

EDUCATION AND CARE SERVICES NATIONAL LAW (QUEENSLAND) BILL

Suggested questions for DET

1. There are inconsistencies between this Bill and Education and Training Legislation Amendment Bill 2011. Could DET comment on the following?

- a) The ECSNLB contains certain offences that may breach the fundamental legislative principle that legislation should be clear, unambiguous and precise. These offences include: inadequate supervision of children (section 165); inappropriate discipline (section 166); protecting children from harm and hazards (section 167) and providing required programs (section 168). Penalties range from \$5,000 in the case of an individual to \$50,000 in any other case.

In the ETLAB, and related child protection laws, penalties are much lower. For example if a school principal fails to report child abuse the penalty is \$2,000.

DET response

As explained on page 26 of the Explanatory Notes for this Bill, these offences were required to be included in the Education and Care Services National Law (National Law) consistent with the COAG National Partnership Agreement.

The penalty amounts in the Bill were negotiated at the national level as part of the development of the National Law. This included consideration of existing penalty amounts for similar offences in jurisdictions. In some cases, jurisdictions applied lower penalties and in other cases they were higher. The final decision on the maximum penalty amounts required consensus from all jurisdictions and this acknowledged that the penalty amounts may not always align with corresponding offences in jurisdictions' own legislation.

- b) The ECSNLB seems to establish lower thresholds for protection of very young children than the ETLAB does for school aged children; and provides for reviews of decisions, along with discretionary powers for the Regulatory Authority while the ETLAB's mandating of decisions by the College of Teachers does not. The ECSNLB ensures that natural justice is observed by providing an applicant with review and appeal rights on the basis of the person's suitability, including the Regulatory Authority's decision having had regard to the person's criminal history. The Regulatory Authority's decision to refuse to grant a provider approval is also a decision that can be appealed to QCAT (Explanatory Notes at pp. 19-20).

DET response

The National Law was developed nationally in accordance with the 2009 COAG *National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care* (National Partnership Agreement). An unavoidable consequence of the development of national law is that it can not always align with every jurisdiction's own specific laws.

2. Regulations

- a) The National Law provides that a regulation made under the National Law may be disallowed in a participating jurisdiction (Explanatory Notes, p. 10). However, the notes also state, 'A regulation disallowed under this process will not cease to have effect in any participating jurisdiction (including Queensland), unless the regulation is disallowed in a majority of the participating jurisdictions. (Explanatory Notes, at p. 10). Is the initial statement misleading?

DET response

The initial statement is accurate. Please see sections 303(3), (4) and (5) of the National Law.

- b) The notes state that the *Statutory Instruments Act 1992* will continue to apply to any regulations made under the Bill, other than those made by Ministerial Council under the National Law. Does this mean that each jurisdiction may make its own regulations and that they are the only ones the *Statutory Instruments Act 1992* will apply to? (See Explanatory Notes, at p.13).

DET response

Clauses 31 (definitions of **central governing body** and **URL data**), 44 and 45 of the Bill provide for the making of regulations under the local application provisions of the Act. Those provisions are about matters which are not covered by the National Law.

The *Statutory Instruments Act 1992* will apply to the making of any regulations under those local application provisions. However, as explained in the Explanatory Notes, the *Statutory Instruments Act 1992* will not apply to the National Regulations, which are made by the Ministerial Council under the National Law.

Each other participating jurisdiction will make its own decisions about whether it needs to include power to make regulations about matters which are not addressed by the National Law.

- c) While changes to Regulations are covered (in that Ministerial Council members must make arrangements to table these in their respective jurisdictions), is there a similar requirement for amendments to the National Law?

DET response

As agreed in the COAG National Partnership Agreement, joint governance of the national system means that individual jurisdictions are not permitted to change the National Law in isolation. Any future amendments will be negotiated amongst all participating jurisdictions, with changes to be endorsed by the Ministerial Council prior to them applying to states/territories. The standard Ministerial Council meeting protocol is that the decision would be formed by majority agreement.

3. Ministerial policy direction. Could DET comment on the following?

Under section 222 of the National Law, the Ministerial Council may give written directions to the board of the National Authority to carry out the National Authority's functions. The Ministerial Council may also give directions to the Regulatory Authorities regarding the administration of the National Quality Framework (Explanatory Notes, at p. 15).

- Ministerial directions must be complied with – these directions are not gazetted so provide no opportunity for review;
- Ministerial directions are published in the annual report – the Explanatory Notes suggest that publication mitigates the inappropriate delegation of legislative power;
- The National Law stipulates that a direction must be consistent with the National Law;
- A Ministerial direction is not a legislative instrument or an instrument of a legislative character. This calls to question enforceability issues;
- Section 222(8) The Board or a Regulatory Authority must comply with a direction given to the Board or the Authority by the Ministerial Council under this section. The consequences for not following a Ministerial direction are not disclosed. The Explanatory Notes state that a Ministerial direction is not a legislative instrument or an instrument of a legislative character (at p. 15).

DET response

The points raised above are correct. With regards to the question of enforceability, this is likely to be a matter for consideration by the National Authority, given that one of its functions is to guide the implementation and administration of the National Quality Framework (see section 225(1)(a) of the National Law).

4. Timing of commencement

A number of submissions raise concerns about the speed of implementation, given that the National Regulations have not yet been finalised; leaving limited time to prepare for implementation. What is the position of other jurisdictions in respect of implementation timeframes, given the lack of final National Regulations?

DET response

The Education and Care Services National Regulations are close to being finalised and are expected to be made by the Ministerial Council in the near future.

While services will be required to meet certain requirements under the National Law from 1 January 2012, many aspects of the National Quality Framework will be implemented gradually.

To give services time to become familiar with the National Quality Standards under the National Quality Framework, the commencement of quality assessment and rating of existing services has been delayed until June 2012.

The Department will continue to work with services to ensure that they are meeting the minimum requirements and are focused on areas for improvement.

5. National Regulations.

Though these are still in draft form, submissions have raised concerns about several aspects (including that they are still in draft form at this point). One is that supervisors, rather than proprietors, would be subject to the various penalties. DET has advised that the number of offences for which supervisors can be penalised has been reduced in response to stakeholder feedback on this matter.

DET response

The Nominated Supervisor is the key responsible person for a service (in addition to the Approved Provider) and has various responsibilities under the National Law and the National Regulations that they share with the Approved Provider. All offence provisions apply to the Approved Provider and some also apply to the Nominated Supervisor. A limited number of offences will also apply to family day care educators at a family day care service.

6. Submissions

- a. Is the Government building state-run kindergartens on state school sites? Or are these not-for-profit community-run kindergartens? Why was this option chosen over letting the private sector provide universal access to kindergarten, using the Commonwealth Government funds that come with Child Care Benefit / Child Care Rebate?

DET response

The early years is a key priority for the Queensland Government through the *Toward Q2* commitment to give all children access to a quality early education, so children are ready for school. The approach to delivering universal access to kindergarten was informed by the July 2008 McMeniman report to the Honourable Anna Bligh MP on early childhood education and care and supports parental choice, aligns with the evidence-base and international best practice and provides strategic and cost-effective use of community infrastructure and resources.

To help meet the different needs of Queensland families, the State Government is supporting the delivery of approved kindergarten programs in a range of settings including community kindergarten services, long day care services and kindergarten services operated by non-state schools.

The Queensland Government is investing \$321 million to establish up to 240 extra kindergarten services across Queensland in the areas they are needed most by 2014. These extra services are targeted at kindergarten-age children that do not attend centre-based child care services. The Queensland Government will establish a total of 108

extra kindergarten services by the end of 2012 on state and non-state school sites with a further 13 to open in 2013. Co-locating kindergarten services with schools helps children with their transition to Prep because they are already familiar with the school environment, and is convenient for parents who have older children attending the school.

C&K, a well respected, not-for-profit organisation with a proven track record in providing high quality early childhood education programs in Queensland, will operate the majority of kindergarten services established on state school sites.

In 2009, for the first time, long day care services were able to apply for government funding to offset the cost of providing a teacher-delivered approved kindergarten program for 15 hours a week, 40 weeks a year. Providing funding to assist long day care services deliver kindergarten programs provides more choice for Queensland families and creates new opportunities for long day care services.

Families' eligibility for Child Care Benefit and Child Care Rebate is not affected by the introduction of the kindergarten program in Queensland long day care services and to date, 780 long day care services have been approved to deliver kindergarten programs, creating more than 21,500 places.

- b. How will early childhood-qualified teachers be attracted to early childhood education and care services, given differences in pay and conditions for teachers between those services and schools?

DET response

It is estimated that Queensland will need approximately 700 to 1,000 additional early childhood teachers by 2014 in order to meet the teacher requirements of the state and national reforms.

To support long day care and kindergarten services provide teacher-delivered kindergarten programs, the Queensland Government introduced the Queensland Kindergarten Funding Scheme (QKFS) in October 2009. Funding provided under this scheme assists services to off-set the cost of delivering an approved kindergarten program and provides extra subsidies to services operating in remote areas to help attract and retain a teacher.

With approximately 50% of Queensland's four year olds attending a long day care service annually, including long day care services under the QKFS is an important factor in realising universal access to kindergarten in Queensland. This initiative will also assist the long day care sector to engage an early childhood teacher from 2014. To date, 780 long day care services have been approved to deliver kindergarten programs.

Coupled with the above, the Queensland Government also released the Early Childhood Education and Care (ECEC) Workforce Action Plan 2011-14 in July 2011 that includes numerous initiatives specifically targeting the upskilling of existing workers to become teachers and the attraction of new teachers into the sector. Some of the major initiatives include:

- \$3.7M for Early Childhood Teacher Scholarships to upskill existing workers holding a 3 year degree or an advanced diploma qualification.

- \$1.2M in direct financial incentives to qualified early childhood teachers to deliver an approved kindergarten program in rural and remote areas of Queensland.
- \$0.3M in conjunction with significant TAFE Fee Waiver funding for a Teacher Bridging Program to allow registered primary qualified teachers to upskill and transition to become a qualified early childhood teacher.

The Queensland Government is running a statewide campaign to raise awareness of the benefits and opportunities to teach kindy including television and print media. Since January 2011, nearly 1300 teachers have been recognised as eligible to deliver approved kindergarten programs in Queensland.

Lastly, it is important to note that that Queensland Government is not a party to award negotiations for the ECEC sector as it is not a substantial provider or employer of ECEC services.

A new modern award for early childhood teachers was introduced by the Australian Government at the start of 2010, applying a consistent approach to salary and conditions of early childhood teachers regardless of the setting (excluding services covered by an enterprise agreement or state public sector award) in which they are employed. However, governments are aware that there are many certified and enterprise agreements in the early childhood sector that result in ongoing disparity for teachers.

The Award modernisation was developed through a consultative, national process with industry, employers and unions.

- c. Will receiving a 'waiver' of certain quality requirements eg due to inability to attract a qualified teacher, mean that the service is deemed (and published) to not meet standards?

DET response

Under the National Law, a waiver can be either temporary (for up to 12 months) or permanent. If it is a temporary waiver, the service provider is not required to comply with the relevant requirement for the period that the waiver is in effect. If it is a permanent waiver (known as a service waiver), the provider is taken to comply with the relevant requirement.

The details of any waivers will be included on the service approval, which is required to be displayed at the service.

- d. What can the state do to ensure that children with special needs are not negatively impacted by any cost increases associated with the national reforms?

DET response

When developing the National Quality Framework for the early childhood education and care sector, Australian Governments were all aware that any increase in quality comes at a cost.

Australian Governments have strived to achieve a balance between increases in quality and cost, including independent analysis of expected cost impacts which revealed a cost increase of \$5.99 per child per day by 2020 in long day care, with up to 50% of this cost being met by the Australian Government's Child Care Benefit and Rebate.

For the majority of early childhood education and care services in Queensland, the Australian Government currently administers the Inclusion Professional Support Program to assist these services in meeting the needs of any children with diverse needs, such as a disability.

However, kindergarten services are not eligible for this financial assistance from the Australian Government. Instead, community kindergarten services can access Non-Schools Organisation (NSO) funding to deliver support services to children with a disability. In 2011, the Queensland Government doubled the allocation of funding under this scheme to \$1.05M.

- e. Why has WA decided to develop 'corresponding' legislation which will be consistent with the National Law, rather than adopting the National Law itself?

DET response

The 2009 COAG National Partnership Agreement requires all participating jurisdictions, except for Western Australia, to enact legislation applying the National Law (as developed by Victoria as the host jurisdiction) in their jurisdictions. The Agreement requires Western Australia to enact corresponding legislation in corresponding terms to the template legislation developed by Victoria. These are the terms that were agreed by all participating jurisdictions when the Agreement was signed on 7 December 2009. The Department is unable to advise why the Agreement requires Western Australia to introduce the National Law by way of corresponding legislation, rather than applying it.