

## Education, Employment and Training Committee

### Report No. 37, 57<sup>th</sup> Parliament

#### Subordinate legislation tabled between 29 March and 8 June 2023

#### 1 Aim of this report

This report summarises the findings of the Education, Employment and Training Committee (the committee) following its examination of subordinate legislation within its portfolio areas.

It reports on any issues identified by the committee relating to:

- the policy to be given effect by the legislation
- its consistency with fundamental legislative principles
- its compatibility with human rights
- its lawfulness.

It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA), and the human rights certificates with the *Human Rights Act 2019* (HRA).

#### 2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
-	Education and Care Services National Amendment Regulations 2023	8 June 2023	24 October 2023

\*Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

#### 3 Committee consideration of the subordinate legislation



The committee did not identify any issues regarding the policy, consistency with fundamental legislative principles, human rights compatibility, or lawfulness of the subordinate legislation covered by this report.

No explanatory notes were tabled with the subordinate legislation. This is consistent with the tabling of previous regulations under the *Education and Care Services National Law (Queensland)* (National Law).

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

The following sections provide a brief overview of the subordinate legislation.

#### 4 Education and Care Services National Amendment Regulations 2023

The Education and Care Services National Amendment Regulations 2023 (Amendment Regulations) were made under the National Law. As required by the National Law, the amendment regulations were published on the New South Wales legislation website.



The National Quality Framework (NQF) ‘establishes a national approach to the regulation, assessment and quality improvement for early education and care, and outside school hours are services across Australia.’<sup>1</sup>

The Amendment Regulations implement recommendations made following a review of the NQF that commenced in 2019. They are designed to ensure the NQF can achieve its objectives and remains effective and sustainable as the education and care sector continues to evolve.

The Amendment Regulations amend the Education and Care Services National Regulations (National Regulations) to:

- impose new minimum family day care (FDC) educator requirements – a FDC educator must hold an approved certificate III level (or higher) education and care qualification prior to commencing their role in an FDC service<sup>2</sup>
- clarify FDC co-ordinator to educator ratios<sup>3</sup>
- include resignation and attendance at practicum placement as allowable reasons for short-term absences of early childhood teachers or suitably qualified persons<sup>4</sup>
- allow a person who holds a primary teaching qualification to replace an educator who holds<sup>5</sup> an approved certificate III or diploma level qualification when the educator is absent due to short-term illness, leave, resignation or practicum placement,<sup>6</sup> and to require an approved provider of a centre-based service to keep a record of such replacements<sup>7</sup>
- increase certain fees payable to regulatory authorities and application fees payable to Australian Children’s Education and Care Quality Authority (ACECQA)<sup>8</sup>
- introduce a new application and annual fee category for centre-based services with at least 101 places and FDC services with at least 61 educators<sup>9</sup>
- introduce a fee for applications for amendment to service approval (there is currently no charge)<sup>10</sup>
- extend jurisdiction-specific transitional workforce provisions until 31 December 2024 (these are not applicable to Queensland)<sup>11</sup>
- bring South Australia, Tasmania, Western Australia and Victoria into line with Queensland, New South Wales and the Northern Territory by requiring approved providers of an education care service keep documentation about the development of the program (rather than the child) for children over preschool age<sup>12</sup>

<sup>1</sup> Human rights certificate, p 1.

<sup>2</sup> Amendment Regulations, s 9. This does not apply until 1 July 2024 in respect of an FDC educator who, immediately before 1 July 2023, was actively working towards at least an approved certificate III level education and care qualification: Amendment Regulations, s 29; human rights certificate, p 2.

<sup>3</sup> Amendment Regulations, s 6; human rights certificate, p 2.

<sup>4</sup> Amendment Regulations, s 11; human rights certificate, p 3.

<sup>5</sup> Or is actively working towards.

<sup>6</sup> Amendment Regulations, s 8; human rights certificate, p 3.

<sup>7</sup> And replacement due to short-term illness or leave of early childhood teacher or suitably qualified person. Amendment Regulations, s 12; human rights certificate, p 3.

<sup>8</sup> Amendment Regulations, ss 31-34; human rights certificate, p 3.

<sup>9</sup> Amendment Regulations, s 34; human rights certificate, p 3.

<sup>10</sup> Amendment Regulations, ss 31, 34; human rights certificate, p 3.

<sup>11</sup> Amendment Regulations, ss 13-15, 17; human rights certificate, p 3.

<sup>12</sup> Amendment Regulations, ss 21-23, 25; human rights certificate, pp 3-4.

- provide that a compliance direction may be given for a failure to conduct a transport risk assessment before a service transports a child so that the existing regulatory requirement that an approved provider carry out a risk assessment can be the subject of a compliance direction and penalty for failure to comply<sup>13</sup>
- specify that the declared approved learning frameworks for the purposes of section 323 of the *Education and Care Services National Law (Queensland)* (National Law) apply until 1 February 2024.<sup>14</sup>

Parts 1 (Preliminary) and 3 (Amendments relating to fees) of the Amendment Regulations came into operation on 17 April 2023. Part 2 (Amendments to the National Regulations) came into operation on 1 July 2023.<sup>15</sup>



In the human rights certificate, the Minister for Education and Minister for Industrial Relations and Minister for Racing, Hon Grace Grace MP, concluded that the Amendment Regulations promote the right to life and the rights of families and children to protection.<sup>16</sup> These rights are protected under the HRA.<sup>17</sup>

## 5 Recommendations

The committee recommends that the Legislative Assembly notes this report.

Kim Richards MP  
**Chair**

**August 2023**

### Education, Employment and Training Committee

**Chair**

**Deputy Chair**

**Members**

Ms Kim Richards MP, Member for Redlands  
Mr James Lister MP, Member for Southern Downs  
Mr Mark Boothman MP, Member for Theodore  
Mr Nick Dametto MP, Member for Hinchinbrook  
Mr Barry O'Rourke MP, Member for Rockhampton  
Mr Jimmy Sullivan MP, Member for Stafford

<sup>13</sup> Amendment Regulations, s 30; human rights certificate, p 4.

<sup>14</sup> Amendment Regulations, s 16; human rights certificate, p 4.

<sup>15</sup> Education and Care Services National Amendment Regulations 2023, s 3.

<sup>16</sup> See Amendment Regulations, human rights certificate, pp 4-5.

<sup>17</sup> See HRA, ss 16 and 26.