



## **Education and Care Services National Law (Queensland) Bill 2011**

**Report No. 4**

**Industry, Education, Training and Industrial Relations  
Committee**

**October 2011**

## **Industry, Education, Training and Industrial Relations Committee**

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### **Acknowledgements**

The Committee thanks those who briefed the Committee, made submissions, gave evidence and participated in its Inquiry. In particular the Committee acknowledges the assistance provided by the Department of Education and Training.

## Contents

|  |           |
|--|-----------|
| Abbreviations.....   | ii        |
| Chair’s Foreword.....  | 1         |
| <b>1 Summary of Recommendations and Findings.....</b>  | <b>3</b>  |
| <b>1.1 Consistency with Fundamental Legislative Principles .....</b>                               | <b>3</b>  |
| <b>1.2 General Issues.....</b>   | <b>3</b>  |
| 1.2.1 TIMING OF IMPLEMENTATION OF NQF .....  | 3         |
| 1.2.2 STAFF QUALIFICATIONS.....  | 4         |
| 1.2.3 AFFORDABILITY OF SERVICES .....  | 4         |
| 1.2.4 VIABILITY OF SERVICES .....  | 4         |
| 1.2.5 VOLUNTEER MANAGEMENT COMMITTEES .....  | 5         |
| <b>2 Introduction.....</b>   | <b>7</b>  |
| 2.1 THE ROLE OF THE COMMITTEE .....  | 7         |
| 2.2 THE COMMITTEE’S PROCESS.....   | 7         |
| Referral.....  | 7         |
| Public submissions .....   | 7         |
| Public briefing.....   | 8         |
| Public hearing.....  | 8         |
| Departmental assistance.....   | 8         |
| <b>3 Education and Care Services National Law (Queensland) Bill 2011.....</b>                      | <b>9</b>  |
| <b>4 Examination of the Bill .....</b>   | <b>11</b> |
| 4.1 TABLING OF THE NATIONAL LAW.....   | 11        |
| 4.2 TABLING OF THE NATIONAL PARTNERSHIP AGREEMENT .....  | 11        |
| 4.3 AMENDMENTS TO THE NATIONAL LAW .....   | 11        |
| 4.4 GENERAL.....   | 12        |
| <b>5 Consistency with Fundamental Legislative Principles .....</b>                                 | <b>21</b> |
| 5.1 TABLING OF THE NATIONAL LAW.....   | 21        |
| 5.2 TABLING OF THE NATIONAL PARTNERSHIP AGREEMENT .....  | 21        |
| 5.3 AMENDMENTS TO THE NATIONAL LAW .....   | 21        |
| <b>6 Appendices .....</b>  | <b>23</b> |
| APPENDIX A – LIST OF SUBMISSIONS .....   | 23        |
| APPENDIX B – LIST OF WITNESSES WHO GAVE EVIDENCE AT THE PUBLIC HEARING ON 12<br>OCTOBER 2011 ..... | 24        |
| APPENDIX C – SUMMARY OF ISSUES RAISED IN SUBMISSIONS WITH DET COMMENTS.....                        | 25        |
| APPENDIX D – COMMITTEE REPORT ON CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE<br>PRINCIPLES .....      | 40        |

## Abbreviations

|                    |             |  |
|--------------------|-------------|--|
| C&K                |             | Creche and Kindergarten Association  |
| CCB                |             | Australian Government Child Care Benefit   |
| COAG               |             | Council of Australian Governments  |
| CQ                 |             | Childcare Queensland   |
| CCR                |             | Child Care Rebate  |
| DET                |             | Department of Education and Training   |
| National Law       |             | Education and Care Services National Law   |
| National Agreement | Partnership | National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care |
| NQF                |             | National Quality Framework   |
| QKFS               |             | Queensland Kindergarten Funding Scheme   |

## Chair's Foreword

This report presents a summary of the Committee's Inquiry into the Education and Care Services National Law (Queensland) Bill 2011.

On 6 September 2011, the House referred the Bill to the Committee for consideration and report by 31 October, 2011, it having been introduced on that day by Hon Cameron Dick MP, Minister for Education and Industrial Relations.

The report is informed by the six written submissions the Committee received in respect of the Bill, the evidence of witnesses who appeared at a public hearing, advice provided by officers of the Department of Education and Training, and research conducted by the Committee's secretariat.

The majority of the content of submissions related to matters not specifically contained within the Bill. The Bill itself seeks to apply the Education and Care Services National Law (the National Law) set out in the Schedule to the *Education and Care Services National Law Act 2010 (Victoria)* as a law of Queensland. Under the National Law would sit National Regulations, and a National Quality Standard to be administered as prescribed by the National Law, by a body established under the National Law and by the Ministerial Council responsible for early education and care services. Submissions tended to focus on implementation issues associated with the National Quality Standard and the National Regulations (which at the time of writing were still being developed<sup>1</sup>), rather than the Bill applying the National Law per se.

The Committee acknowledges the importance of the issues raised, and the relevance to the Bill as it provides the legal framework which would see the NQS and National Regulations implemented, even though they are not directly referenced in clauses of the Bill. Key concerns relate to affordability for parents, how to attract qualified teachers, timing of implementation and viability of services.

In respect of the Bill itself and the National Law that would consequently apply to Queensland, the Committee has concerns relating to the Queensland Parliament's ability to scrutinise amendments to the National Law; and the tabling of the National Law and National Partnership Agreement.

In respect of matters of technical scrutiny not commented upon, the Committee accepts the explanations provided by the Department in respect of potential non-consistency, recognising that the implementation of national schemes does have some associated costs in terms of fundamental legislative principles.

In respect of matters raised in submissions that are not commented on in this report, the Committee accepts the Department's advice as contained in its response to submissions, and subsequent responses to questions posed by the Committee secretariat.

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<sup>1</sup> The draft *Education and Care Services National Regulations* were approved for publication by the Ministerial Council for Education, Early Childhood Development and Youth Affairs on 14 October 2011. They are available at:  
<http://www.eduweb.vic.gov.au/edulibrary/public/earlychildhood/childrensservices/draft-edu-care-regs.pdf>

The Committee unanimously recommends that the Bill proceed subject to the amendments it has recommended and clarifications by the Minister of points raised in this report.

  
Kerry Shire MP  
Chair

October 2011

## 1 Summary of Recommendations and Findings

### Recommendation 1

**The Committee recommends that the Bill proceed subject to the amendments recommended and consideration by the Minister of the points raised in this report.**

### 1.1 Consistency with Fundamental Legislative Principles

The Committee notes the explanations provided in the Explanatory Notes and the advice provided by DET in respect of the consistency of the Bill with fundamental legislative principles. The Committee has concerns relating to the scrutiny of future amendments to the National Law, and the tabling of the National Law and the National Partnership Agreement. In respect of other matters raised in the technical scrutiny report, the Committee accepts the explanations provided<sup>2</sup>, recognising that national scheme legislation does have some costs in respect of fundamental legislative principles.

The Committee invites the Minister to table at the second reading of the Bill a copy of the:

- *Schedule to the Education and Care Services National Law Act 2010 (Victoria)* (the National Law);
- *National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care.*

### Recommendation 2

**The Committee recommends that a clause be inserted in the Bill to provide that the member of the Ministerial Council representing Queensland is to make arrangements for the tabling of any amendment to the National Law in this House of Parliament.**

### 1.2 General Issues

#### 1.2.1 TIMING OF IMPLEMENTATION OF NQF

The Committee notes the concerns raised in submissions from the long day care sector about the implementation timeframe for the NQF, and in particular the request from Childcare Queensland (CQ) that the state government delay adoption of the regulations for two years while the sector works on implementing the NQF, growing the staffing pool and until the Australian government can provide financial assistance for families.

The Committee notes the advice from DET that many aspects of the NQF will be implemented gradually with the first substantial changes for Queensland not occurring until

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<sup>2</sup> In the Explanatory Notes and advice from DET at Appendix C

2014, and the most significant cost drivers (changes to the staff – child ratio) commencing in 2016 and 2017.

Some Members expressed serious concerns about the cost impact on parents and questioned whether the cost impacts are manageable under the stated time frames.

While noting that sector development activity is underway to ease the transition to the NQF, the Committee invites the Minister to respond to concerns raised about whether the timeframes for implementation of the NQF should be extended to allow further time for training staff and to reduce the cost impacts of the legislation on parents.

### **1.2.2 STAFF QUALIFICATIONS**

The Committee notes as valid, the concerns raised in submissions about the ability of the industry to attract the additional qualified staff that the Bill would require. This is a significant issue in rural, regional and remote areas.

The Committee notes the submission of CQ in relation to the interpretation to be placed on a centre waiver and the potential impact of a negative rating on a centre's ability to attract parents. The Committee notes the advice from DET that a waiver does not mean that a centre fails to meet national standard requirements – waiver details will be published along with assessments against other ratings.

The Committee is satisfied that the Government is taking significant steps to attract qualified staff to the industry and that the waiver system is not designed to produce an assessment that a centre does not meet national quality standards with the potentially negative impact on a centre's ability to attract parents that may result from such an assessment.

The Committee invites the Minister to consider, in negotiations over the content of the national *My Child* website where service assessments will be published, taking a Queensland position that a centre that has obtained a waiver is rated as either not required to meet a relevant requirement, with reasons why, or is taken to comply with the requirement.

### **1.2.3 AFFORDABILITY OF SERVICES**

The Committee acknowledges the concerns raised by a number of submitters that this legislation would impose significant costs on services that would be passed on to parents. On balance, and after extensive discussion, the Committee believes that the legislation strikes the right balance between enhanced early childhood education and affordability for parents. Notwithstanding this, some Committee Members continue to hold strong concerns that implementation of the reforms may need to be delayed to reduce the cost impact on parents.

### **1.2.4 VIABILITY OF SERVICES**

The Committee notes the submission by CQ that the new staff to child ratios and the requirement to employ an early childhood teacher would result in reduced capacity in centres, higher fees for parents and reduced utilisation rates in some areas already under financial pressure from lower utilisation rates, potentially calling the viability of many services into question.



While retaining strong concerns about service viability, the Committee recognises that all governments, including the Queensland Government, have strived to achieve a balance between quality and cost and notes that the delayed timeframes negotiated for implementation of the key cost drivers until 2016 and 2017 do provide some time for the sector to prepare for the quality increase.

The Committee invites the Minister to comment on what Queensland will do between now and 2016 and 2017 when the most significant cost drivers take effect in Queensland, to support parents, ensure that access to a quality kindergarten program is truly universal, and that parents have a choice between community kindergartens and private providers, including in long day care settings.

#### **1.2.5 VOLUNTEER MANAGEMENT COMMITTEES**

The Committee is satisfied that sufficient options are available to ensure volunteer management committees have expert support to meet their responsibilities under the National Regulations.



## 2 Introduction

### 2.1 THE ROLE OF THE COMMITTEE

The Industry, Education, Training and Industrial Relations Committee (the Committee) is a bipartisan portfolio committee of the 53<sup>rd</sup> Queensland Parliament established by motion of the House on 16 June 2011. It has responsibility for the portfolio areas of tourism, manufacturing, small business, state development and trade, the Coordinator-General, education, employment, skills and training, workplace health and safety, industrial relations and retail.

Section 93 (1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio area to consider –

- The policy to be given effect by the legislation;
- The application of fundamental legislative principles; and
- For subordinate legislation – its lawfulness.

### 2.2 THE COMMITTEE'S PROCESS

#### Referral

On 6 September 2011, the Legislative Assembly referred the Education and Care Services National Law (Queensland) Bill 2011 introduced by the Hon CR Dick MP, Minister for Education and Industrial Relations, to the Committee for consideration and report. The Committee's consideration of the Bill included a public submission process, a public briefing by officials from DET, and a public hearing. The Committee also considered advice on the Bill's consistency with fundamental legislative principles listed in Section 4 of the *Legislative Standards Act 1992* (Qld).

The Committee was required by the House to report on the Bill by 31 October 2011.

#### Public submissions

The Committee advertised its Inquiry into the Bill in the Courier Mail and on the Parliament's webpages, on Saturday, 13 August 2011. At the same time, the Committee wrote to specific stakeholders and all subscribers to its email list, inviting written submissions on the Bill by Thursday, 15 September 2011. A total of 6 submissions were received:

- Creche and Kindergarten Association (Sub No. 1)
- Independent Education Union of Australia - Queensland and Northern Territory Branch (Sub No. 2)
- Childcare Queensland (Sub No. 3)
- Commission for Children and Young People and Child Guardian (Sub No. 4)
- Queensland Council of Parents and Citizens' Association Inc (Sub No.5)
- The Glennie School (Sub No.6).

Appendix A provides a summary of the points raised in submissions. The written submissions are available on the Committee's website: [www.parliament.qld.gov.au/ietirc](http://www.parliament.qld.gov.au/ietirc).

### **Public briefing**

Officers from DET briefed the Committee on the Bill on 7 September 2011. The Committee opened the briefing to the general public. The transcript of the briefing is available from the Committee's website.

### **Public hearing**

The Committee questioned witnesses about their views on the Bill, and sought suggestions in respect of issues raised in submissions to the Inquiry, at a public hearing held on 12 October 2011 at Parliament House, Brisbane. The public hearing was advertised in the Courier Mail on Saturday, 17 September 2011 as well as on the Committee's webpage and to email subscribers. A list of the witnesses who gave evidence at the hearing is at Appendix B and the transcript of the hearing is available on the Committee's webpage.

### **Departmental assistance**

As DET is the Department responsible for the policy area of the Bill, the Committee sought and received assistance from DET in its examination.

DET provided written briefing material on the Bill; a report on the issues raised in submissions and commented on issues of fundamental legislative principle. Officials attended a meeting to brief the Committee, provide comment and answer the Committee's questions.

The written material provided by the Department and transcripts of the meeting with officials are available on the committee's website: [www.parliament.qld.gov.au/ietirc](http://www.parliament.qld.gov.au/ietirc).

The Committee thanks the officials from DET for their assistance during the Committee's examination.

### 3 Education and Care Services National Law (Queensland) Bill 2011

The objectives of the Bill are to:

- apply the Education and Care Services National Law (the National Law) set out in the Schedule to the *Education and Care Services National Law Act 2010 (Victoria)* as a law of Queensland;
- amend the *Child Care Act 2002* so that it no longer applies to services that will be covered by the National Law; and
- make consequential amendments to other legislation.

In December 2009 the Council of Australian Governments (COAG) endorsed the *National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care*. This agreement included the commitment to establish a jointly governed, uniform National Quality Framework and facilitate the introduction of a new National Quality Standard for early childhood education and care services known as long day care services, family day care services, kindergartens and outside school hours care services.

As host jurisdiction, the Victorian Parliament passed the *Education and Care Services National Law Act 2010 (Victoria)* on 5 October 2010. New South Wales then passed the *Children (Education and Care Services) National Act 2010*. Under the National Partnership Agreement, the other States and Territories agreed to enact legislation to apply the National Law by reference, with the exception of Western Australia which will pass its own corresponding legislation.

The National Law would establish the National Quality Framework (NQF). The NQF is part of a broader national policy framework including universal access to a year of preschool education. The NQF is comprised of:

- the National Law;
- National Regulations;
- a National Quality Standard; and
- a prescribed rating system, with ratings published.

The NQF would be implemented progressively from 1 January 2012 through to January 2020. Some of the more significant changes include changes to staff to child ratios (from 2016 in Queensland) and the qualifications of staff, effective from 1 January 2014.

The National Law would replace the diverse range of licensing and regulatory requirements of each state and territory with a national system. From 1 January 2012, a jointly governed national authority, the Children's Education and Care Quality Authority, would oversee the NQF and guide its implementation. A regulatory authority would be established in each jurisdiction (in Queensland, this would be DET), with a quality assessment role and responsibility for granting approvals, assessing and rating services and monitoring compliance with legislation. All services will be assessed against the new National Quality Standard from June 2012, with ratings published on the Commonwealth Government's 'My Child' website.



## 4 Examination of the Bill

This section discusses issues raised during the Committee's examination of the Bill. In respect of the Bill itself, no significant issues were raised in submissions. Many of the submissions focus on areas of detail that are not the direct subject of the Bill; that is, they would be implemented under the National Law, which this Bill proposes be adopted as a Queensland law. The key concerns were with other elements of the NQF, and in particular the implementation of the National Regulations and the National Quality Standard. These have been developed nationally, and the Bill, adopting the National Law, provides the foundation for their adoption. The Committee has considered and commented on those key issues raised in submissions that are directly consequential to adopting the Bill, while noting that they are not part of the Bill itself.

The Committee notes some concerns in relation to the consistency of the Bill itself with fundamental legislative principles. This is discussed in more detail later in the report, in the section, *Consistency with fundamental legislative principles*.

In summary, the Committee has concerns that directly relate to the Bill, in the following three areas:

### 4.1 TABLING OF THE NATIONAL LAW

The law to be adopted as the law of Queensland was not tabled with the Bill by the Minister. The Committee believes that this should occur as a matter of course, particularly given that the explanatory notes to the Bill indicate that the National Law contains provisions that may not be consistent with fundamental legislative principles.

#### Committee comment

The Minister is invited to table a copy of the Schedule to the *Education and Care Services National Law Act 2010 (Victoria)* (the National Law) at the second reading of the Bill.

### 4.2 TABLING OF THE NATIONAL PARTNERSHIP AGREEMENT

The *National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care* was not tabled by the Minister at the time that the Bill was tabled. The Committee believes this should be tabled, given the Bill intends to give effect to Queensland's commitment under that Agreement.

#### Committee comment

The Minister is invited to table a copy of the *National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care* at the second reading of the Bill.

### 4.3 AMENDMENTS TO THE NATIONAL LAW

The Committee notes with concern the absence from the legislation of a requirement that amendments to the National Law be tabled in the Queensland Legislative Assembly. Section 303 of the National Law provides that Members of the Ministerial Council are required to make arrangements to table National Regulations in their respective jurisdictions. No such provision exists in respect of amendments to the National Law.

### **Advice from DET**

DET advised that any future amendments would be negotiated amongst all participating jurisdictions, with any changes to be endorsed by the Ministerial Council prior to amendments taking effect. The standard meeting protocol is that the decision on an amendment would be informed by majority agreement.

### **Committee comment**

The Committee is not satisfied of the practical ability of the Legislative Assembly to subject amendments to the National Law, which would also be a law of Queensland, to its scrutiny and to inform the people of Queensland, under the Bill as it stands.

### **Recommendation 2**

**The Committee recommends that a clause be inserted in the Bill to provide that the member of the Ministerial Council representing Queensland is to make arrangements for the tabling of any amendment to the National Law in this House of Parliament.**

## **4.4 GENERAL**

The Committee notes the following concerns that were raised in submissions and, overall, is satisfied with the information contained in the Explanatory Notes to the Bill and the advice from DET on the issues raised in submissions.

Introduction of the NQF was supported by all stakeholders with some refinements.

The table at Appendix C provides a comprehensive summary of comments on the issues raised by submitters, together with responses to these comments provided to the Committee from DET.

### **TIMING OF IMPLEMENTATION OF NQF**

While generally supporting the Bill, submissions from CQ and The Glennie School raised concerns about the implementation timeframe for the NQF, due for release in mid October and implementation from January 2012.

In their submission, CQ requested that the state government delay adoption of the regulations for two years while the sector works on implementing the NQF, growing the staffing pool and until the Australian government can provide financial assistance for families.

### **Advice from DET**

DET advised that while services will be required to meet certain requirements under the National Law from 1 January 2012, many aspects of the NQF will be implemented gradually. In particular, in order to give services time to become familiar with the National Quality Standards, the commencement of quality assessment and rating of existing services has been delayed until June 2012.

Officers advised that delaying implementation of the National Regulations until 2014 would not have any effect on the cost impact in Queensland, as the first substantial change for Queensland services will be in 2014.



The Department also advised that following the finalisation of the National Regulations, a suite of resources will be released to assist services to implement and navigate the NQF. In addition, DET advised that it will be conducting a series of state-wide information sessions for the sector once the final National Regulations are released; and the Queensland Government is working with the Australian Government to provide the sector with resources to assist in understanding the new system.

Since the public hearing, the Committee has become aware that the National Regulations have been finalised and that sector development activity is underway to ease the transition to the NQF. The DET website states that officers are working with services on “*strategies for reflecting on their current practice, self-assessment and developing plans for ongoing quality improvement, in line with the NQF and National Quality Standard*” and “*working with service providers to develop and deliver innovative professional learning activities and experiences to support the new processes and assist service providers and educators in becoming familiar with new regulations, quality standards, assessment processes and learning frameworks*”.

### **Committee comments**

The Committee notes that readiness has been raised as a significant problem in the submissions received in respect of the largely privately-operated long day care sector; though most community kindergartens are ready to implement the new framework<sup>3</sup>. The timeframes for implementation of the NQF may not be realistic, given the training that is required. This is exacerbated by regional issues and current vacancy rates. The reduced ratio rates may be a significant factor affecting viability and consequently, affordability for parents using long day care services.

The historical context of long day care not being considered part of the education sector until relatively recently may also be a factor in the reduced readiness of the long day care sector to implement the NQF.

The Committee acknowledges the concessions obtained by the Queensland Government to delay implementation of those aspects of the NQF that may have the greatest impact on services. However the Committee notes that significant training will be required to implement National Regulations and a National Quality Standard that are still in the process of being finalised. The quality assessment and rating of services will commence in June 2012.

Some Members expressed serious concerns about the cost impact on parents and questioned whether the cost impacts are manageable under the stated time frames.

While noting that sector development activity is underway to ease the transition to the NQF, the Committee invites the Minister to respond to concerns raised about whether the timeframes for implementation of the NQF should be extended to allow further time for training staff in the long day care sector and to reduce the cost impacts of the legislation on parents.

### **STAFF QUALIFICATIONS**

A number of submissions raised concerns about the ability of the industry to attract the additional qualified staff that the Bill would require, particularly in remote areas.

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<sup>3</sup> Ms Tyler-Pascoe, C&K, Public hearing 12 October 2011. Hansard transcript p 3.

There was broad support for the intent of the NQF, that is, to improve the quality of early childhood education with submitters questioning how the increased demand for qualified staff might be met.

At the public hearing, Ms Gwynn Bridge, President of Childcare Queensland, gave evidence that the availability of qualified staff varies greatly across demographic areas and while Queensland is better off than most other states because of the Queensland Kindergarten Funding Scheme (QKFS, under which the state government funds long day services to support them to deliver a kindergarten program, through employment of a qualified teacher), in a lot of areas qualified staff are not available.<sup>4</sup>

Some submitters referred to the disparity in pay rates between kindergartens and long day care centres. It was noted that the pay rates and holidays in kindergartens are aligned with schools, while long day care centre staff traditionally have received neither pay rates commensurate with schools nor school holidays.

Mr John Spriggs, Senior Industrial Officer from the Independent Education Union of Australia gave evidence at the public hearing that this disparity in pay rates goes back a number of years to a time when a distinction was made between education and care with long day care centres regarded as not actually providing education. With the advent of universal access, that distinction has well and truly been removed but we are left with the historical consequences, that is, teachers in long day care centres will struggle to be paid rates commensurate with the rates paid to kindergarten teachers. Mr Spriggs submitted that this disparity makes it more difficult to attract qualified staff to long day care centres.<sup>5</sup>

Ms Bridge submitted that while the difference in pay rates could be a problem in some areas it was not true of all areas. Some teachers choose not to work in the public sector for a variety of reasons including greater negotiability and an inability to obtain loans while employed on a contract basis.<sup>6</sup>

One submission went so far as to argue that consistent with our schools, staff in the early education sector (including long day care services) should be fully qualified to work with children, not merely working towards a qualification.<sup>7</sup>

The Queensland and Northern Territory Branch of the Independent Education Union was concerned to ensure that existing staff should be able to continue to work in the area even if they do not meet designated qualifications.

CQ noted that the draft regulations currently provide that a service may apply for a 'waiver' if they are unable to meet national standards due to an inability to obtain suitably qualified staff. However, an assessment that a centre does not currently meet national standards may impact adversely on their ability to attract parents to the centre. They submitted that the legislation should not be implemented if there is no assurance that the sector can meet the legislation. Alternatively, another rating level should be introduced.

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<sup>4</sup> Hansard at 6

<sup>5</sup> Hansard at 5

<sup>6</sup> Hansard at 6

<sup>7</sup> The Glennie School submission at 1.

<http://www.parliament.qld.gov.au/documents/committees/IETIRC/2011/ECSNLB>

### **Advice from DET**

DET advised that in October 2009 the Queensland Government introduced the Queensland Kindergarten Funding Scheme (QKFS) to assist long day care and kindergarten services to provide teacher-delivered kindergarten programs. The scheme also provides extra subsidies to services operating in remote areas to help attract and retain a teacher. To date, 780 long day care services have been approved to deliver kindergarten programs.

DET also advised that the Queensland Government is also encouraging early childhood teaching careers through its ECEC Workforce Action Plan 2011-14 which provides numerous initiatives targeting the creation of additional early childhood teachers. This includes:

- Up to \$3.7M for teaching scholarships (upgrading 3 year degree and advanced diploma holders).
- In conjunction with significant investment via the TAFE Fee Waiver initiative for Diploma level qualifications, \$300k to enable registered primary teachers to upskill to become qualified early childhood teachers.
- Up to \$1.2M in financial incentives to encourage qualified teachers to relocate to work in rural and remote kindergarten or long day care services delivering an approved kindergarten program.
- Up to \$100k to provide financial incentives for pre-service teachers to undertake practicum in rural and remote services. This initiative commenced in October 2011.
- Approximately \$650k to provide professional and leadership development to educators, like early childhood teachers, across a range of service types (incl. kindergarten). These services are expected to commence from early 2012.

As part of its Teacher Recognition Program, DET stated that it has recognised almost 1,200 individuals to work as qualified early childhood teachers suitable to deliver an approved kindergarten program since January 2011.

DET also advised that applicants from rural and remote services are prioritised for the early childhood teacher and advanced diploma teacher scholarships programs.

DET stated that it is important to note that the ability of the sector to meet the workforce changes presented in the NQF will be re-assessed nationally in 2013.

In relation to the retention of existing staff, DET advised that transitional provisions in the National Regulations will recognise particular people who have a long history of working in the sector, even if they do not have the designated level education and care qualification.

With regard to waivers, DET pointed out that under the National Law a waiver can either be of a temporary nature (of up to 12 months) or permanent. If it is a temporary waiver, the service is not required to comply with the relevant requirement for the period that the waiver is in effect. However if it is a permanent waiver (that is, a service waiver), the provider is taken to comply with the relevant requirement.

### **Committee comments**

While the Committee acknowledges that attracting appropriately qualified staff to the industry has had difficulties, it is satisfied that the Government is taking significant steps to address the increasing demand for early childhood teachers that will arise from 2014 onwards. It also notes that the waiver system is not designed to produce an assessment that a centre does not meet national quality standards with the potentially negative impact on a

centre's ability to attract parents that may result from such an assessment. If a waiver were granted to a service in respect of the qualified teacher standards, the reason for this (ie a lack of available teachers) should be published with the rating.

The Committee understands that results of a centre's assessment will be available to the public via a ratings system on the *My Child* website.

The Committee invites the Minister to consider, in negotiations over the content of the national *My Child* website where service assessments will be published, taking a Queensland position that a centre that has obtained a waiver is rated as either not required to meet a relevant requirement, with reasons why, or is taken to comply with the requirement.

### **AFFORDABILITY OF SERVICES**

Many submitters expressed concern about the effect that the Bill may have on underlying costs and fees that may be passed on to parents.

The Creche and Kindergarten Association (C&K) in its oral evidence, estimated that fees would rise by \$5-6 per child per day to cover compliance issues.<sup>8</sup> When asked by the Committee, whether it concurred with the C&K costing, CQ stated that it expected fee increases of \$12-\$13 per child per day given that its centres are much larger than the C&K centres.<sup>9</sup> In its written submission, CQ stated that an independent evaluation carried out by Urban Economics indicates that the average increase to Queensland centres under the proposed National Regulations will be \$13.00 per child per day.<sup>10</sup>

CQ expressed concern that many families, already struggling with the rising cost of living will be unable to absorb the increases that will result from this legislation, resulting in some parents either leaving the workforce with consequent broader economic effects or forced into lower quality child care arrangements.<sup>11</sup>

CQ also submitted that children using services irrespective of parental employment status should not be forgotten. Increased costs may make their participation in an early education programme even more prohibitive. Further, children from disadvantaged backgrounds are less likely to attend early childhood programs. Increased costs may place these services firmly out of their reach.

Finally, CQ submitted that the Australian Government has demonstrated a lack of concern for families in the workforce by reducing the Child Care Rebate from \$8,100 to \$7,500 and placing a freeze on indexation of this amount for four years.

### **Advice from DET**

DET advised that although the NQF will be implemented from 1 January 2012, it will not have any impact on child care fees until 2014 when long day care services will be required to engage an early childhood teacher and family day care educators will require a minimum Certificate III qualification. Queensland's roll out of universal access to kindergarten will offset some of the impact of having to employ a teacher for those services eligible for

<sup>8</sup> Hansard, Kerry Tyler Pascoe, 12/10/10 at 2

<sup>9</sup> Ms Gwynn Bridge, Hansard at 7

<sup>10</sup> Childcare Queensland submission at 5

<sup>11</sup> Childcare Queensland submission at 2

funding under the QKFS. To date 780 long day care centres have been approved to deliver kindergarten programs.

To balance quality and affordability for Queensland families, DET advised that Queensland has negotiated key concessions in the draft National Regulations such as:

- Delayed implementation of the improved educator-to-child ratios to 2016;
- A special transitional arrangement for services licensed before 1 January 2011 that can justify the use of a 1:5 ratio for children aged 15-24 months, able to continue to use that ratio until 31 December 2017;
- Transitional provisions to continue current practices to allow fewer educators to care for children during specified rest periods and rest pauses under certain circumstances; and
- Allowing a Diploma qualified educator to backfill an early childhood teacher during short term absences (including annual leave).

Under the new needs-based funding scheme for approved kindergarten programs, DET advised, eligible services can claim extra funding for low income parents holding a Health Care Card to directly offset their out-of-pocket fees.

In relation to the Child Care Rebate (CCR), DET stated that the Australian Government estimated that the capping of the CCR at \$7,500 (down from the current rebate of \$7,778) would impact less than 700 families nationally (i.e. high income, full time users of care). It should be noted as well that eligibility for Australian Government Child Care Benefit (CCB) and CCR is not determined by parental employment status (though the number of hours which will be funded by CCB is reduced for parents who are not working).

### **Committee comments**

The Committee acknowledges the concerns about affordability of services. On balance, after extensive discussion, the Committee believes that the legislation strikes the right balance between enhanced early childhood education and affordability for parents. Notwithstanding this, some Committee Members continue to hold strong concerns that implementation of the reforms may need to be delayed to reduce the cost impact on parents.

It also notes that because the Australian Government assistance through CCB and CCR are paid as a percentage of fees and out of pocket expenses incurred respectively, these can be expected to increase for individual families if fees increase, up to the maximums for each.

### **VIABILITY OF SERVICES**

CQ identified that the financial arrangements for many childcare service owners are such that they are committed to the extent of their licensed capacity and return on borrowing. CQ estimates that the new staff to child ratios and requirement to employ a qualified early childhood teacher will result in a loss of 5 places per day per centre, with business owners having no choice but to pass on the cost of the lost places to parents in the form of increased fees. They argue that many centres are already suffering from lower utilisation rates from the rising cost of living, and will become less viable, as a result of lower utilisation rates, if parents are not compensated for the increase in childcare fees which will arise from the NQF.<sup>12</sup>

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<sup>12</sup> Childcare Queensland submission at 7-8 and Hansard at 7

**Advice from DET**

DET advised that they could see no reason why centres which currently have a maximum capacity of 75 places or less at any time would need to reduce their capacity by 30 places per week. They pointed out that the National Regulations provide more flexibility, with staffing requirements calculated at the service level, rather than on a room by room basis. However, services may consider reducing places by a small number when the new ratios commence in 2016 or may employ additional staff.

DET also points out that to reduce the cost impacts for parents which could flow from these business viability issues, Queensland has successfully negotiated<sup>13</sup>:

- a delay in implementing the new ratios until 2016;
- a special transitional arrangement for services licensed before 1 January 2011 that can justify the use of a 1:5 ratio for children aged 15-24 months, until 31 December 2017;
- transitional provisions to continue current practices to allow fewer educators to care for children during specified rest periods and rest pauses under certain circumstances; and
- allowing a Diploma qualified educator to backfill an early childhood teacher during short term absences (including annual leave).

**Committee comments**

The Committee acknowledges that the NQF's increased staff to child ratio and requirement to employ a qualified teacher will result in increased costs. It notes that while both Commonwealth and State governments are contributing to meeting these costs (for example through Child Care Benefit and Child Care Rebate, which meets up to 50 percent of out of pocket (ie. after Child Care Benefit) expenses for long day care, and through state government measures such as financial incentives to encourage teachers to work in long day care centres, and direct subsidies to services; and the recently announced subsidisation of kindergarten fees for holders of health care cards) some costs will be passed on to parents, even if the cost impact for parents is delayed.

While retaining strong concerns about service viability, the Committee recognises that all governments, including the Queensland Government, have strived to achieve a balance between quality and cost and notes that the delayed timeframes negotiated for implementation of the key cost drivers until 2016 and 2017 do provide some time for the sector to prepare for the quality increase.

The Committee invites the Minister to comment on what Queensland will do between now and 2016 and 2017 when the most significant cost drivers take effect in Queensland, to support parents, ensure that access to a quality kindergarten program is truly universal, and that parents have a choice between community kindergartens and private providers, including in long day care settings.

<sup>13</sup> DET response, 6 October 2011, p3, p5  
<http://www.parliament.qld.gov.au/documents/committees/IETIRC/2011/ECSNLB/cor-DET-ECSNLQB.pdf>

## **VOLUNTEER MANAGEMENT COMMITTEES AND P & C COMMITTEES**

C&K submitted that difficulties will be faced by volunteer parent management committees in applying the National Regulations. These relate to the provisions of the NQF being drafted in such a way as to apply to private providers, with references to roles and responsibilities of owners, staff and parents. The volunteer management committee model usually consists of a group of parents, who are in effect the Board of Management for a not-for-profit early education and care service. The concerns are that they have insufficient capacity to effectively meet the responsibilities assigned to them under the Regulations. C&K submit that professional, not for profit business management organisations should bear these responsibilities; and that at the very least, committee members should be required to undertake approved training in governance each year.<sup>14</sup>

The Queensland Council of Parents and Citizen's Associations Incorporated expressed concern that volunteer staffed P&C committees would not have the time nor legal knowledge to achieve a high ranking under the new assessment structure.<sup>15</sup>

### **Advice from DET**

DET has confirmed that volunteer parent management committees are free to engage such a body to undertake various aspects of managing a service; and that in order to receive Queensland Government funding (to support the delivery of kindergarten programs), approved kindergarten services are required to be a member of a central governing body (such as C&K), which in turn receive government funding to enable them to support member kindergartens.<sup>16</sup>

In relation to P&C committees, DET pointed out that while the NQF does raise the standard for services when compared to the previous accreditation system, assessment of services will focus on outcomes for children rather than specifying inputs.

Under this approach, DET did not envisage that services operated by large commercial organisations will have an advantage over smaller community-based services. In fact, DET noted that a key aspect of quality is that the service delivery meets the needs of the community and a P&C would be well placed to understand the needs of the families, the school community and the general community.

### **Committee comments**

The Committee is satisfied that sufficient options are available to ensure volunteer management committees have expert support to meet their responsibilities under the National Regulations and that the NQF is flexible enough to meet the needs of all volunteer committees.

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<sup>14</sup> C&K, *Submission 1*, pp 2-3 and Transcript of hearing, 12 October 2011, pxx.

<sup>15</sup> Queensland Council of Parents and Citizen's Associations Incorporated submission at 1

<sup>16</sup> DET responses to submissions received, 6 October 2011, pp1-2





## 5 Consistency with Fundamental Legislative Principles

The Committee considered the consistency of the Bill with fundamental legislative principles and has concerns with the following 3 areas:

### 5.1 TABLING OF THE NATIONAL LAW

The law to be adopted as the law of Queensland was not tabled by the Minister at the time that the Bill was tabled. Accordingly, the Queensland Parliament and the people of Queensland were not provided with a readily accessible copy of the National Law, even though the explanatory notes to the legislation indicate that the National Law contains provisions which may be inconsistent with fundamental legislative principles

#### Committee comment

The Minister is invited to table a copy of the Schedule to the *Education and Care Services National Law Act 2010 (Victoria)* at the second reading of the Bill.

### 5.2 TABLING OF THE NATIONAL PARTNERSHIP AGREEMENT

The *National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care* was not tabled by the Minister at the time that the Bill was tabled. The National Partnership Agreement was endorsed by Queensland and contains our commitment to enact this Bill to apply the National Law by reference, to establish a jointly governed uniform NQF and to facilitate the introduction of a new National Quality Standard for early childhood education and care services. As the National Partnership Agreement underpins this Bill it may be useful for the Queensland Parliament and the people of Queensland to be provided with a readily accessible copy of it.

#### Committee comment

The Minister is invited to table a copy of the *National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care* at the second reading of the Bill.

### 5.3 AMENDMENTS TO THE NATIONAL LAW

Section 303 of the National Law provides that Members of the Ministerial Council are required to make arrangements to table National Regulations in their respective jurisdictions. No such provision exists in respect of amendments to the National Law.

#### Advice from DET

DET advised that the application of National Law in one State or Territory Parliament for adoption by others, is a standard approach to implementing national legislative schemes, where Constitutional powers rest with States and Territories and not with the Commonwealth. Although the legislation for national schemes may take a number of forms, concerns about abrogating the rights of Parliaments tend to be greatest when, as in this case, the proposed law includes pre-determined legislative provisions based on an agreement between governments. However, DET pointed out that this approach is consistent with the protocol for national scheme legislation, and is designed to ensure that national legislation is applied consistently in each participating jurisdiction.

### **Committee comments**

The Committee notes with concern the absence from the legislation of a requirement that amendments to the National Law be tabled in the Queensland Legislative Assembly, constraining the Parliament from informing the people of Queensland and subjecting such amendments to its scrutiny.

#### **Recommendation 2**

**The Committee recommends that a clause be inserted in the Bill to provide that the member of the Ministerial Council representing Queensland is to make arrangements for the tabling of any amendment to the National Law in this House of Parliament.**

In respect of the remaining areas identified in the Committee report on consistency with fundamental legislative principles, at Appendix D, the Committee is satisfied with the explanations provided in the explanatory notes and from DET, recognising that national scheme legislation does have some associated costs in terms of those principles.

## **6 Appendices**

### **APPENDIX A – LIST OF SUBMISSIONS**

001 - Creche and Kindergarten Association

002 - Independent Education Union of Australia - Queensland and Northern Territory Branch

003 - Commission for Children and Young People and Child Guardian

004 - Queensland Council of Parents and Citizens' Associations Inc.

005 - The Glennie School

006 - Childcare Queensland

**APPENDIX B – LIST OF WITNESSES WHO GAVE EVIDENCE AT THE PUBLIC HEARING ON 12 OCTOBER 2011**

| <b>Organisation</b>  | <b>Witness</b>  |
|--|---|
| Creche and Kindergarten Association  | <b>Ms Kerry Tyler-Pascoe</b> , National Quality Framework Manager |
| Independent Education Union of Australia, Queensland and Northern Territory Branch | <b>Mr John Spriggs</b> , Senior Industrial Officer                |
| Childcare Queensland   | <b>Ms Gwynn Bridge</b> , President                                |

## APPENDIX C – SUMMARY OF ISSUES RAISED IN SUBMISSIONS WITH DET COMMENTS

| Clause                     | Submitter         | Sub No.  | Section / initiative  | Key Points  | DET comments (provided on 6 October 2011)  |
|----------------------------|-------------------|--|---|---|--|
| <b>GENERAL</b>             |                   |  |   |   |  |
| n/a                        | C&K               | 1  | Community kindergartens should be recognised in the Bill as a unique model. | To not do so fails to recognise the rich diversity in quality of qualified staff and educational programs that make up early childhood education and care services.   | <p>The definition of an 'education and care service' in the national legislation is broad, simply referring to any service providing, or intending to provide, education and care on a regular basis to children under 13 years of age, other than specified services that are excluded from the definition.</p> <p>It is not necessary for the national legislation to distinguish between service types, other than whether they are centre based or family day care.</p> <p>This approach is similar to Queensland's current <i>Child Care Act 2002</i> (CCA), which refers to "centre-based services" and does not include specific provision for "kindergarten" services.</p> <p>Department of Education and Training's communications materials use "kindergarten" terminology extensively to translate the legislation for those services and families.</p> |
| Draft National Regulations | C&K               | 1  | Definition of 'supervisor'  | Use of the term 'supervisor' is a misnomer. A supervisor without education qualifications in an educational setting is appropriate, and should not be supervising staff who have university qualifications. | <p>The term 'supervisor' refers to the supervisor of the service, not necessarily of other staff. A person employed as a "teacher" could hold the position of 'supervisor' in a service. The national legislation does not prevent this. Similarly, the <i>Child Care Act 2002</i> currently requires services to employ a 'qualified director', and in many services a teacher is employed in this role.</p> <p>The eligibility requirements for the 'supervisor' role are intended to recognise different types of experience and qualifications as being suitable for the role of certified supervisor.</p>   |
| National Law               | N/A - Secretariat | The National Law will allow flow on effects to services <u>not</u> regulated by the National Law (ie occasional care or a babysitting service) where the service operates both types – identified as 'streamlining' in the Explanatory notes. It means |   | The intent is to provide streamlining for service operators, to reduce administrative burden.   |  |

| Clause                                 | Submitter | Sub No. | Section / initiative  | Key Points   | DET comments (provided on 6 October 2011)  |
|--|-----------|---------|---|--|--|
|  |           |         |   |  | that conditions or approvals applied under the National Law would also apply to the service element not regulated by the National Law, but by the <i>Child Care Act 2002</i> . (Explanatory notes, pp6-7).   |
| <b>VOLUNTEER MANAGEMENT COMMITTEES</b> |           |         |   |  |  |
| National Quality Framework             | C&K       | 1       | <b>Voluntary Parent Management Committee model</b> will face particular difficulties under the proposed National Quality Framework. | <p>Clients (parents) are also acting as the business owner/operator, with teacher the employee who guides them.</p> <p>Committee will have considerable power, but limited capacity to manage it, or to make decisions.</p> <p>Professional, not-for-profit organisations should be given this power instead. Or at the very least, committee members should be required to undertake approved training in governance, annually.</p> | <p>Community organisations, managed by voluntary management committees, have and continue to play an important role in the provision of early childhood education and care. A key strength of these organisations is their community connection and understanding of community needs; collaborative partnerships with families are fundamental to achieve quality outcomes for children and community partnerships that focus on active communication, consultation and collaboration also contribute to children's learning and wellbeing.</p> <p>An organisation may choose to engage a management body to undertake various aspects of managing a service.</p> <p>Under its <i>Early Childhood Education and Care (ECEC) Workforce Action Plan</i>, the Queensland Government has allocated funding to supporting the sector in upskilling to meet the changes posed by the NQF. This includes the negotiation of approx. \$400k in support services for those ECEC services not currently supported by the Australian Government training and support initiatives for approved services (i.e. kindergartens and limited hours care).</p> <p>In order to receive Queensland Government funding that supports the delivery of kindergarten programs, approved kindergarten services are required to be a member of a Central Governing Body (CGB).</p> <p>Approved CGBs have a range of responsibilities including supporting their members to provide a quality and inclusive kindergarten program.</p> |

| Clause                     | Submitter   | Sub No. | Section / initiative  | Key Points   | DET comments (provided on 6 October 2011)   |
|----------------------------|---|---------|---|--|---|
|                            |   |         |   |  | <p>The Queensland Government provides funding to these organisations to support the delivery of kindergarten.</p> <p>Obligations and responsibilities for management committee members of incorporated associations are outlined under separate legislation (the <i>Associations Incorporation Act 1981</i> and <i>Associations Incorporation Regulation 1999</i>).</p>   |
| National Quality Standard  | Queensland Council of Parent and Citizen's Associations | 4       | <b>OSHC services and difficulty in meeting national standards</b> | <p>Difficulties for OSHC services operated by P&amp;C committees in meeting the new, higher standards given they are run by volunteers.</p>  | <p>The National Quality Framework does raise the standard for services when compared to the previous Accreditation system.</p> <p>However, assessment of services will focus on outcomes for children rather than specifying inputs.</p> <p>Under this approach, it is not envisaged that services operated by large commercial organisations will have an advantage over smaller community-based services. In fact, as noted in the response to C&amp;K above, a key aspect of quality is that the service delivery meets the needs of the community and a P&amp;C would be well placed to understand the needs of the families, the school community and the general community.</p> |
| Draft National Regulations | QIEU  | 2       | <b>Penalties for supervisors</b>                                  | <p>Concerned about the National Regulations, which establish regulatory offences including penalties to be borne by 'supervisors'. This is inappropriate – penalties should be borne by proprietors. (NB the Regulations will be subordinate to this Bill, and are not addressed in the Explanatory Notes. They are still in draft form, with consultation occurring nationally).</p> <p>This also reduces the attractiveness of the sector to qualified</p> | <p>The National Regulations have been revised in response to stakeholder feedback received on this issue and the latest version has reduced the number of offences which would apply to Nominated Supervisors.</p> <p>Note that these concerns are not directly relevant to the Bill.</p>   |

| Clause                      | Submitter            | Sub No. | Section / initiative   | Key Points  | DET comments (provided on 6 October 2011)  |
|-----------------------------|----------------------|---------|--|---|--|
|                             |                      |         |  | staff.  |  |
| Draft National Regulations  | The Glennie School   | 5       | Several concerns noted with the draft National Regulations   | a) Children being able to leave the service with parental permission or with older siblings;<br>b) Need for clarification of 'regular' policy reviews;<br>c) Transitional arrangements need to be clarified.                                  | a) Feedback received from stakeholders in relation to the draft National Regulations released in March 2011 has resulted in some changes. For instance, the National Regulations will not specifically refer to children leaving a service with older siblings. The National Regulations will require that children may only leave the service's premises if they are given into the care of their parents, or someone authorised by the parents, or if they leave in accordance with written authorisation from the parents.  |
| <b>STAFF QUALIFICATIONS</b> |                      |         |  |   |  |
| National Quality Standard   | Childcare Queensland | 6       | <b>Where will the required qualified teachers come from?</b> | Legislation should not be implemented where there is no assurance the sector can meet that legislation. While a 'waiver' might be possible, it is understood the National Regulations will provide that a waiver means not meeting standards. | Data from Queensland universities indicate that the supply of graduating early childhood teachers will meet current demand (470 in 2008, 432 in 2009) with higher levels expected from 2010 onwards.<br>New university programs and pathways continue to be developed to support the supply of qualified teachers for the sector such as the pathway for Advanced Diploma holders to attain teacher qualifications.<br>The Queensland Government is also encouraging early childhood teaching careers through its ECEC Workforce Action Plan 2011-14 which provides numerous initiatives targeting the creation of additional early childhood teachers. This includes: <ul style="list-style-type: none"> <li>• Up to \$3.7M for teaching scholarships (upgrading 3 year degree and advanced diploma holders). To date there have been 235 scholarship offers made across both programs to educators employed within the sector.</li> <li>• In conjunction with significant investment via the TAFE Fee Waiver initiative for Diploma level qualifications, \$300k to enable registered primary teachers to upskill to become</li> </ul> |



| Clause                    | Submitter  | Sub No. | Section / initiative   | Key Points  | DET comments (provided on 6 October 2011)   |
|---------------------------|--|---------|--|---|---|
|                           |  |         |  |   | <p>qualified early childhood teachers. To date, this program has enrolled more than 200 registered primary school teachers to be upskilled to work as qualified early childhood teachers.</p> <ul style="list-style-type: none"> <li>• Up to \$100k to provide financial incentives for pre-service teachers to undertake practicum in rural and remote services. This initiative commenced in October 2011.</li> <li>• Approximately \$650k to provide professional and leadership development to educators, like early childhood teachers, across a range of service types (inc kindergarten). These services are expected to commence from early 2012.</li> </ul> <p>In addition to the above, as part of its Teacher Recognition Program, the Department of Education and Training has also recognised almost 1,200 individuals to work as qualified early childhood teachers suitable to deliver an approved kindergarten program since January 2011.</p> <p>It is important to note that the ability of the sector to meet the workforce changes presented in the NQF will be re-assessed nationally in 2013.</p> |
| National Quality Standard | QIEU   | 2       | <b>How will qualified staff be attracted to the early education and care sector?</b> | The industry already faces a challenge to obtain qualified staff.   | <p>See above.</p> <p>It is important to note that the ability of the sector to meet the workforce changes presented in the NQF will be re-assessed nationally in 2013.</p>  |
| National Quality Standard | Queensland Council of Parents and Citizen's Associations | 4       | <b>How will qualified teachers be attracted to remote areas?</b>                     | This is imperative both for meeting national standards, and in the context of universal access to early childhood education (and not just care) services. | <p>As stated above, the Queensland Government's ECEC Workforce Action Plan 2011-14 provides a range of initiatives specifically aimed at attracting qualified early childhood teachers to rural and remote services, for both the purposes of the NQF and also in meeting the universal access to kindergarten commitment. These include:</p> <ul style="list-style-type: none"> <li>• Up to \$1.2M in financial incentives to encourage qualified</li> </ul>   |

| Clause                    | Submitter          | Sub No. | Section / initiative   | Key Points  | DET comments (provided on 6 October 2011)  |
|---------------------------|--------------------|---------|--|---|--|
|                           |                    |         |  |   | <p>teachers to relocate to work in rural and remote kindergarten or long day care services delivering an approved kindergarten program.</p> <ul style="list-style-type: none"> <li>Up to \$100k to provide financial incentives for pre-service teachers to undertake practicum in rural and remote services.</li> </ul> <p>Applicants from rural and remote services are prioritised for the early childhood teacher and advanced diploma teacher scholarships programs.</p> <p>If a rural and remote kindergarten or long day care service is unable to employ a qualified early childhood teacher, they may apply to the Department to seek a temporary waiver of this requirement under the National Law.</p> <p>It is important to note that the ability of the sector to meet the workforce changes presented in the NQF will be re-assessed nationally in 2013.</p> |
| National Quality Standard | The Glennie School | 5       | Staff qualifications   | Those working in centres should be fully qualified, not working towards qualification.  | The provision for an educator to be counted as having a qualification provided they are working towards that qualification is consistent with the current requirements under the <i>Child Care Act 2002</i> . Furthermore, the National Law provides time for educators and service providers to adjust by introducing the new qualification requirements gradually.   |
| National Quality Standard | QIEU               | 2       | Transitional arrangements for existing qualified teachers in the sector who do not have early childhood qualifications | Existing experienced, qualified and registered teachers should be able to continue their work in the sector even if they do not have the specialist training. | <p>Transitional provisions in the National Regulations will recognise particular people who have a long history of working in the sector, even if they do not have the designated level education and care qualification.</p> <p>The functions of the national authority, the Australian Children's Education and Care Quality Authority (ACECQA) will include publication and determination of approved qualifications and assessment of qualifications to determine equivalency, including Early Childhood teacher qualifications.</p>   |

| Clause  | Submitter            | Sub No. | Section / initiative   | Key Points  | DET comments (provided on 6 October 2011)   |
|---|----------------------|---------|--|---|---|
| <b>TIMING OF IMPLEMENTATION / TRANSITIONAL ARRANGEMENTS</b> |                      |         |  |   |   |
| N/A   | The Glennie School   | 5       | The implementation timeframe for the National Framework is concerning. | The new Framework has not been finalised – due for release mid-October and implementation from 1 January 2012. Funding will be required for professional training, and time allocated for staff to understand the requirements in a short period.   | <p>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.</p> <p>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.</p> <p>The Department will continue to work with services to ensure that they are meeting the minimum requirements and are focussed on areas for improvement.</p>  |
| National Quality Standard                                   | Childcare Queensland | 6       | Staff qualifications and staff – child ratios                          | <p>There are many apparent inconsistencies and contradictions within the National Regulations themselves, and when read with the Education and Care Services National Law. Interpreting these and then educating a child care centre workforce on them is impossible to achieve within a few months.</p> <p>At least two years will be necessary from the date that the regulations become 'final' for all stakeholders to become operationally familiar with the new requirements.</p> | <p>Feedback on the draft National Regulations has informed changes to clarify requirements and make the Regulations easier to understand and use.</p> <p>The Queensland Government is working with the Australian Government to provide the sector with resources to assist in understanding the new system.</p> <p>Following the finalisation of the National Regulations, a suite of resources will be released to assist services to implement and navigate the National Quality Framework.</p> <p>In addition, the Department of Education and Training will be conducting a series of state-wide information sessions for the sector once the final National Regulations are released.</p> |
| Draft National Regulations                                  | Childcare Queensland | 6       | Draft National Regulations   | Requests the Government delay the adoption of the regulations for two years while the sector works on implementing the Early Years Learning   | <p>The Early Years Learning Framework was developed in 2009 and since its release, services have been provided with a range of information, support and resources to assist them to implement it.</p> <p>In accordance with the COAG</p>  |

| Clause                     | Submitter          | Sub No. | Section / initiative               | Key Points   | DET comments (provided on 6 October 2011)  |
|----------------------------|--------------------|---------|------------------------------------|--|--|
|                            |                    |         |                                    | Framework, growing the staffing pool and until the Australian Government can provide financial assistance for families. Queensland's current regulations are the highest standard in Australia which allows Queensland to bide its time, and learn from those states and territories who will implement immediately. | agreement in December 2009, the Queensland Government is committed to implementing the National Quality Framework from 1 January 2012.<br>Delaying implementation of the National Regulations until 2014 as suggested by CCQ would not have any effect on the cost impacts in Queensland as the first substantial change for Queensland services will be in 2014.<br>In contrast to Queensland's current highly prescriptive legislation, the National Quality Framework focuses assessing and rating each service's performance in relation to delivering positive outcomes for children.   |
| **                         | The Glennie School | 5       | Publication of quality assessments | Rather than commencing at a base level, previous National Childcare Accreditation Council (NCAC) ratings should be published along with the proposed nil rating and 'yet to be assessed' statement.  | At the commencement of the National Law, services transitioning into the system will be required to publish their NCAC accreditation (where they have one) together with their provisional assessment, until such time as they are first assessed and rated under the National Law.  |
| Draft National Regulations | The Glennie School | 5       | Fees for quality assessment        | Supports the quality assessment and rating system; though cautions that the fees for assessment and <i>application for excellent rating</i> need to be reasonable to ensure no disadvantage for smaller, community based services and to encourage centres to work towards excellence.                               | No fees will be payable for an assessment of a service, other than if the provider seeks a re-assessment, or applies to ACECQA for assessment at the highest level. Instead, each service pays an annual administrative fee regardless of when their next assessment is scheduled.<br>Under the Education and Care Services National Law Act 2010, ACECQA is responsible for assessing applications for the 'Excellent' rating. It is anticipated that very few services will meet the criteria for an excellent rating ie "a service demonstrates excellent practice and sector leadership". The fee is payable to ACECQA in recognition of the cost of undertaking the assessment, without being prohibitive for services.<br>ACECQA will have the power to waive or reduce fees payable to it in exceptional circumstances. |

| Clause                             | Submitter  | Sub No. | Section / initiative                          | Key Points  | DET comments (provided on 6 October 2011)  |
|------------------------------------|--|---------|---|---|--|
| <b>CHILDREN WITH SPECIAL NEEDS</b> |  |         |   |   |  |
| Clauses 31 – 37 of Bill            | Queensland Council of Parents and Citizen's Associations | 4       | Division 2 of Bill                            | Will the url data disclosure around disability be used to inform financial assistance to early childhood education services?  | <p>Unit Record Level (URL) data includes information about a child enrolled at a relevant service in an approved kindergarten program, including whether the child has a disability or a long term medical condition.</p> <p>This information is currently collected under the CCA and the provisions have been included in the Bill to ensure that it can continue to be collected for relevant services that will be covered by the National Law.</p> <p>The URL data may be used for quality assuring funding provided to relevant services for approved kindergarten programs; planning for, monitoring of outcomes of, and reporting on, early childhood initiatives; and disclosing the data to the Australian Bureau of Statistics of the Australian Institute of Health and Welfare in accordance with the National Information Agreement on Early Childhood Education and Care.</p> |
|                                    |  |         |   | Children with high support needs present an impost on services, because Australian Government funding for those children is \$12 per hour less than the current wage rate for specialised assistance. | This funding is a matter for the Australian Government and is not affected by the implementation of the NQF.   |
| <b>AFFORDABILITY OF SERVICES</b>   |  |         |   |   |  |
| National Quality Standard          | Childcare Queensland                                     | 6       | Staff qualifications and staff – child ratios | The reforms will inevitably result in increased child care costs.   | <p>The Queensland Government is working hard to ensure the NQF strikes the right balance of enhanced service provision at an affordable price for parents.</p> <p>Although the National Quality Framework (NQF) will be implemented from 1 January 2012, these reforms will not have any impact on child care fees until 2014 when the first substantial change for Queensland services comes into effect. From 2014, long day care services will be required to engage</p>  |

| Clause                    | Submitter            | Sub No. | Section / initiative                          | Key Points  | DET comments (provided on 6 October 2011)  |
|---------------------------|----------------------|---------|---|---|--|
|                           |                      |         |   |   | <p>an early childhood teacher and family day care educators will require a minimum Certificate III qualification.</p> <p>Queensland's roll out of universal access to kindergarten will offset some of the impact of having to employ a teacher for those services eligible for funding under the Queensland Kindergarten Funding Scheme (QKFS).</p> <p>To balance quality and affordability for Queensland families, Queensland has negotiated key concessions in the draft National Regulation such as:</p> <ul style="list-style-type: none"> <li>● Delayed implementation of the improved educator-to-child ratios from 2016;</li> <li>● A special transitional arrangement for services licensed before 1 January 2011 that can justify the use of a 1:5 ratio for children aged 15-24 months, able to continue to use that ratio until 31 December 2017;</li> <li>● Transitional provisions to continue current practices to allow fewer educators to care for children during specified rest periods and rest pauses under certain circumstances; and</li> <li>● Allowing a Diploma qualified educator to backfill an early childhood teacher during short term absences (including annual leave).</li> </ul> |
| National Quality Standard | Childcare Queensland | 6       | Staff qualifications and staff – child ratios | This means parents will leave the workforce, with consequent broader economic effects, or be forced into lower quality child care arrangements. | <p>The Productivity Commission in its draft report on the early childhood workforce does not include substantial analysis of the impact of fee increases on workforce participation and in fact concludes that the exact effects are difficult to quantify. The report also states that "most studies suggest that demand for ECEC is relatively unresponsive to changes in fees".</p> <p>Importantly, the report indicates that in addition to cost, parents will also</p>  |

| Clause                       | Submitter            | Sub No. | Section / initiative                          | Key Points  | DET comments (provided on 6 October 2011)   |
|------------------------------|----------------------|---------|---|---|---|
|                              |                      |         |   |   | consider the educational benefits to their child in determining whether to send their children to early childhood services.   |
| National Quality Standard    | Childcare Queensland | 6       | Staff qualifications and staff – child ratios | Children using services irrespective of parental employment status are also an important consideration – yet their parents do not qualify for Child Care Rebate, making the costs even more prohibitive for them.<br>The Australian Government's reduction in child care rebate (CCR) demonstrates a lack of concern for parents. | Regardless of their employment status, all parents using approved child care services are eligible to apply for assistance with their fees, either through Child Care Benefit or the Child Care Rebate, or both.<br><br>In the 2010–11 Budget, the Australian Government announced changes to the Child Care Rebate, which would be capped at the 2008–09 level of \$7,500 a child (down from current rebate of \$7,778) over the next four years. The Australian Government estimated this would impact less than 700 families nationally (i.e. high income, full time users of care). |
| National Quality Standard    | Childcare Queensland | 6       | Staff qualifications and staff – child ratios | Children from disadvantaged backgrounds are less likely to attend early childhood programs. Increased costs of early childhood education and care services will place them firmly out of reach.   | Under the new needs-based funding scheme for approved kindergarten programs, eligible services can claim extra funding for low income parents holding a Health Care Card to directly offset their out-of-pocket fees.   |
| National Quality Standard    | Childcare Queensland | 6       | Staff qualifications and staff – child ratios | The union representing child care workers is seeking pay increases for members. This will also add to costs for families.   | The Queensland Government is not a party to Award negotiations for the ECEC sector.   |
| <b>VIABILITY OF SERVICES</b> |                      |         |   |   |   |
| National Quality Standard    | Childcare Queensland | 6       | Staff qualifications and staff – child ratios | Viability of centres will be an issue with loss of 30 places per week per centre. Costs will be passed on to parents to cover that loss, to ensure service viability – services are committed to the  | There is no reason to believe that centres which currently have a maximum capacity of 75 places or less at any time will reduce their capacity by 30 places per week. The National Regulations provide much more flexibility, with staffing requirements calculated at the service level, rather than on a room   |

| Clause | Submitter            | Sub No. | Section / initiative | Key Points   | DET comments (provided on 6 October 2011)   |
|--------|----------------------|---------|----------------------|--|---|
|        |                      |         |                      | extent of licensed capacity and return on borrowing  | by room basis.<br>Services may consider reducing places by a small number when new ratios commence in 2016 or may employ additional staff. It is reasonable to assume that services will implement the new ratios in the most efficient way and would not reduce places where demand for those places is strong.  |
|        | Childcare Queensland | 6       |                      | The construction of state kindergartens on school sites has further impacted on utilisation rates for private long day care centres in some areas. | Planning for the development of new kindergarten services takes into account the existing capacity of services in the area, including any long day care centres. The Queensland Kindergarten Funding Scheme and associated promotional campaign encourages parents to enrol their children in an approved kindergarten program, wherever the family can conveniently access it – for example, this could be at a kindergarten located on a school site or at another service such as a long day care centre.<br><br>The National Quality Framework legislation does not impact on this process. |

**CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES**

| Clause No.                 | Source                                | Key Points  | DET comments (Explanatory Notes and comments provided 6 October)  |
|----------------------------|---------------------------------------|---|---|
| s13 and s19 (National Law) | <b>Scrutiny of Legislation report</b> | Considering criminal history may affect rights of individuals to information privacy. | Consideration of the criminal history of a person who proposes to become an approved provider, or a certified supervisor, is critical to ensuring the health, safety and wellbeing of children attending approved education and care services.<br><br>It should also be noted that while the legislation requires that an applicant's criminal history is to be taken into account by the Regulatory Authority, the possession of a criminal history does not necessarily make the person unsuitable to be a provider or supervisor. The National Law ensures that natural justice is observed by providing the applicant with review and appeal rights on the basis of the person's suitability, |



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|  |  |   | 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 and heard by QCAT.  |
| s182<br>(National Law)                     |  | Allows a prohibition notice to be issued where the presence of a particular person on approved child care premises poses an unacceptable risk to children. This could be a breach of individual rights and liberties.   | This is considered justified because it contributes towards safeguarding children attending education and care services. The National Law balances an individual's right with the need to protect children, by requiring that before a prohibition notice is issued the Regulatory Authority must give the person a show cause notice allowing the person to make a written submission. The person may subsequently apply to the chief executive for a cancellation of the prohibition notice. The person also has the right to seek a review of decisions about prohibition notices. |
| s19, s51 (4)<br>and s115<br>(National Law) |  | These sections provide for administrative decision making without providing criteria for making the decision. The sections provide that the Regulatory Authority may grant service and provider approvals and issue supervisor certificates subject to any conditions they determine, or that are provided in the National Regulations (still in draft form). | The potential breach is justified because: <ul style="list-style-type: none"> <li>the power to impose additional conditions is limited, as the National Regulations will prescribe the standard conditions.</li> <li>Any additional conditions would be specific to the applicant.</li> <li>The objectives and guiding principles of the National Law form the basis for any decisions made by the Regulatory Authority</li> <li>Any decisions to impose conditions are reviewable.</li> </ul>  |
| Clause 45<br>(National Law)                |  | Provides that transitional regulations may be made, and may have retrospective effect.  | There is also a lack of specificity about matters for which regulation may be made. However, the development of the National Law and National Regulations has been a complex and complicated process. Given this, it is considered prudent to include the transitional regulation making power in the Bill out of an abundance of caution, in case there is a matter that has not been sufficiently provided for but which is later shown to be critical. The   |

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|  |   |   | provision would expire at the end of two years after commencement.  |
| s165-168   |   | <p>These sections contain a number of offences, of a subjective nature, which may not have been drafted in a sufficiently clear and precise way, making them difficult to prosecute. The offences relate to:</p> <ul style="list-style-type: none"> <li>• inadequate supervision of children (section 165);</li> <li>• use of inappropriate discipline (section 166);</li> <li>• protection of children from harm and hazards(section 167); and</li> <li>• provision of required programs (section 168).</li> </ul> <p>Penalties range from \$5,000 for an individual to \$50,000 in any other case.</p>  | Procedural manuals and other guidance notes will be developed at the national level for use in administering the National Law. It is expected that such documents will provide Regulatory Authorities with direction about the circumstances in which action should be taken in relation to the proposed offences.  |
| <p>Clause 4 of the Bill</p> <p>Part 11 of the National Law</p> | <p><b>Scrutiny of Legislation Secretariat</b></p> <p><b>Committee Secretariat</b></p> | <p><b>Clause 4 would adopt the National Law, as set out in the schedule to the Education and Care Services National Law Act 2010 (Victoria), as the law of Queensland.</b></p> <p><b>Part 11 of the National Law provides for the establishment of a national authority to guide implementation and oversee the operation of the National Law.</b></p> <p>Applying a national law as a law of Queensland, may not have sufficient regard to the institution of Parliament as it may be seen as eroding the sovereign power of the Parliament.</p> <p>The law to be adopted as a law of Queensland upon the enactment of this Bill was not tabled by the minister at the time the bill was tabled. Accordingly, the Queensland Parliament and the people of Queensland were not provided with a readily accessible copy of the National Law, even though the explanatory notes to the legislation indicate that the National Law contains provisions which may be inconsistent with fundamental legislative principles.</p> <p>Similarly, the National Partnership Agreement to be given effect by adoption of the National Law was not tabled. The Committee may wish to invite the Minister to table these.</p> <p>The Committee might also wish to recommend a requirement that amendments to the National Law be tabled in the Queensland Legislative Assembly (as is the case with changes to the National Regulations).</p> <p>It is unclear how the Legislative Assembly will be able to scrutinise amendments to the National Law or National Regulations. In the case of regulations, the National Law provides they will not cease to have effect in any jurisdiction unless</p> | <p>The application of National Law in a State or Territory Parliament for adoption by other participating States and Territories is a standard approach to implementing national legislative schemes, where Constitutional powers rest with States and Territories and not with the Commonwealth. Although the legislation for national schemes may take a number of forms, concerns about abrogating the rights of Parliaments tend to be greatest when, as in this case, the proposed law includes pre-determined legislative provisions based on an agreement between governments.</p> <p>This may be considered as undermining the institution of Parliament. In particular, the establishment of, and conferral of functions upon, a national body (such as the National Authority), may raise a concern about the lack of authority of a State government to respond to, or distance itself from, the actions of a joint Commonwealth and State regulatory authority and the pressure upon Parliaments to merely ratify the legislation.</p> <p>However, the institution of Parliament is sovereign, and the Queensland Parliament will</p> |

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|                            |  | <p>they are disallowed in a majority of jurisdictions.</p>  | <p>ultimately, through debate of the Bill, decide whether the proposed legislation will be passed to enable full implementation of the National Law.</p> <p>This approach is consistent with the protocol for national scheme legislation, and is designed to ensure that national legislation is applied consistently in each participating jurisdiction.</p>  |
| <p>s222 (National Law)</p> |  | <p>The National Law provides that the Ministerial Council may give written directions to the board of the National Authority with respect to the carrying out of the National Authority's functions and to the Regulatory Authorities with regard to administration of the National Quality Framework. There is no requirement to gazette directions.</p> <p>This could be a breach of the FLP about inappropriate delegation of power.</p> | <p>[T]his potential infringement is mitigated because the National Law requires directions of the Ministerial Council to be published in the annual report of the board of the National Authority, which must be tabled in the Parliament of a participating jurisdiction determined by the Ministerial Council and subsequently published on the National Authority's website.</p> <p>In addition, the National Law stipulates that a direction must be consistent with the National Law and cannot be about a particular person or education and care service, or a particular application, approval, notification, assessment or proceeding; or the determination of a rating for a particular education and care service. Further, a Ministerial direction is not a legislative instrument or an instrument of a legislative character.</p> |

## APPENDIX D – COMMITTEE REPORT ON CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

### EDUCATION AND CARE SERVICES NATIONAL LAW (QUEENSLAND) BILL 2011

1. The committee has examined the consistency of the bill with fundamental legislative principles under the *Legislative Standards Act 1992*. It has been necessary for the committee also to examine the *Education and Care Services National Law Act 2010 (Victoria)* as the bill adopts the National Law, set out in the schedule to that Act, as the law of Queensland.
2. The explanatory notes provide (at 2):

*Victoria, as host jurisdiction, developed the legislation and the Education and Care Services National Law Act 2010 (Victoria) was passed by the Victorian Parliament on 5 October 2010. The schedule to that Act sets out the Education and Care Services National Law (the National Law).*

*Under the National Partnership Agreement, the other States and Territories agreed to enact legislation to apply the National Law by reference, with the exception of Western Australia which will pass its own corresponding legislation.*
3. This report outlines potential breaches of the fundamental legislative principles identified during the committee's examination of the bill and the National Law and includes any explanations or justifications provided in the explanatory notes.

#### Sufficient regard to rights and liberties of individuals

##### Rights and liberties

4. **Sections 13 and 109** of the National Law may affect rights of individuals to information privacy. These sections provide that in determining whether an applicant for provider approval or a supervisor certificate is fit and proper, the Regulatory Authority must consider the applicant's criminal history to the extent that it may affect the person's suitability for the role.
5. Justification is provided in the explanatory notes (at 19):

*Consideration of the criminal history of a person who proposes to become an approved provider, or a certified supervisor, is critical to ensuring the health, safety and wellbeing of children attending approved education and care services.*

*It should also be noted that while the legislation requires that an applicant's criminal history is to be taken into account by the Regulatory Authority, the possession of a criminal history does not necessarily make the person unsuitable to be an Approved Provider or a Certified Supervisor. The National Law 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 and heard by QCAT.*
6. **Section 182** of the National Law empowers the Regulatory Authority to issue a prohibition notice to a person involved in providing an approved education and care service, where there may be an unacceptable risk of harm to a child if the person was

allowed to remain on the service's premises, or provide education and care to children.

7. The explanatory notes provide (at 21):

*[T]he power to issue a prohibition notice is considered to be justified because it contributes towards safeguarding children attending education and care services – a guiding principle under the National Law.*

*The National Law balances an individual's rights with the need to protect children from harm by requiring that before giving a person a prohibition notice, the Regulatory Authority must give the person a show cause notice allowing the person to make a written submission. The person may subsequently apply to the chief executive for a cancellation of a prohibition notice. The National Law also provides the person with the right to seek a review of the decision to give the prohibition notice, or a decision to refuse to cancel a prohibition notice.*

### **Administrative power**

8. **Sections 19, 51(4) and 115** of the National Law provide for administrative decision-making without providing criteria for making the decision. These sections provide that the Regulatory Authority may grant service and provider approvals and issue supervisor certificates subject to any conditions they determine or that are provided in the National Regulations.

9. The explanatory notes state (at 20) that:

*[T]his potential breach is justified because:*

- *The power to impose additional conditions is limited, as the National Regulations will prescribe the standard conditions.*
- *Any additional conditions considered necessary by a Regulatory Authority would be specific to the applicant. For instance, where a service operates out of shared premises (e.g. it operates from a community hall which is also used for other purposes) it may be necessary to apply specific conditions to take into account the way the service needs to operate within that environment.*
- *The objectives and guiding principles of the National Law form the basis for any decisions made by the Regulatory Authority, including decisions about the imposition of conditions.*
- *A decision to impose a condition on a provider approval, service approval or supervisor certificate is a reviewable decision. This provides sufficient natural justice if a person considers a condition imposed on their approval or certificate is unjustified.*

### **Retrospective operation**

10. **Clause 45** of the bill would provide that a transitional regulation may be made about a matter which is necessary to facilitate the change from the operation of the *Child Care Act 2002* to the operation of the National Law, if the bill and the National Law do not make sufficient provision for the matter. The transitional regulation may have retrospective effect.

11. The committee examines legislation that would have effect retrospectively to evaluate whether there would be any adverse effects on rights or liberties or whether obligations imposed retrospectively would be unduly onerous. When considering 'sufficient regard', the committee generally examines whether:
  - the retrospective operation would be adverse to people other than the government; and
  - people have relied on and would have legitimate expectations based on the existing law.
12. The explanatory notes provide justification for this transitional regulation-making power (at 16):

*The transitional regulation making power represents a breach of fundamental legislative principles, given its potential for retrospective application and its lack of specificity about the matters for which a regulation may be made. However, the development of the National Law and the National Regulations has been a complex and complicated process. Given this, it is considered prudent to include the transitional regulation making power in the Bill out of an abundance of caution, in case there is a matter that has not been sufficiently provided for, but which is later revealed to be critical. The Bill provides that the provision, together with any transitional regulation made, would expire at the end of two years after commencement of the section.*

*A similar transitional regulation making power has been included in the Children (Education and Care Services National Law Application) Act 2010 (New South Wales), and the Education and Care Services National Law Act 2010 (Victoria).*

#### **Clear meaning**

13. **Sections 165-168** of the National Law contain a number of offences, of a subjective nature, that may not been drafted in a sufficiently clear and precise way, making them difficult to prosecute. These offences relate to:
  - inadequate supervision of children (section 165);
  - use of inappropriate discipline (section 166);
  - protection of children from harm and hazards(section 167); and
  - provision of required programs (section 168).
14. Penalties range from \$5,000 for an individual to \$50,000 in any other case.
15. The explanatory notes address this issue (at 26):

*Procedural manuals and other guidance notes will be developed at the national level for use in administering the National Law. It is expected that such documents will provide Regulatory Authorities with direction about the circumstances in which action should be taken in relation to the proposed offences.*

#### **Sufficient regard to the institution of Parliament**

##### **Institution of Parliament**

16. **Clauses 4** would adopt the National Law, as set out in the schedule to the *Education and Care Services National Law Act 2010* (Victoria), as the law of Queensland.

17. **Part 11** of the National Law provides for the establishment of a national authority to guide implementation and oversee the operation of the National Law.
18. This approach, of applying a national law as a law of Queensland, may not have sufficient regard to the institution of Parliament as it may be seen as eroding the sovereign power of the Parliament.
19. The committee notes that the law to be adopted as a law of Queensland upon the enactment of this bill was not tabled by the minister at the time the bill was tabled. Accordingly, the Queensland Parliament and the people of Queensland were not provided with a readily accessible copy of the National Law, even though the explanatory notes to the legislation indicate that the National Law contains provisions which may be inconsistent with fundamental legislative principles.
20. The minister is invited to table a copy of the Education and Care Services National Law.
21. Where the Queensland Legislative Assembly is considering the enactment of legislation which is to be uniform with the legislation of one or more other Australian Parliaments, the committee's report on its examination of the legislation aims to assist the Legislative Assembly in the 'enhanced and investigative role' necessary in relation to such legislation.<sup>17</sup> This role is required because the legislatures participating in uniform or complementary legislation:<sup>18</sup>
  - provide the legislative underpinning for the whole process;
  - provide a forum for discussion of intergovernmental matters and for asking questions about them from the major executive participants; and
  - have an investigative role which may be used to study the need for, and the goals of, intergovernmental cooperation, as well as the performance of the relevant agencies, and the appropriateness of existing intergovernmental agreements.
22. The explanatory notes provide the following information to assist consideration of these matters (at 9):

*The application of National Law in a State or Territory Parliament for adoption by other participating States and Territories is a standard approach to implementing national legislative schemes, where Constitutional powers rest with States and Territories and not with the Commonwealth. Although the legislation for national schemes may take a number of forms, concerns about abrogating the rights of Parliaments tend to be greatest when, as in this case, the proposed law includes pre-determined legislative provisions based on an agreement between governments.*

*This may be considered as undermining the institution of Parliament. In particular, the establishment of, and conferral of functions upon, a national body (such as the National Authority), may raise a concern about the lack of authority of a State government to respond to, or distance itself from, the actions of a joint*

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<sup>17</sup>Gerard Carney, *The Constitutional Systems of the Australian States and Territories* (2006) 20.

<sup>18</sup>Campbell Sharman, 'Parliaments and Commonwealth-State relations' in JR Nethcote (ed), *Parliament and Bureaucracy* (1982) 284.

*Commonwealth and State regulatory authority and the pressure upon Parliaments to merely ratify the legislation.*

*However, the institution of Parliament is sovereign, and the Queensland Parliament will ultimately, through debate of the Bill, decide whether the proposed legislation will be passed to enable full implementation of the National Law.*

23. The committee notes with concern the apparent absence from the legislation of a requirement that amendments to the National Law be tabled in the Queensland Legislative Assembly. Whereas Ministerial Council members are required to make arrangements to table National Law regulations in their respective jurisdictions.
24. The committee invites the minister to provide information about the practical ability of the Legislative Assembly to subject such amendments to its scrutiny.
25. **Section 303(4)** of the National Law provides that while the Parliaments of participating jurisdictions retain the power to disallow regulations made under the National Law, the disallowed regulation does not cease to have effect unless it is disallowed in a majority of jurisdictions.
26. The explanatory notes address this issue (at 10):

*This approach is consistent with the protocol for developing national scheme legislation, and is designed to ensure that national legislation is applied consistently in each participating jurisdiction.*

#### **Delegation of legislative power**

27. **Section 222** of the National Law provides that the Ministerial Council may give written directions to the board of the National Authority with respect to the carrying out of the National Authority's functions and to the Regulatory Authorities with respect to the administration of the National Quality Framework. The Ministerial directions must be complied with. In the absence of a requirement to gazette directions, section 222 may permit an inappropriate delegation of legislative power.
28. The explanatory notes provide justification (at 15):

*[T]his potential infringement is mitigated because the National Law requires directions of the Ministerial Council to be published in the annual report of the board of the National Authority, which must be tabled in the Parliament of a participating jurisdiction determined by the Ministerial Council and subsequently published on the National Authority's website.*

*In addition, the National Law stipulates that a direction must be consistent with the National Law and cannot be about a particular person or education and care service, or a particular application, approval, notification, assessment or proceeding; or the determination of a rating for a particular education and care service. Further, a Ministerial direction is not a legislative instrument or an instrument of a legislative character.*



### Explanatory notes

29. Part 4 of the *Legislative Standards Act* relates to explanatory notes. Subsection 22(1) states that when introducing a Bill in the Legislative Assembly, a member must circulate to members an explanatory note for the Bill. Section 23 requires an explanatory note for a bill to be in clear and precise language and to include the bill's short title and a brief statement providing certain information.
30. Explanatory notes were tabled with the introduction of the bill. They are clear and precise and contain the information required by section 23.