

TASMANIA

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

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# **EDUCATION AND CARE SERVICES NATIONAL LAW (APPLICATION) 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 apply as a law of this State a national law relating to the regulation of education and care services for children and for related matters**

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) Act 2011*.

### **2. Commencement**

This Act commences on 1 January 2012, but if it does not receive the Royal Assent before

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1 January 2012 this Act is taken to have commenced on 1 January 2012.

**3. Definitions**

(1) In this Act –

**“commencement day”** means the day on which this Act commences or is taken to have commenced;

**“Education and Care Services National Law (Tasmania)”** means the provisions applying in this jurisdiction because of section 4.

(2) Terms used in this Act and also in the Education and Care Services National Law set out in the Schedule to the *Education and Care Services National Law Act 2010* of Victoria have the same meaning in this Act as they have in that Law.

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**PART 2 – ADOPTION OF EDUCATION AND CARE  
SERVICES NATIONAL LAW**

**4. Adoption of Education and Care Services National  
Law**

The Education and Care Services National Law, as in force from time to time, set out in the Schedule to the *Education and Care Services National Law Act 2010* of Victoria –

- (a) applies as a law of this jurisdiction; and
- (b) as so applying may be referred to as the Education and Care Services National Law (Tasmania); and
- (c) so applies as if it were part of this Act.

**5. Exclusion of legislation of this jurisdiction**

- (1) The following Acts of this jurisdiction do not apply to the Education and Care Services National Law (Tasmania) or to instruments made under that Law:
  - (a) *Acts Interpretation Act 1931*;
  - (b) *Personal Information Protection Act 2004*;
  - (c) *Right to Information Act 2009*;
  - (d) *Rules Publication Act 1953*;

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(e) *Subordinate Legislation Act 1992.*

(2) The following Acts of this jurisdiction do not apply to the Education and Care Services National Law (Tasmania) or to instruments made under that Law, except to the extent that that Law and those instruments apply to the Regulatory Authority and the employees, decisions, actions and records of the Regulatory Authority:

(a) *Audit Act 2008;*

(b) *Financial Management and Audit Act 1990;*

(c) *Ombudsman Act 1978;*

(d) *Public Account Act 1986;*

(e) *State Service Act 2000.*

**6. Application of *Archives Act 1983***

To avoid any doubt, it is declared that the *Archives Act 1983* applies to the Regulatory Authority for this jurisdiction and its records.

**7. Meaning of generic terms in Education and Care Services National Law for the purposes of this jurisdiction**

In the Education and Care Services National Law (Tasmania) –

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**“child protection law”** means the *Children, Young Persons and Their Families Act 1997*;

**“de facto relationship”** means a significant relationship within the meaning of the *Relationships Act 2003*;

**“local authority”** means a council within the meaning of the *Local Government Act 1993*;

**“magistrate”** means a magistrate appointed under the *Magistrates Court Act 1987*;

**“public authority”** means a body or authority, whether incorporated or not, which is established or constituted by or under an Act or under the royal prerogative, being a body or authority which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister or another public authority and includes –

(a) a company incorporated under the Corporations Act which is controlled by –

(i) the Crown in right of Tasmania; or

(ii) a Government Business Enterprise within the meaning of the

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*Government Business  
Enterprises Act 1995; or*

(iii) a public authority; or

(iv) another company which is so controlled; and

(b) the governing authority of a public authority –

but does not include a council within the meaning of the *Local Government Act 1993*;

**“registered teacher”** means a registered teacher within the meaning of the *Teachers Registration Act 2000*;

**“superior court”** means the Supreme Court of Tasmania;

**“this jurisdiction”** means Tasmania.

## 8. Relevant tribunal or court

For the purposes of the definition of **“relevant tribunal or court”** in section 5 of the Education and Care Services National Law (Tasmania) –

(a) the Magistrates Court is declared to be the relevant tribunal or court for this jurisdiction for the purposes of section 181 of that Law; and



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- (b) the Magistrates Court (Administrative Appeals Division) is declared to be the relevant tribunal or court for this jurisdiction for the purposes of Part 8 of that Law.

**9. Regulatory Authority**

For the purposes of the definition of “**Regulatory Authority**” in section 5 of the Education and Care Services National Law (Tasmania), the Secretary of the department responsible for the administration of the *Education Act 1994* is declared to be the Regulatory Authority for this jurisdiction for the purposes of that Law.

**10. Children’s services law**

- (1) For the purposes of the definition of “**children’s services law**” in section 5 of the Education and Care Services National Law (Tasmania), the following laws are declared to be children’s services laws for this jurisdiction for the purposes of the Education and Care Services National Law (Tasmania):
  - (a) the *Child Care Act 2001*;
  - (b) the Child Care Standards issued under the *Child Care Act 2001*, as in force from time to time.

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- (2) For the purposes of the definition of “**children’s services regulator**” in section 5 of the Education and Care Services National Law (Tasmania), the Secretary of the department responsible for the administration of the *Education Act 1994* is declared to be a children’s services regulator for this jurisdiction for the purposes of the Education and Care Services National Law (Tasmania).

## 11. Education law

For the purposes of the definition of “**education law**” in section 5 of the Education and Care Services National Law (Tasmania), the following Acts are declared to be education laws for this jurisdiction for the purposes of the Education and Care Services National Law (Tasmania):

- (a) the *Education Act 1994*;
- (b) the *Teachers Registration Act 2000*.

## 12. Former education and care services law

For the purposes of the definition of “**former education and care services law**” in section 5 of the Education and Care Services National Law (Tasmania), the *Child Care Act 2001*, as in force immediately before the commencement day is declared to be a former education and care services law for this jurisdiction for the purposes

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of the Education and Care Services National Law (Tasmania).

**13. Infringements law**

For the purposes of the definition of “**infringements law**” in section 5 of the Education and Care Services National Law (Tasmania), the *Monetary Penalties Enforcement Act 2005* is declared to be an infringements law for this jurisdiction for the purposes of the Education and Care Services National Law (Tasmania).

**14. Public sector law**

For the purposes of the definition of “**public sector law**” in section 5 of the Education and Care Services National Law (Tasmania), the *State Service Act 2000* is declared to be a public sector law for this jurisdiction for the purposes of the Education and Care Services National Law (Tasmania).

**15. Tabling of annual report**

In addition to the requirements of section 280 of the Education and Care Services National Law (Tasmania), the Minister must make arrangements for the tabling of the annual report of the National Authority, and the report of the

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public sector auditor with respect to the financial statement in the report, in each Tasmanian House of Parliament.

**16. Penalty at end of provision**

In the Education and Care Services National Law (Tasmania), a penalty specified at the end of a provision indicates that a contravention of the provision is punishable on conviction by a penalty of not more than the specified penalty.

**17. Transitional provisions**

(1) In this section –

“**former *Child Care Act***” means the *Child Care Act 2001* as in force immediately before the commencement day;

“**person-in-charge**” has the same meaning as in the former *Child Care Act* and includes a person who is an appointed person in charge, or a nominated person in charge, referred to in standard 3.1 of a relevant standard;

“**prescribed person**” means a person who, immediately before the commencement day, was –

(a) a person-in-charge; or

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- (b) a responsible person, within the meaning of the former *Child Care Act*, if that responsible person has notified the Secretary of the Department, in writing before the commencement day, that he or she is willing to be a declared certified supervisor for the purposes of the Education and Care Services National Law (Tasmania); or
- (c) in the case of a child care service within the meaning of the former *Child Care Act* that under subsection (5) is a declared approved service and that is operated under a licence under that Act held by a body corporate or government agency, a person referred to in the note to standard 1.1(a)(i) of a relevant standard, if that person has notified the Secretary of the Department, in writing before the commencement day, that he or she is willing to be a declared certified supervisor for the purposes of the Education and Care Services National Law (Tasmania); or
- (d) in the case of a child care service within the meaning of the former *Child Care Act* that under

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subsection (5) is a declared approved service and that is operated under a licence under that Act held by an individual, the holder of that licence, if that holder has notified the Secretary of the Department, in writing before the commencement day, that he or she is willing to be a declared certified supervisor for the purposes of the Education and Care Services National Law (Tasmania);

**“relevant standard”** means –

- (a) the Tasmanian Licensing Standards for Centre Based Child Care, Class 1 (0 – 5 years) *Gazetted* on 13 August 2003, as amended and in force immediately before the commencement day; or
  - (b) the Tasmanian Licensing Standards for Centre Based Child Care, Class 2 (5 – 12 years) *Gazetted* on 16 February 2005, as amended and in force immediately before the commencement day.
- (2) For the purposes of the definition of **“declared approved family day care service”** in section 305 of the Education and Care Services National

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Law (Tasmania), an approved registration body that held, immediately before the commencement day, an approved registration body licence class 1 under the former *Child Care Act* is declared to be a declared approved family day care service for this jurisdiction for the purposes of the Education and Care Services National Law (Tasmania).

- (3) For the purposes of the definition of “**declared approved family day care venue**” in section 305 of the Education and Care Services National Law (Tasmania), a venue at which a person, who was approved or registered as a child carer by an approved registration body referred to in subsection (2), was entitled immediately before the commencement day to provide child care within the meaning of the former *Child Care Act* is declared to be a declared approved family day care venue for this jurisdiction for the purposes of the Education and Care Services National Law (Tasmania).
- (4) For the purposes of the definition of “**declared approved provider**” in section 305 of the Education and Care Services National Law (Tasmania), a person or body that held under the former *Child Care Act* any of the following licences immediately before the commencement day is declared to be a declared approved provider for this jurisdiction for the purposes of the Education and Care Services National Law (Tasmania):
- (a) a centre-based child care licence class 1;

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- (b) a centre-based child care licence class 2;
  - (c) a centre-based child care licence class 1/2;
  - (d) an approved registration body licence class 1;
  - (e) an approved registration body licence class 1/2.
- (5) For the purposes of the definition of “**declared approved service**” in section 305 of the Education and Care Services National Law (Tasmania), a child care service within the meaning of the former *Child Care Act* that is operated under the authority of any of the following licences, or parts of licences, immediately before the commencement day is declared to be a declared approved service for this jurisdiction for the purposes of the Education and Care Services National Law (Tasmania):
- (a) a centre-based child care licence class 1;
  - (b) a centre-based child care licence class 2;
  - (c) a centre-based child care licence class 1/2;
  - (d) an approved registration body licence class 1;
  - (e) that part of an approved registration body licence class 1/2 that relates to the



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approved registration body licence class  
1.

- (6) For the purposes of the definition of “**declared certified supervisor**” in section 305 of the Education and Care Services National Law (Tasmania), a prescribed person is declared to be a declared certified supervisor for this jurisdiction for the purposes of the Education and Care Services National Law (Tasmania).
- (7) For the purposes of the definition of “**declared nominated supervisor**” in section 305 of the Education and Care Services National Law (Tasmania), a prescribed person is declared to be a declared nominated supervisor for this jurisdiction for the purposes of the Education and Care Services National Law (Tasmania).
- (8) For the purposes of the definition of “**former approval**” in section 305 of the Education and Care Services National Law (Tasmania), any of the following licences, or parts of licences, issued under the former Child Care Act that was in effect immediately before the commencement day is declared to be a former approval for this jurisdiction for the purposes of the Education and Care Services National Law (Tasmania):
  - (a) a centre-based child care licence class 1;
  - (b) a centre-based child care licence class 2;
  - (c) a centre-based child care licence class 1/2;

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- (d) an approved registration body licence class 1;
- (e) that part of an approved registration body licence class 1/2 that relates to the approved registration body licence class 1.

## **PART 3 – MISCELLANEOUS**

### **18. Regulations**

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Regulations made under this section may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) Without limiting the generality of subsection (1), regulations made under this section may –
  - (a) provide for savings or transitional matters necessary or expedient for bringing this Act into operation; and
  - (b) provide for any of those savings or transitional matters to take effect when this Act commences or on a later day specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.
- (4) For the avoidance of doubt, the *Rules Publication Act 1953* and the *Subordinate Legislation Act 1992* apply to regulations made under this section.

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Part 3 – Miscellaneous

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**19. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Children; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Education.