

# TASMANIA

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## **EDUCATION AND CARE SERVICES NATIONAL LAW (APPLICATION) (CONSEQUENTIAL AMENDMENTS) BILL 2011**

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# **EDUCATION AND CARE SERVICES NATIONAL LAW (APPLICATION) (CONSEQUENTIAL AMENDMENTS) BILL 2011**

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*  
27 October 2011

*(Brought in by the Minister for Children, the Honourable  
Michelle Anne O'Byrne)*

## **A BILL FOR**

**An Act to amend certain Acts consequentially on the  
enactment of the *Education and Care Services National Law  
(Application) Act 2011***

Be it enacted by His Excellency the Governor of Tasmania, by  
and with the advice and consent of the Legislative Council and  
House of Assembly, in Parliament assembled, as follows:

## **PART 1 – PRELIMINARY**

### **1. Short title**

This Act may be cited as the *Education and  
Care Services National Law (Application)  
(Consequential Amendments) Act 2011*.

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**THIS BILL IS COGNATE WITH THE *EDUCATION AND CARE SERVICES NATIONAL LAW  
(APPLICATION) BILL 2011***

*Education and Care Services National Law (Application)*  
*(Consequential Amendments) Act 2011*  
*Act No. of*

s. 2

Part 1 – Preliminary

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**2. Commencement**

This Act commences, or is taken to have commenced, on the day on which the *Education and Care Services National Law (Application) Act 2011* commences, or is taken to have commenced.

*Education and Care Services National Law (Application)  
(Consequential Amendments) Act 2011*  
*Act No. of*

Part 2 – Child Care Act 2001 Amended

s. 3

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**PART 2 – CHILD CARE ACT 2001 AMENDED**

**3. Principal Act**

In this Part, the *Child Care Act 2001*\* is referred to as the Principal Act.

**4. Long title amended**

The long title of the Principal Act is amended by inserting “that are not otherwise regulated under the Education and Care Services National Law (Tasmania)” after “workers”.

**5. Section 3 amended (Interpretation)**

Section 3(1) of the Principal Act is amended as follows:

- (a) by omitting the definition of “child care service” and substituting the following definition:

**“child care service”** means –

- (a) the operation by an approved registration body of any business that involves one or more of

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\*No. 62 of 2001

*Education and Care Services National Law (Application)*  
*(Consequential Amendments) Act 2011*  
*Act No. of*

s. 5

Part 2 – Child Care Act 2001 Amended

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the activities authorised  
by the licence; and

(b) the operation by the  
holder of a centre-based  
child care licence of any  
business that involves the  
activity authorised by the  
licence; and

(c) the operation by the  
holder of a home-based  
child care licence of any  
business that involves the  
activity authorised by the  
licence; and

(d) the provision of child care  
by a registered carer –

but does not include an education  
and care service;

(b) by inserting the following definitions  
after the definition of “director”:

**“education and care service”** has the  
same meaning as in the Education  
and Care Services National Law  
(Tasmania);

**“educator”** has the same meaning as  
in the Education and Care  
Services National Law  
(Tasmania);

*Education and Care Services National Law (Application)  
(Consequential Amendments) Act 2011*  
*Act No. of*

Part 2 – Child Care Act 2001 Amended

**s. 6**

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- (c) by inserting the following definition after the definition of “school”:

**“Secretary”** means the Secretary of the Department;

**6. Section 4 amended (Child care defined)**

Section 4 of the Principal Act is amended by inserting after subsection (3) the following subsection:

- (3A) The provision of an education and care service, and the education and care of a child as part of an education and care service, are not the provision of child care.

**7. Section 5 amended (Objects of Act)**

Section 5 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b)(iii) “children; and” and substituting “children.”;
- (b) by omitting paragraphs (c), (d) and (e).

*Education and Care Services National Law (Application)  
(Consequential Amendments) Act 2011  
Act No. of*

s. 8

Part 2 – Child Care Act 2001 Amended

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**8. Section 10 amended (Authority of approved registration body licence)**

Section 10(1) of the Principal Act is amended as follows:

- (a) by omitting paragraphs (a) and (b);
- (b) by omitting from paragraph (e) “arranging home-based child care of a kind referred to in this section;” and substituting “arranging, organising or coordinating the placement of potential child carers with children who need child care in the primary or other residences of the children;”.

**9. Section 15A amended (Criteria for grant of, or holding, licence)**

Section 15A of the Principal Act is amended as follows:

- (a) by inserting the following subparagraph after subparagraph (ii) in subsection (2)(h):
  - (ia) the Education and Care Services National Law (Tasmania) or any regulations made under that Law, whether that offence was committed in Tasmania or elsewhere; or



*Education and Care Services National Law (Application)*  
*(Consequential Amendments) Act 2011*  
*Act No. of*

Part 2 – Child Care Act 2001 Amended

**s. 9**

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- (b) by omitting from subsection (2)(h)(v) “subparagraph (ii), (iii) or (iv);” and substituting “subparagraph (ii), (iia), (iii) or (iv);”;
  - (c) by inserting the following subsection after subsection (3):
    - (4) In determining whether the applicant or any other person is a fit and proper person, or a suitable person, the Secretary may, despite subsections (2) and (3), determine that the applicant or other person is a fit and proper person, or a suitable person, on the basis only that the applicant or other person has been determined to be a fit and proper person under the Education and Care Services National Law (Tasmania) and that determination is current.

*Education and Care Services National Law (Application)*  
*(Consequential Amendments) Act 2011*  
*Act No. of*

s. 10

Part 3 – Annulled Convictions Act 2003 Amended

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**PART 3 – ANNULLED CONVICTIONS ACT 2003  
AMENDED**

**10. Principal Act**

In this Part, the *Annulled Convictions Act 2003*\*  
is referred to as the Principal Act.

**11. Schedule 1 amended (Non-exempt applications)**

Schedule 1 to the Principal Act is amended by  
inserting after item 2 in Part 6 the following  
items:

- 2A.** Approved provider within the meaning of  
the Education and Care Services National  
Law (Tasmania), regardless of which  
jurisdiction in Australia granted, or has  
the right to grant, the provider approval.
- 2B.** Certified supervisor within the meaning  
of the Education and Care Services  
National Law (Tasmania), regardless of  
which jurisdiction in Australia granted,  
or has the right to grant, the supervisor  
certificate.

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\*No. 46 of 2003

*Education and Care Services National Law (Application)*  
*(Consequential Amendments) Act 2011*  
*Act No. of*

Part 4 – Children, Young Persons and Their Families Act 1997 Amended

s. 12

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**PART 4 – CHILDREN, YOUNG PERSONS AND THEIR  
FAMILIES ACT 1997 AMENDED**

**12. Principal Act**

In this Part, the *Children, Young Persons and Their Families Act 1997*\* is referred to as the Principal Act.

**13. Section 14 amended (Informing of concern about abuse or neglect or certain behaviour)**

Section 14(1) of the Principal Act is amended by inserting “an approved education and care service, within the meaning of the Education and Care Services National Law (Tasmania), or” after “of ” in paragraph (j) of the definition of “prescribed person”.

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\*No. 28 of 1997

*Education and Care Services National Law (Application)*  
*(Consequential Amendments) Act 2011*  
*Act No. of*

s. 14

Part 5 – Family Violence Act 2004 Amended

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**PART 5 – FAMILY VIOLENCE ACT 2004 AMENDED**

**14. Principal Act**

In this Part, the *Family Violence Act 2004*\* is referred to as the Principal Act.

**15. Section 38 amended (Informing of concern about family violence )**

Section 38(1) of the Principal Act is amended as follows:

- (a) by inserting the following definitions before the definition of “prescribed person”:

**“child care”** means the provision of care or accommodation to a child by a person other than the child’s parent or a member of the child’s extended family;

**“child care service”** means operations concerned with child care, including a person or agency that is involved with organising or arranging placements for children in child care or placements of child carers with children;

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\*No. 67 of 2004

*Education and Care Services National Law (Application)*  
*(Consequential Amendments) Act 2011*  
*Act No. of*

Part 5 – Family Violence Act 2004 Amended

**s. 15**

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- (b) by inserting “an approved education and care service, within the meaning of the Education and Care Services National Law (Tasmania), or” after “of” in paragraph (i) of the definition of “prescribed person”.

*Education and Care Services National Law (Application)  
(Consequential Amendments) Act 2011*  
*Act No. of*

**s. 16**

Part 6 – Miscellaneous

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**PART 6 – MISCELLANEOUS**

**16. Repeal of Act**

This Act is repealed on the ninetieth day from the day on which it commences, or is taken to have commenced, or on which it receives the Royal Assent, whichever occurs later.