliance with the National Law).

Clause 81 New Part 6A inserted

Part 6A — Devices in education and care services

175A Definitions

New section 175A sets out the following definitions for the purposes of Part 6A—

- ***capture***, in relation to an image of a child, includes to film, record or take an image of the child;
- ***personal device*** means a device that is—
    - owned or controlled by a person; and

  capable of capturing an image, or storing or transmitting an image, but does not include a service-supplied device, a service-authorised device, or a class of device that is prescribed not to be a personal device;

- ***service-authorised device*** means a device authorised under new section 175C(1);
- ***service-supplied device*** means a device supplied under new section 175B(1).

175B Approved provider may supply device for use in education and care service

New section 175B(1) provides that an approved provider of an education and care service may supply a device that is to be used by a person employed, engaged or appointed at the service exclusively for the purposes of providing education and care to children as part of that service.

New section 175B(2) provides that in supplying a device under section 175B(1), an approved provider must ensure that the device is configured to operate in accordance with any policies or procedures of the service relating to child safety or security of devices.

New section 175B enables service supplied devices to be used for legitimate purposes of education and care while children are being educated or cared for by an education and care service.

175C Approved provider may authorise device for use in family day care services

New section 175C(1) provides that an approved provider of a family day care service may authorise a device that is to be used by a person employed, engaged or appointed at the service exclusively for the purposes of providing education and care to children as part of that service.

New section 175C(2) provides that in authorising a device under section 175C(1), an approved provider must ensure that the device is configured to operate in accordance with any policies or procedures of the service relating to child safety or security of devices.

New section 175C enables the authorisation of devices to be used for legitimate purposes such as documenting a child's education and care and communicating with families while the child is being educated or cared for by a family day care service.

175D Requirement to use service-supplied device in education and care service (other than family day care service)

New section 175D(1) and (2) provide that an approved provider of an education and care service (other than a family day care service) must take every reasonable precaution to ensure that while each nominated supervisor, staff member and volunteer is providing education and care to children as part of the service, the person does not use a device to capture, store or transmit an image of a child being educated or cared for by the service unless the person uses a service-supplied device to do so.

Failure to comply is an offence with a maximum penalty of $6,600 for an individual or $34,200 in any other case.

New section 175D(3) and (4) provide that a nominated supervisor of an education and care service (other than a family day care service) must take every reasonable precaution to ensure that while each staff member and volunteer is providing education and care to children as part of the service, the person does not use a device to capture, store or transmit an image of a child being educated or cared for by the service unless the person uses a service-supplied device to do so.

Failure to comply is an offence with a maximum penalty of $6,600.

175E Requirement to use service-authorised device or service-supplied device in family day care service

New section 175E(1) and (2) provide that an approved provider of a family day care service must take every reasonable precaution to ensure that while each nominated supervisor, staff member and volunteer is providing education and care to children as part of the service, the person does not use a device to capture, store or transmit an image of a child being educated or cared for by the service unless the person uses a service-authorised or service-supplied device to do so.

Failure to comply is an offence with a maximum penalty of $6,600 for an individual or $34,200 in any other case.

New section 175E(3) and (4) provide that a nominated supervisor of a family day care service must take every reasonable precaution to ensure that while each staff member and volunteer is providing education and care to children as part of the service, the person does not use a device to capture, store or transmit an image of a child being educated or cared for by the service unless the person uses a service-authorised device or a service-supplied device to do so.

Failure to comply is an offence with a maximum penalty of $6,600.

175F Offences relating to capturing, storing or transmitting images of children

New section 175F(1) provides that an approved provider of an education and care service (other than a family day care service) must not capture, store or transmit an image of a child while the child is being educated or cared for by that service unless the approved provider captures, stores or transmits the image of the child on a service-supplied device for the purposes of, or in connection with, the provision of education and care services.

Failure to comply is an offence with a maximum penalty of $6,600.

New section 175F(2) provides that an approved provider of a family day care service must not capture, store or transmit an image of a child while the child is being educated or cared for by that service unless the approved provider captures, stores or transmits the image of the child on a service-supplied device or service-authorised device for the purposes of, or in connection with, the provision of education and care services.

Failure to comply is an offence with a maximum penalty of $6,600.

New section 175F(3) provides that a nominated supervisor of an education and care service (other than a family day care service) must not capture, store or transmit an image of a child while the child is being educated or cared for by that service unless the nominated supervisor captures, stores or transmits the image of the child on a service-supplied device for the purposes of, or in connection with, the provision of education and care services.

Failure to comply is an offence with a maximum penalty of $6,600.

New section 175F(4) provides that a nominated supervisor of a family day care service must not capture, store or transmit an image of a child while the child is being educated or cared for by that service unless the nominated supervisor captures, stores or transmits the image of the child on a service-supplied device or service-authorised device for the purposes of, or in connection with, the provision of education and care services.

Failure to comply is an offence with a maximum penalty of $6,600.

New section 175F(5) provides that a staff member of an education and care service (other than a family day care service) must not capture, store or transmit an image of a child while the child is being educated or cared for by that service unless the staff member captures, stores or transmits the image of the child on a service-supplied device for the purposes of, or in connection with, the provision of education and care services.

Failure to comply is an offence with a maximum penalty of $6,600.

New section 175F(6) provides that a staff member of a family day care service must not capture, store or transmit an image of a child while the child is being educated or cared for by that service unless the staff member captures, stores or transmits the image of the child on a service-supplied device or service-authorised device for the purposes of, or in connection with, the provision of education and care services.

Failure to comply is an offence with a maximum penalty of $6,600.

New section 175F(7) provides that a volunteer at an education and care service (other than a family day care service) must not capture, store or transmit an image of a child while the child is being educated or cared for by that service unless the volunteer captures, stores or transmits the image of the child on a service-supplied device for the purposes of, or in connection with, the provision of education and care services.

Failure to comply is an offence with a maximum penalty of $6,600.

New section 175F(8) provides that a volunteer at an family day care service must not capture, store or transmit an image of a child while the child is being educated or cared for by that service unless the volunteer captures, stores or transmits the image of the child on a service-supplied device or service-authorised device for the purposes of, or in connection with, the provision of education and care services.

New section 175F(8) provides that new section 175F does not apply in relation to an image of a child that is captured, stored or transmitted at an education and care service premises by an optical surveillance device within the meaning of the Surveillance Devices Act 2004 of the Commonwealth that is installed at the service premises and authorised by the approved provider for security purposes.

Failure to comply is an offence with a maximum penalty of $6,600.

175G Meaning of *working directly with children*

New section 175G(1) provides that for the purposes of Division 3 of new Part 6A, a person is ***working directly with children*** at a given time if the person is—

- physically present with a child or children at the time; and
- employed, engaged or appointed to provide education and care to the child or children at that time.

New section 175G(2) provides that for the purposes of Division 3 of new Part 6A, a person is not working directly with children at a given time if the person is taking a short break from providing education or care to children in accordance with the person's employment, engagement or appointment.

175H Offences relating to possession or control of personal devices—approved providers and nominated supervisors

New section 175H(1) and (2) provide that an approved provider of an education and care service (other than a family day care service) must take every reasonable precaution to ensure that while each nominated supervisor, staff member and volunteer is working directly with children as part of the service, the person does not have a personal devices in the person's possession or under the person's control.

Under new section 175H(1) and (2), approved providers are responsible for implementing measures such as policies and procedures to ensure that workers comply with the requirement not to have personal devices in their possession or under their control while working directly with children. The requirement to take every reasonable precaution is an objective standard.

Failure to comply is an offence with a maximum penalty of $6,600 for an individual or $34,200 in any other case.

New section 175H(3) provides that new section 175H(1) does not apply to an approved provider if—

- the nominated supervisor, staff member or volunteer has the personal device in the person's possession or under the person's control—
    - in accordance with an authorisation under new section 175J; or

    - during an excursion with children being educated or cared for by the service, and possession or control of the personal device is necessary for the purposes of safety or the provision of education or care to the children; or

    - while the children are being transported by the service or on transportation arranged by the service, and the possession or control of the personal device is necessary for the purposes of safety or the provision of education and care to the children; or
- it is not practicable for an authorisation to be given under new section 175J and a reasonable person would consider the possession or control of the personal device is necessary for the purposes of—
    - providing support or assistance with the disability or health needs of the nominated supervisor, staff member or volunteer; or
    - the nominated supervisor, staff member or volunteer communicating with a family member; or
    - safety or the provision of education and care to the children if a service-supplied device stops working; or
    - use in an emergency; or
    - work health and safety; or
- any prescribed circumstances apply in relation to the possession or control of the personal device.

New section 175H(4) and (5) provides that a nominated supervisor of an education and care service (other than a family day care service) must take every reasonable precaution to ensure that while each staff member or volunteer is working directly with children as part of the service, the person does not have a personal device in the person's possession or under the person's control.

Failure to comply is an offence with a maximum penalty of $6,600.
New section 175H(6) provides that new section 175H(4) does not apply to a nominated supervisor if—

- the staff member or volunteer has the personal device in the person's possession or under the person's control—
    - in accordance with an authorisation under new section 175J; or
    - during an excursion with children being educated or cared for by the service, and possession or control of the personal device is necessary for the purposes of safety or the provision of education and care to the children; or
    - while the children are being transported by the service or on transportation arranged by the service, and the possession or control of the personal device is necessary for the purposes of safety or the provision of education and care to the children; or

- it is not practicable for an authorisation to be given under new section 175J and a reasonable person would consider the possession or control of the personal device is necessary for the purposes of—
    - providing support or assistance with the disability or health needs of the staff member or volunteer ; or
    - the staff member or volunteer communicating with a family member; or
    - safety or provision of education and care to the children if a service-supplied device stops working; or
    - use in an emergency; or
    - work health and safety; or
- any prescribed circumstances apply in relation to the possession or control of the personal device.

175I Offences relating to possession or control of personal devices—persons working directly with children

New section 175I(1) provides that a nominated supervisor of an education and care service (other than a family day care service) must not have a personal device in their possession or under their control while working directly with children as part of the service.

Failure to comply is an offence with a maximum penalty of $6600.

New section 175I(2) provides that section 175I(1) does not apply to a nominated supervisor if—

- the nominated supervisor has the personal device in their possession or under their control—
    - in accordance with an authorisation under new section 175J; or
    - during an excursion with children being educated or cared for by the service, and the possession or control of the personal device is necessary for the purposes of safety or the provision of education and care to the children; or
    - while the children are being transported by the service or on transportation arranged by the service, and the possession or control of the personal device is necessary for the purposes of safety or the provision of education and care to the children; or
- it is not practicable for an authorisation to be given under new section 175J and a reasonable person would consider the possession or control of the personal device is necessary for the purposes of—
    - providing support or assistance with the nominated supervisor's disability or health needs; or
    - the nominated supervisor communicating with a family member; or
    - safety or the provision of education and care to the children where a service-supplied device stops working; or
    - use in an emergency; or
    - work health and safety; or

- any prescribed circumstances apply in relation to the nominated supervisor's possession or control of the personal device.

New section 175I(3) provides that a staff member of an education and care service (other than a family day care service) must not have a personal device in their possession or under their control while working directly with children as part of the service.

Failure to comply is an offence with a maximum penalty of $6,600.

New section 175I(4) provides that new section 175I(3) does not apply to a staff member if—

- the staff member has the personal device in their possession or under their control—
    - in accordance with an authorisation under new section 175J; or
    - during an excursion with children being educated or cared for by the service and the possession or control of the personal device is necessary for the purposes of safety or the provision of education and care to the children; or
    - while the children are being transported by the service or on transportation arranged by the service, and possession or control of the personal device is necessary for the purposes of safety or the provision of education and care to the children; or
- it is not practicable for an authorisation to be given under section 175J and a reasonable person would consider the possession or control of the personal device is necessary for the purposes of—
    - providing support or assistance with the staff member's disability or health needs; or
    - the staff member communicating with a family member; or
    - safety or the provision of education and care to the children if a service-supplied device stops working; or
    - use in an emergency; or
    - work health and safety; or
- any prescribed circumstances apply in relation to the staff member's possession or control of the personal device.

New section 175I(5) provides that a volunteer on practicum placement at an education and care service (other than a family day care service) must not have a personal device in their possession or control while working directly with children as part of the service.

Failure to comply is an offence with a maximum penalty of $6600.

New section 175I(6) provides that section new 175I(5) does not apply to a volunteer if—

- the volunteer has the personal device in their possession or control—
    - in accordance with an authorisation under section 175J; or
    - during an excursion with children being educated or cared for by the service and the possession or control of the personal device is necessary for the purposes of safety or the provision of education and care to the children; or
    - while the children are being transported by the service or on transportation arranged by the service, and the possession or control of the personal device is necessary for the purposes of safety or the provision of education and care to the children; or
- it is not practicable for an authorisation to be given under new section 175J and a reasonable person would consider the possession or control of the personal device is necessary for the purposes of—
    - providing support or assistance with the disability or health needs of the volunteer; or
    - the volunteer communicating with a family member; or
    - safety or the provision of education and care to the children where a service-supplied device stops working; or
    - use in an emergency; or
    - work health and safety; or
- any prescribed circumstances apply in relation to the possession or control of the personal device by the volunteer.

175J Authorisation to have possession or control of personal device while working directly with children.

New section 175J(1) provides that an approved provider of an education and care service (other than a family day care service) may authorise a person to have a personal device in their possession or under their control while they are working directly with children as part of the service if the approved provider is reasonably satisfied that the possession or control is necessary for the purposes of—

- providing support or assistance with the persons' disability or health needs; or

- communication with the person's family member; or
- safety or the provision of education and care to the children if a service-supplied device stops working; or
- use in an emergency; or
- work health and safety.

New section 175J(2) provides that an approved provider who authorises a personal device under section 175J(1) must—

- record the authorisation in writing; and
- include the prescribed information in that written record.

New section 175J(3) provides that an approved provider must keep a written record required to be made under section 175J(2) for the prescribed period.

New section 175J(4) provides that a period prescribed for the purposes of new section 175J(3) must be at least 3 years.

Clause 82 Compliance directions

Subclause (1) inserts new subsection (2A) after section 176(2) of the National Law which provides that without limiting section 176(2), the Regulatory Authority may give an approved provider of the education and care service a written direction (a ***compliance direction***) requiring the approved provider to take the steps specified in the direction if the Regulatory Authority is satisfied that—

- there is a systemic risk in relation to the approved provider or a related provider of the approved provider; and
- the direction is reasonably necessary to address the systemic risk.

Subclause (2) substitutes "subsection (2)" with "subsection (2) or (2A)" in section 176(3) of the National Law.

Clause 83 Compliance notices

Subclause (1) inserts new subsection (2A) after section 177(2) of the National Law which provides that without limiting section 177(2), the Regulatory Authority may give an approved provider of the education and care service a notice (a ***compliance notice***) requiring the approved provider to take steps specified in the notice if the Regulatory Authority is satisfied that—

- there is a systemic risk in relation to the approved provider or a related provider of the approved provider; and
- the notice is reasonably necessary to address the systemic risk.

Subclause (2) substitutes "subsection (2)" with "subsection (2) or (2A)" in section 177(3) of the National Law.

Clause 84 New sections 178A, 178B, 178C, 178D and 178E inserted

Clause 84 inserts new sections 178A, 178B, 178C, 178D and 178E after section 178 of the National Law which provide the Regulatory Authority the power to:

- issue suspension directions; and
- issue supervision directions; and
- issue training directions.

178A Direction to suspend education and care by staff member (other than a family day care educator) or volunteer

New section 178A(1) provides the Regulatory Authority may give a notice to an approved provider of an education and care service that directs the provider to suspend the provision of education and care by a staff member (other than family day care educator) of, or volunteer at, the service for a period of time determined by the Regulatory Authority (a ***suspension direction***) if the Regulatory Authority is reasonably satisfied that—

- because of the conduct of, or the inadequacy of education and care provided by, the staff member or volunteer—
  - the approved provider is not complying with any provision of the National Law; or
  - the nominated supervisor of the service is not complying with any provision of the National Law; or
  - there is a risk to the safety, health or wellbeing of the children being cared for by the service; or
- the staff member or volunteer has contravened or alleged to have contravened section 166(3) (inappropriate discipline), or new section 166A(5) or (6) (inappropriate conduct).

New section 178A(2) provides that before giving the approved provider a suspension direction, the Regulatory Authority may give the provider a notice (***show cause notice***) stating—

- that the Regulatory Authority intends to give the provider a suspension direction; and
- the reasons for the proposed suspension direction; and
- that the provider may, within 14 days after the show cause notice is given (the ***show cause period***), make submissions to the Regulatory Authority in respect of the proposed suspension direction.

New section 178A(3) provides that after the Regulatory Authority gives the approved provider a show cause notice—

- the Regulatory Authority must consider any submissions from the provider received within the show cause period; and

- may consider any other submissions and any other matters the Regulatory Authority considers relevant; and
- may decide—
    - to give the provider a suspension direction; or
    - not to give the provider a suspension direction.

New section 178A(4) provides that if, after the show cause period, the Regulatory Authority decides not to give the approved provider a suspension direction, the Regulatory Authority must give the provider written notice of the decision.

New section 178A(5) provides that the Regulatory Authority may immediately give the approved provider a suspension direction without giving the provider a show cause notice if the Regulatory Authority is reasonably satisfied that—

- there is an immediate risk to the safety, health or wellbeing of a child or children being educated or cared for by the service; and
- the suspension direction is necessary to protect the safety, health or wellbeing of the child or children.

New section 178A(6) provides that an approved provider must not contravene a suspension direction. A contravention of section 178A(6) is an offence with a maximum penalty of $20,400 for an individual or $103,200 in any other case.

<u>178B</u> <u>Direction to suspend education and care by nominated supervisor</u>

New section 178B(1) provides the Regulatory Authority may give a notice to an approved provider of an education and care service that directs the provider to suspend the provisions of education and care by a nominated supervisor of the service for a period of time determined by the Regulatory Authority (a ***suspension direction***) if the Regulatory Authority is reasonably satisfied that—

- because of the conduct of, or the inadequacy of the education and care provided by, the nominated supervisor—
    - the nominated supervisor is not complying with any provision of the National Law; or
    - the provider is not complying with any provision of the National Law; or
    - there is a risk to the safety, health or wellbeing of the children being educated or cared for by the service; or
- the nominated supervisor has contravened or alleged to have contravened section 166(2) (inappropriate discipline) or new section 166A(2) or (4) (inappropriate conduct).

New section 178B(2) provides that before giving the approved provider a suspension direction, the Regulatory Authority may give the provider a notice (***show cause notice***) stating—

- that the Regulatory Authority intends to give the provider a suspension direction; and

- the reasons for the proposed suspension direction; and
- that the provider may, within 14 days after the show cause notice is given, make submissions to the Regulatory Authority in respect of the proposed suspension direction.

New section 178B(3) provides that after the Regulatory Authority gives the approved provider a show cause notice, the Regulatory Authority—

- must consider any submissions from the provider received within the show cause period; and
- may consider any other submissions and any other matters the Regulatory Authority considers relevant; and
- may decide—
  - to give the provider a suspension direction; or
  - not give the provider a suspension direction.

New section 178B(4) provides that (4) if, after the show cause period, the Regulatory Authority decides not to give the approved provider a suspension direction, the Regulatory Authority must give the provider written notice of the decision.

New section 178B(5) provides that the Regulatory Authority may immediately give the approved provider a suspension direction without giving the provider a show cause notice if the Regulatory Authority is reasonably satisfied that—

- there is an immediate risk to the safety, health or wellbeing of a child or children being cared for by the service; and
- the suspension direction is necessary to protect the safety, health and wellbeing of the child or children.

New section 178B(6) provides that an approved provider must not contravene a suspension direction. A contravention of section 178B(6) is an offence with a maximum penalty of $20,400 for an individual and $103,200 in any other case.

<u>178C</u> <u>Direction requiring supervision of staff member (other than a family day care co-ordinator) or volunteer</u>

New section 178C(1) provides that the Regulatory Authority may give a notice to an approved provider of an education and care service that directs the provider to ensure that a staff member (other than a family day care co-ordinator) of, or a volunteer at, the service is directly supervised while providing education and care to children as part of the service (a ***supervision direction***) if the Regulatory Authority is reasonably satisfied that—

- because of the conduct of the staff member or volunteer–
  - the approved provider is not complying with any provision of the National

  Law; or
  - the nominated supervisor of the service is not complying with any provision of the National Law; or

- the staff member or volunteer has contravened or alleged to have contravened section 166(3) (inappropriate discipline), or section 166A(5) or (6) (inappropriate conduct).

New section 178C(2) provides a supervision direction must specify—

- that the staff member of, or volunteer at, the services is to be directly supervised—
  - by a suitably qualified and experienced person specified in section 178C(3); and
  - for a period of time determined by the Regulatory Authority; and
- details of any conditions applying to the supervision of the staff member or volunteer.

New section 178C(3) specifies the following persons—

- a person in day-to-day charge of the service;
- the nominated supervisor of the service;
- a staff member of the service.

New section 178C(4) provides that before giving the approved provider a supervision direction, the Regulatory Authority may give the provider a notice (***show cause notice***) stating—

- that the Regulatory Authority intends to give the approved provider a supervision direction; and
- the reasons for the proposed supervision direction; and
- that the provider may, within 14 days after the show cause notice is given (the ***show cause period***), make submissions to the Regulatory Authority in respect of the proposed supervision direction.

New section 178C(5) provides that after the Regulatory Authority gives the approved provider a show cause notice, the Regulatory Authority—

- must consider any submissions from the provider received within the show cause period; and
- may consider any other submissions and any other matters the Regulatory Authority considers relevant; and
- may decide—
  - to give the provider a supervision direction; or

- not to give the provider a supervision direction.

New section 178C(6) provides that if, after the show cause period, the Regulatory Authority decides not to give the approved provider a supervision direction, the Regulatory Authority must give the provider written notice of the decision.

New section 178C(7) provides the Regulatory Authority may immediately give the approved provider a supervision direction without giving the provider a show cause notice if the Regulatory Authority is reasonably satisfied that—

- there is an immediate risk of safety, health or wellbeing of a child or children being educated or cared for by the service, and
- the supervision direction is necessary to protect the safety, health and wellbeing of the child or children.

New section 178C(8) provides that an approved provider must not contravene a supervision direction. A contravention of section 178C(8) is an offence with a maximum penalty of $20,400 for an individual and $103,200 in any other case.

<u>178D</u> <u>Direction requiring nominated supervisor to complete training</u>

New section 178D(1) provides that the Regulatory Authority may give a notice to a nominated supervisor of an education and care service that directs the nominated supervisor to complete training determined by the Regulatory Authority within the period specified by the Regulatory Authority (a ***training direction***) if the Regulatory Authority is reasonably satisfied that—

- because of the conduct of the nominated supervisor—
  - the nominated supervisor is not complying with any provision of the National Law; or
  - the approved provider of the service is not complying with any provision of the National Law; or
- the nominated supervisor has contravened or is alleged to have contravened section 166(2) (inappropriate discipline) or new section 166A(2) or (4) (inappropriate conduct).

New section 178D(2) provides a training direction must specify details of any conditions applying to the nominated supervisor's training.

New section 178D(3) provides that before giving the nominated supervisor a training direction, the Regulatory Authority may give the nominated supervisor a notice (***show cause notice***) stating—

- that the Regulatory Authority intends to give the nominated supervisor a training direction; and
- the reasons for the proposed training direction; and
- that the nominated supervisor may, within 14 days after the show cause notice is given (the ***show cause period***), make submissions to the Regulatory Authority in respect of the proposed training direction.

New section 178D(4) provides that after the Regulatory Authority gives the nominated supervisor a show cause notice, the Regulatory Authority—

- must consider any submissions from the nominated supervisor received within the show cause period; and
- may consider any other submissions and any other matters the Regulatory Authority considers relevant; and
- may decide—
  - to give the nominated supervisor a training direction; or
  - not to give the nominated supervisor a training direction.

New section 178D(5) provides that if, after the show cause period, the Regulatory Authority decides to give the nominated supervisor a training direction, the Regulatory Authority must give the approved provider of the service written notice of the decision.

New section 178D(6) provides that if, after the show cause period, the Regulatory Authority decides not to give the nominated supervisor a training direction, the Regulatory Authority must give the nominated supervisor written notice of the decision.

New section 178D(7) provides a nominated supervisor must not contravene a training direction. A contravention of section 178D(7) is an offence with a maximum penalty of $20,400.

<u>178E</u> <u>Direction requiring staff member or volunteer to complete training</u>

New section 178E(1) provides that the Regulatory Authority may give a notice to staff member of, or a volunteer at, an education and care service that directs the staff member or volunteer to complete training determined by the Regulatory Authority within the period determined by the Regulatory Authority (a ***training direction***) if the Regulatory Authority is reasonably satisfied that—

- because of the conduct of the staff member or volunteer—
  - the approved provider of the service is not complying with any provision of the National Law; or
  - the nominated supervisor of the service is not complying with any provision of the National Law; or
- the staff member or volunteer has contravened or is alleged to have contravened section 166(3) (inappropriate discipline) or new section 166A(5) or (6) (inappropriate conduct).

New section 178E(2) provides a training direction must specify details of any conditions applying to the training of the staff member or volunteer.

New section 178E(3) provides that before giving the staff member or volunteer a training direction, the Regulatory Authority may give the staff member or volunteer a notice (***show cause notice***) stating—

- that the Regulatory Authority intends to give the staff member or volunteer a training direction; and
- the reasons for the proposed training direction; and
- that the staff member or volunteer may, within 14 days after the show cause notice is given (the ***show cause period***), make submissions to the Regulatory Authority in respect of the proposed training direction.

New subsection 178E(4) provides that after the Regulatory Authority gives the staff member or volunteer a show cause notice, the Regulatory Authority—

- must consider any submissions from the staff member or volunteer received within the show cause period; and
- may consider any other submissions and any other matters the Regulatory Authority considers relevant; and
- may decide—
    - to give the staff member or volunteer the training direction; or
    - not to give the staff member or volunteer the training direction.

New section 178E(5) provides that if, after the show cause period, the Regulatory Authority decides to give the staff member or volunteer a training direction, the Regulatory Authority must give the approved provider of the service written notice of the decision.

New section 178E(6) provides that if, after the show cause period, the Regulatory Authority decides not to give the staff member or volunteer a training direction, the Regulatory Authority must give the staff member or volunteer written notice of the decision.

New section 178E(7) provides that a staff member or volunteer must not contravene a training direction. A contravention of section 178E(7) is an offence with a maximum penalty of $20,400.

Clause 85 Enforceable undertakings

Clause 85 inserts new subsection (2A) after section 179A(2) of the National Law which provides that without limiting section 179A(2), if section 179A(1)(a) applies in relation to a related provider of an approved provider, 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, to comply with the National Law if the Regulatory Authority is satisfied there is a systemic risk in relation to the approved provider or the related provider.

Clause 86 Certain actions prohibited while undertaking is in force

Clause 86 substitutes “179A(2)” with “179A(2) or (2A)” in section 179B(1) of the National Law.

Clause 87 Certain actions prohibited if undertaking is complied with

Clause 87 inserts new subsection (1A) after section 180(1) of the National Law to provide that if an approved provider complies with the requirements of an undertaking under section 179A(2A), no further proceedings may be commenced for any offence constituted by the contravention or alleged contravention in respect of which the undertaking was given.

Clause 88 Failure to comply with enforceable undertakings

Clause 88 subclause (1) inserts new subsection (3A) after section 181(3) of the National Law which provides that if the relevant tribunal or court determines that an approved provider has failed to comply with a term of an undertaking under section 179A(2A), proceedings may be commenced for any offence constituted by the contravention or alleged contravention in respect of which the undertaking was given.

Subclause (2) substitutes “subsection (3)” with “subsection (3) or (3A)” in section 181(6) of the National Law.

Clause 89 Grounds for giving prohibition notice

Clause 89 inserts new subsection (4) after section 182(3) of the National Law which provides that without limiting section 182(1), the Regulatory Authority may give a prohibition notice to an approved provider if a related provider of the approved provider is subject to a prohibition notice in force under the National Law and the Regulatory Authority is satisfied that—

- there is a systemic risk in relation to the approved provider or the related provider; and
- the prohibition notice is reasonably necessary to address the risk.

This provision is intended to enable the Regulatory Authority to issue prohibition notices to any approved provider who, by their connection to a related provider (such as shared governance structures, policies or practices) pose a systemic risk.

Clause 90 Content of prohibition notice

Clause 90 Subclause (1) substitutes “section 182(1)” with “section 182(1) or (4)” in section 185(1) of the National Law.

Subclause (2) substitutes “section 182(1) or (3)” with “section 182(1), (3), or (4)” in section 185(3) of the National Law.

Clause 91 Person must not contravene prohibition notice

Clause 91 substitutes “section 182(1)” with section 182(1) or (4)” in section 187(1) of the National Law.

Clause 92 Reviewable decision—internal review

Clause 92 substitutes section 190(h) of the National Law to include internally reviewable decisions to—

- issue a compliance notice; or
- direct an approved provider of a family day care service to suspend the provision of education and care by a family day care educator under section 178; or
- to direct an approved provider of an education and care service to suspend the provision of education and care by a staff member (other than a family day care educator), or a volunteer under section 178A; or
- to direct an approved provider of an education and care service to suspend the provision of education and care by a nominated supervisor under section 178B; or
- to direct an approved provider of an education and care service under section 178C to ensure that a staff member (other than a family day care co-ordinator), or a volunteer is directly supervised while providing education and care; or
- to direct a nominated supervisor of an education and care services to complete training under section 178D; or
- to direct a staff member of, or a volunteer at, an education and care service to complete training under section 178E.

Clause 93 Reviewable decision—external review

Clause 93 repeals section 192(b)(vi) of the National Law.

Clause 94 New section 197A inserted

Clause 94 inserts new section 197A after section 197 of the National Law to enable authorised officers to inspect areas beyond the part of a premises in which education and care is provided as part of a family day care service.

<u>197A</u> <u>Powers of entry to family day service premises—monitoring compliance with prescribed requirement relating to the safety, health and wellbeing of children</u>

New section 197A(1) provides that an authorised officer may exercise the powers under section 197A if the authorised officer reasonably believes it is necessary to do so to assess or monitor compliance of an approved provider of a family day care service with any prescribed requirement in relation to safety, health and wellbeing of children.

New section 197A(2) provides that subject to section 197A(5) and (7), an authorised officer, with consent of the occupier of family day care service premises, may enter the family day care service premises and do any of the following—

- inspect any part of the premises;
- inspect any plant, equipment, vehicle or other thing at the premises;
- photograph or film, or make audio recordings or make sketched of, any part of the premises or anything at the premises;

- inspect and make copies of, or take extracts from, any document kept at the premises;
- take any document or any other thing at the premises;
- ask a person at the premises—
    - to answer a question to the best of that person's knowledge, information and belief; or
    - to take reasonable steps to provide information or produce a document.

New section 197A(3) provides an authorised officer who enters a family day care service premises under section 197A—

- must enter the premises during ordinary business hours; and
- may enter the premises with such assistants as may reasonably be required.

New section 197A(4) provides that before entering the family day care service premises under section 197A, the authorised officer must inform the occupier of the premises of—

- the purpose of the entry; and
- the powers that may be exercised.

New section 197A(5) provides that a power under section 197(2)(a) to (e) is limited to a document or thing that is used or likely to be used in the provision of the family day care service.

New section 197A(6) provides that if the authorised officer takes any document or thing under section 197A(2), the authorised officer must—

- give notice of the taking of the document or thing to the person apparently in charge of it or to the occupier of the premises; and
- return the document or thing to that person or the premises within 7 days after taking it.

New section 197A(7) provides an authorised officer must not enter a family day care service premises that is a family day care residence under section 197A unless—

- the authorised officer reasonably believes that an approved family day care service is operating at the residence at the time of entry; and
- the register of family day care educators records that the approved family day care service operates at the residence at the time of entry.

New section 197A(8) provides that in section 197A, ***family day care service premises***, in relation to a family day care service, means—

- an approved family day care venue; or

- an area in a family day care residence whether or not that area is used to provide education and care to children as part of the service;
- an area outside but near a family day care residence whether or not that area is used to provide education and care to children as a part of the service.

Clause 95 Powers of entry for investigating approved education and care service

Clause 95 subclause (1) amends section 199(2) of the National Law, which deals with powers of entry of authorised officers to education and care service premises, to substitute “premises at” with “premises and the education and care service premises of a related provider of the approved provider of the approved education and care service at”.

Subclause (2) inserts new subsection (5) after section 199(4) of the National Law which provides that an authorised officer must not enter the education and care services premises of a related provider under section 199 unless the authorised officer is satisfied that—

- there is a systemic risk in relation to the approved provider; and
- the entry is reasonably necessary to address the risk.

Clause 96 New section 199A inserted

Clause 96 inserts new section 199A after section 199 of the National Law to provide an authorised officer with powers to enter family day care service premises during business hours.

<u>199A Powers of entry to family day care service premises—investigation of offences</u>

New section 199A(1) provides that an authorised officer may exercise the powers under section 199A to investigate a family day care service if the authorised officer reasonably suspects an offence may have been or may be being committed against the National Law.

New section 199A(2) provides that subject to section 199A(5) and (7), an authorised officer, with the consent of the occupier of family day care service premises, may enter the family day care service premises and do any of the following—

- search any part of the premises;
- inspect, measure, test, photograph or film, or make audio recordings of, anything that may afford evidence of an offence against the National Law at any part of the premises; and
- take for analysis, measurement or testing a thing, or a sample from a thing, at the premises that may afford evidence of an offence against the National Law;
- copy, or take an extract from, a document, at the premises that may afford evidence of an offence against the National Law;

- take into or onto the premises any person, equipment or materials the authorised officer reasonably requires for exercising a power under section 199A;
- require the occupier of the premises or a person at the premises to give the authorised officer information the authorised officer reasonably requires for exercising a power under section 199A.

New section 199A(3) provides an authorised officer who enters a family day care service premises under section 199A—

- must enter the premises during ordinary business hours; and
- may enter the premises with such assistants as may reasonably be required.

New section 199A(4) provides that before entering the family day care service premises under section 199A, the authorised officer must advise the occupier of the premises of—

- the purpose of the entry; and
- the powers that may be exercised.

New section 199A(5) provides that a power under section 199A(2)(b) to (d) is limited to a document or thing that is used or likely to be used in the provision of the family day care service.

New section 199A(6) provides that if the authorised officer takes any document or thing under section 199A(2), the authorised officer must—

- give notice of the taking of the document or thing to the person apparently in charge of it or to an occupier of the premises; and
- return the document or thing to that person or the premises within 7 days after taking it.

New section 199A(7) provides an authorised officer must not enter a family day care service premises that is a family day care residence under section 199A unless—

- the authorised officer reasonably believes that an approved family day care service is operating at the residence at the time of entry; and
- the register of family day care educators records that the approved family day care service operated at the residence at the time of entry.

New section 199A(8) provides that an occupier of a family day care service premises must not unreasonably refuse to give consent to an authorised officer under section 199A. This is an offence with a maximum penalty of $27,300 for an individual or $137,700 in any other case.

New section 199A(9) provides that in section 199A ***family day care service premises***, in relation to a family day care service, means—

- an approved family day care venue;

- an area in a family day care residence whether or not that area is used to provide education and care to children as part of the service;
- an area outside but near a family day care residence whether or not that area is used to provide education and care to children as part of the service.

Clause 97 Powers of entry to business premises

Clause 97 subclause (1) substitutes section 200(1) of the National Law which provides that an authorised officer may exercise powers under section 200, in relation to approved providers and related providers of approved providers, if the authorised officer reasonably suspects that documents or other evidence relevant to the possible commission of an offence against the National Law by an approved provider of an education and care service are present at—

- the principal office of the approved provider; or
- any other business office of the approved provider; or
- the principal office of a related provider of the approved provider; or
- any other business office of a related provider of the approved provider.

Subclause (2) inserts new subsection (4) after section 200(3) of the National Law which provides that an authorised officer must not enter the principal office of a related provider of the approved provider or any other business office of a related provider if the approved provider under section 200 unless the authorised officer is satisfied that—

- there is a systemic risk in relation to the approved provider; and
- entry to the premises is reasonably necessary to address the risk.

Clause 98 New section 206B inserted

Clause 98 inserts new section 206B after section 206A of the National Law.

<u>206B</u> <u>Power of authorised offices to obtain information, documents and evidence from former provider for purposes of related provider determination</u>

New section 206B(1) provides that for the purposes of a related provider determination, an authorised officer, by written notice, may require a former provider to provide to the authorised officer any relevant information specified in the notice.

New section 206B(2) provides that a former provider who is required to provide information under subsection (1) must provide that information—

- within the timeframe specified in the notice; and
- in the manner specified in the notice.

New section 206B(3) provides the time specified in the notice must not be less than 14 days from the date the notice is issued.

Clause 99 Protection against self-incrimination

Clause 99 substitutes "section 215 or 216" with "section 215, 216, 216A or 216B" in section 211(2)(c) of the National Law.

Clause 100 New sections 216A, 216B and 216C inserted

Clause 100 inserts new sections 216A, 216B and 216C after section 216 of the National Law to provide the Regulatory Authority with powers to obtain information, documents and evidence relating to corporate governance and financial arrangements between providers for the purposes of making a related provider determination.

<u>216A Power of Regulatory Authority to obtain information, documents and evidence from approved provider for the purposes of a related provider determination</u>

New section 216A(1) provides that for the purposes of making a related provider determination in relation to an approved provider the Regulatory Authority, by written notice, may require the approved provider—

- to provide to the Regulatory Authority, in writing signed by that provider, or if the provider is not an individual, by a competent officer of that provider, within the time and in the manner specified in the notice, any relevant information specified in the notice; or
- to produce to the Regulatory Authority, or to a person specified in the notice acting on the Regulatory Authority's behalf, in accordance with the notice, any relevant document referred to in the notice; or
- to appear before the Regulatory Authority, or to a person specified in the notice acting on the Regulatory Authority's behalf, at a time and place specified in the notice to give any evidence or to produce any relevant document specified in the notice.

New section 216A(2) provides the notice must—

- warn the approved provider that failure or refusal to comply with the notice may constitute an offence; and
- warn the provider about the effect of sections 217, 218 and 219.

New section 216A(3) provides the Regulatory Authority or the person specified in the notice acting on the Regulatory Authority's behalf may require the evidence referred to in section 216A(1)(c) to be given on oath or affirmation and for that purpose may administer an oath or affirmation.

New section 216A(4) provides the approved provider may give evidence under section 216A(1)(c) by telephone or video conference or other electronic means unless the Regulatory Authority, on reasonable grounds, requires the provider or applicant to give that evidence in person.

<u>216B Power of Regulatory Authority to obtain information, documents and evidence from specified person at education and care service for the</u>

purposes of a related provider determination

New section 216B(1) provides that for the purposes of making a related provider determination in relation to an approved provider or former provider, the Regulatory Authority, by written notice, may require a specified person at an education and care service—

- to provide to the Regulatory Authority, or a person acting on the Regulatory Authority's behalf, with any specified information relevant to the related provider determination; or
- to produce to the Regulatory Authority, or to a person acting on the Regulatory Authority's behalf, any specified document relevant to the related provider determination.

New section 216B(2) provides the notice must—

- warn the approved provider that failure or refusal to comply with the notice may constitute an offence; and
- warn the provider about the effect of sections 217, 218 and 219.

New section 216B(3) provides the Regulatory Authority must not require a specified person to remain at the education and care service for more than a reasonable time for the purposes of providing information or producing documents under section 216B(1).

New section 216B(4) provides that in section 216B, ***specified person*** means a person who is or has been—

- a nominated supervisor of an education and care service; or
- a staff member of an education and care service; or
- a volunteer at an education and care service.

216C Approved provider that is a related provider must disclose certain information to Regulatory Authority

New section 216C provides that at the request of the Regulatory Authority, an approved provider who is a related provider must disclose to the Regulatory Authority within 14 days after the Regulatory Authority's request—

- details of any arrangement entered into by the provider relating to the provider's governance or the operation of an education and care service by the provider; and
- the prescribed information relating to the approved provider's ownership or operation.

Failure to comply is an offence with a maximum penalty of $27,300 in the case of an individual and $137,700 in any other case.

Clause 101 Offence to fail to comply with notice or requirement

Clause 101 substitutes “section 215 or 216” with “section 215, 216, 216A or 216B” in section 217 of the National Law.

Clause 102 Offence to hinder or obstruct Regulatory Authority

Clause 102 substitutes “section 215 or 216” with “section 215, 216, 216A or 216B” in section 218 of the National Law.

Clause 103 Self incrimination not an excuse

Clause 103 subclause (1) substitutes “section 215 or 216” with “section 215, 216, 216A or 216B” in section 219(1) of the National Law.

Subclause (2) substitutes “section 215 or 216” with “section 215, 216, 216A or 216B” in paragraphs (a) and (b) of the definition of ***disclosed information*** in section 219(4) of the National Law.

Clause 104 Functions of National Authority

Clause 104 inserts new section 225(ga) after section 225(g) of the National Law which provides that a function of the National Authority is to establish, maintain and publish the National Early Childhood Worker Register.

Clause 105 Powers of Regulatory Authority

Clause 105 substitutes "family day care educators and nominated supervisors" with "nominated supervisors, staff members and volunteers" in section 261(2)(b) of the National Law.

Clause 106 Register of approved providers

Clause 106 inserts new paragraph (ab) after section 266(2)(a) of the National Law to include in the register of approved providers the name of each related provider of each approved provider.

Clause 107 New Division 4A of Part 13 inserted

Clause 107 inserts new Division 4A of Part 13 after section 269 of the National Law.

<u>Division 4A—National Early Childhood Worker Register</u>

New Division 4A of Part 13 establishes the National Early Childhood Worker Register. Existing provisions in the National Law provide that an approved provider of a family day care service must keep records as prescribed in the national regulations about all staff members and make these available for inspection by the Regulatory Authority on request, however the National Law does not provide for a national, centralised register of information about staff members.

<u>269A</u> <u>Who is an *education and care service worker*?</u>

New section 269A provides that in Division 4A, each of the following is an ***education and care service worker***—

- a nominated supervisor of an education and care service;
- a staff member of an education or care service;
- a volunteer at an education or care service.

<u>269B</u> <u>National Early Childhood Worker Register</u>

New section 269B(1) provides the National Authority must establish and maintain the National Early Childhood Worker Register.

New section 269B(2) provides the National Authority may include the following information on the National Early Childhood Worker Register about each education and care service worker—

- the person's full name and any alias or former name;
- the person's date of birth;
- the person's address and telephone number;
- in relation to each education and care services where the worker is or has been employed, engaged or appointed—
  - the role in which the person is or has been employed, engaged or appointed in or as part of the service; and
  - the name of the service; and
  - the date that the person was employed, engaged or appointed in or as part of the service; and
  - the date the person ceased to be employed, engaged or appointed in or as part of the service (if applicable);
- any other prescribed information.

<u>269C</u> <u>National Authority may access and use information on other registers</u>

New section 269C(1) provides the National Authority may use any information on the register of approved providers kept under section 266 for the purposes of the National Authority establishing and maintaining the National Early Childhood Worker Register under the National Law.

New section 269C(2) provides the National Authority may access and use any information on the register of approved education and care services kept under section 267 or the register of family day care educators, co-ordinators and assistants kept under section 269 for the purposes of the National Authority establishing and maintaining the National Early Childhood Worker Register under the National Law.

<u>269D</u> <u>Access to National Early Childhood Worker Register</u>

New section 269D(1) provides that the National Authority is authorised to access the National Early Childhood Worker Register for the purposes of the National

Authority—

- maintaining the register under the National Law; or;
- performing any other function of National Authority under the National Law.

New section 269D(2) provides the Regulatory Authority is authorised to access the National Early Childhood Worker Register for the purposes of performing its functions under the National Law.

New section 269D(3) provides an approved provider of an education and care service is authorised to access the National Early Childhood Worker Register to the extent that the register relates to the service for purposes related to providing information to the National Authority in accordance with section 269E.

<u>269E</u> <u>Approved provider must give information to the National Authority for the National Early Childhood Worker Register</u>

New section 269E(1) provides an approved provider of an education and care service must take reasonable steps to ensure that the information in section 269B(2) is provided to the National Authority—

- within the prescribed time after an education and care service worker is employed, engaged or appointed at the service; and
- in the manner and form approved by the Authority.

Failure to comply is an offence with a maximum penalty of $6,600 for an individual or $34,200 in any other case.

New section 269E(2) provides that an approved provider of an education and care service must take reasonable steps to ensure that the National Authority is notified of any changes to information on the National Early Childhood Worker Register about an education and care service worker employed, engaged or appointed at the service—

- within the prescribed time after the approved provider becomes aware of the change; and
- in the manner and form approved by the Authority.

Failure to comply is an offence with a maximum penalty of $6,600 for an individual or $34,200 in any other case.

By requiring the approved provider to take reasonable steps to ensure that the information in new section 269B(2) is provided to the National Authority and the requiring approved provider to take reasonable steps to ensure that the National Authority is notified of any changes to information on the National Early Childhood Worker Register, it is intended the approved provider take reasonable steps to ensure to ensure the information is accurate when providing the information or notifying of any changes to information on the National Early Childhood Worker Register.

New section 269E(3) provides an approved provider of an education and care service does not contravene section 269E(1) or (2) during the period beginning on the day on which Part 4 of the **Early Childhood Legislation Amendment (Child Safety) Act 2025** commences and ending on the day that is one month after that commencement.

269F Collection by National Authority of information for the purposes of maintaining the National Early Childhood Worker Register

New section 269F provides the National Authority may collect information from an approved provider of an education and care service or a recruitment agency for the purposes of maintaining the National Early Childhood Worker Register.

269G Collection, use and disclosure by National Authority of information on the National Early Childhood Worker Register

New section 269G(1) provides the National Authority may collect and use information on the National Early Childhood Worker Register for the purposes of the Authority performing any of its functions under the National Law.

New section 269G(2) provides the National Authority may disclose information on the National Early Childhood Worker Register for a purpose listed in section 269G(3) to—

- a relevant Commonwealth Government Department; or
- any State or Territory Government Department; or
- any Commonwealth, State or Territory public authority; or
- any State or Territory local authority; or
- the Regulatory Authority.

New section 269G(3) provides the purposes for disclosure of information under section 269G are—

- the disclosure is for the purposes of enabling or assisting the National Authority to perform any of its functions under the National Law; or
- the disclosure is reasonably necessary to promote the objectives of the national education and care services quality framework; or
- the disclosure is for the purposes of enabling or assisting the other entity to perform any of its functions under the National Law or any other Act; or
- 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
- the disclosure is for a purpose relating to the funding of education and care services; or
- 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.

New section 269G(4) provides a disclosure of information under section 269G is subject to Division 1 of Part 13 and any protocol agreed for the purposes of section 269G by—

- the National Authority, all participating jurisdictions and the Commonwealth; and
- subject to any protocol referred to in section 269G(4)(a), the National Authority and the Regulatory Authority, or the National Authority, the Regulatory Authority and any Regulatory Authority of another participating jurisdiction.

New section 269G(5) provides that information disclosed under section 269G 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—

- an approved provider or a nominated supervisor; or
- 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
- a person to whom a prohibition notice applies; or
- a person who is being prosecuted for an offence against the National Law.

<u>269H</u> <u>Collection, use and disclosure by Regulatory Authority of information on the National Early Childhood Worker Register</u>

New section 269H(1) provides the Regulatory Authority may collect and use information on the National Early Childhood Worker Register for the purposes of the Regulatory Authority performing any of its functions under the National Law.

New section 269H(2) provides the Regulatory Authority may disclose information on the National Early Childhood Worker Register for a purpose listed in section 269H(3) to—

- a relevant Commonwealth Government Department; or
- any State or Territory Government Department; or
- any Commonwealth, State or Territory public authority; or
- any State or Territory local authority; or
- another Regulatory Authority.

New section 269H(3) provides the purposes for disclosure of information under section 269H are—

- the disclosure is for the purposes of enabling or assisting the other Regulatory Authority to perform any of its functions under the National Law or any other Act; or
- the disclosure is reasonably necessary to promote the objectives of the national education and care services quality framework; or

- the disclosure is for the purposes of enabling or assisting the other entity to perform or exercise any of its functions under the National Law or any other Act; or
- 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
- the disclosure is for a purpose relating to the funding of education and care services; or
- 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.

New section 269H(4) provides a disclosure of information under section 269H is subject to Division 1 of Part 13 and any protocol agreed for the purposes of this section by—

- the National Authority, all participating jurisdictions and the Commonwealth; and
- subject to any protocol referred to in section 269H(4)(a), the National Authority and the Regulatory Authority, or the National Authority, the Regulatory Authority and any Regulatory Authority of another participating jurisdiction.

New section 269H(5) provides information disclosed under section 269H 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—

- an approved provider or a nominated supervisor; or
- 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
- a person to whom a prohibition notice applies; or
- a person who is being prosecuted for an offence against the National Law.

Clause 108 Publication of information

Clause 108 inserts new paragraph (da) after section 270(1)(d) of the National Law to enable the publication of any prescribed information in relation to a related provider determination made in respect of an approved provider.

Clause 109 Disclosure of information to other authorities

Clause 109 subclause (1) inserts new subsection (3A) after section 271(3) of the National Law which provides that the National Authority and Regulatory Authority may disclose information to each other about a related provider of an approved provider or a related provider determination if the disclosure is reasonably necessary for the purposes of monitoring compliance with the National Law. This will support transparency and allow both bodies to maintain accurate provider records and conduct risk assessment across related providers.

Subclause (2) inserts, after “provider”, “(including any related provider of an approved provider” in section 271(8)(a) of the National Law to enable information disclosed for the purposes of research or the development of National, State or Territory policy with respect to education and care services to identify any related providers of an approved provider.

Part 5—Amendment of Application Act

APPLIES TO VICTORIAN APPLICATION ACT ONLY

Part 6—Repeal of this Act

Clause 125 Repeal of this Act

Clause 125 provides that the Bill is repealed on 27 February 2027.

The repeal of the Bill does not otherwise affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).