



Australian Capital Territory

Education and Care Services National Law (ACT) Act 2011

A2011-42

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Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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Australian Capital Territory

Education and Care Services National Law (ACT) Act 2011

A2011-42

An Act to apply a national law relating to the regulation of education and care services for children

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Education and Care Services National Law (ACT) Act 2011*.

2 Commencement

- (1) This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

- (2) If this Act has not commenced within 2 years beginning on its notification day, it automatically commences on the first day after that period.
- (3) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act.

Note 2 A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Terms used in Education and Care Services National Law (ACT)

Terms used in this Act and also in the Education and Care Services National Law set out in the schedule to the Victorian Act have the same meaning in this Act as they have in that Law.

5 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

Part 2 Adoption of National Law

6 Adoption of Education and Care Services National Law

- (1) Subject to this section, the Education and Care Services National Law, as in force from time to time, set out in the schedule to the Victorian Act—
 - (a) applies as a territory law; and
 - (b) as so applying may be referred to as the Education and Care Services National Law (ACT); and
 - (c) so applies as if it were part of this Act.
- (2) A law that amends the Education and Care Services National Law set out in the schedule to the Victorian Act and is passed by the Victorian Parliament after this Act's notification day must be presented to the Legislative Assembly not later than 6 sitting days after the day it is passed.
- (3) The amending law may be disallowed by the Legislative Assembly in the same way, and within the same period, that a disallowable instrument may be disallowed.

Note See the Legislation Act, s 65 (Disallowance by resolution of Assembly).
- (4) If the amending law is not presented to the Legislative Assembly in accordance with subsection (2), or is disallowed under subsection (3), the Education and Care Services National Law applying under subsection (1) is taken—
 - (a) not to include the amendments made by the amending law; and
 - (b) to include any provision repealed or amended by the amending law as if the amending law had not been made.
- (5) Section 303 (4) (Parliamentary scrutiny of national regulations) of the Education and Care Services National Law set out in the schedule to the Victorian Act does not apply as a territory law.

7 Exclusion of territory laws

- (1) The following territory laws do not apply to the *Education and Care Services National Law (ACT)* or to the instruments made under that Law:
- (a) the *Criminal Code 2002*;
 - (b) the *Freedom of Information Act 1989*;
 - (c) the *Legislation Act 2001*.
- (2) The following territory laws do not apply to the *Education and Care Services National Law (ACT)* or to the instruments made under that Law, except to the extent that that Law and those instruments apply to the Regulatory Authority and the employees, decisions, actions and records of the Regulatory Authority:
- (a) the *Annual Reports (Government Agencies) Act 2004*;
 - (b) the *Auditor-General Act 1996*;
 - (c) the *Financial Management Act 1996*;
 - (d) the *Ombudsman Act 1989*;
 - (e) the *Public Sector Management Act 1994*;
 - (f) the *Territory Records Act 2002*.

8 Meaning of generic terms in Education and Care Services National Law for this jurisdiction

In the *Education and Care Services National Law (ACT)*:

child protection law means the *Children and Young People Act 2008*.

Note A reference to a law includes a reference to the statutory instruments made or in force under the law (see *Legislation Act*, s 104).

de facto relationship means a domestic partnership.

magistrate means a Magistrate under the *Magistrates Court Act 1930*.

public authority means a body established for a public purpose under an Act.

registered teacher means a registered teacher under the *ACT Teacher Quality Institute Act 2010*.

superior court means the Supreme Court.

this jurisdiction means the Australian Capital Territory.

9 Relevant tribunal or court

For the definition of *relevant tribunal or court* in the *Education and Care Services National Law (ACT)*, section 5—

- (a) the Magistrates Court is the relevant court or tribunal for that Law, section 181; and
- (b) the ACAT is declared to be the relevant court or tribunal for that Law, part 8.

10 Regulatory Authority

For the definition of *Regulatory Authority* in the *Education and Care Services National Law (ACT)*, section 5, the chief executive is the Regulatory Authority.

11 Children's services law

For the definition of *children's services law* in the *Education and Care Services National Law (ACT)* the *Children and Young People Act 2008*, chapter 20 is a children's services law.

12 Education law

For the definition of *education law* in the *Education and Care Services National Law (ACT)*, section 5, the *Education Act 2004* is an education law.

13 Former education and care services law

For the definition of *former education and care services law* in the *Education and Care Services National Law (ACT)*, section 5—

- (a) the *Children and Young People Act 2008*, chapter 20, is a former education and care services law; and
- (b) the *Education Act 2004* is a former education and care services law.

14 Infringements law

For the definition of *infringements law* in the *Education and Care Services National Law (ACT)*, section 5, the *Magistrates Court Act 1930*, part 3.8 is an infringements law.

15 Public sector law

For the definition of *public sector law* in the *Education and Care Services National Law (ACT)*, section 5, the *Public Sector Management Act 1994* is a public sector law.

16 Working with children law

For the definition of *working with children law* in the *Education and Care Services National Law (ACT)*, in section 5, the *Working with Vulnerable People (Background Checking) Act 2011* is a working with children law.

17 Working with vulnerable people law

For the definition of *working with vulnerable people law* in the *Education and Care Services National Law (ACT)*, section 5, the *Working with Vulnerable People (Background Checking) Act 2011* is a working with vulnerable people law.

18 Penalty at end of provision

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

Part 3 Miscellaneous

19 Regulation-making power

The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Part 4 Transitional

20 Definitions—pt 4

In this part:

childcare services standards—see the *Children and Young People Act 2008*, section 887 (2) (e).

government preschool means a government preschool established under the *Education Act 2004*, section 20.

licensed childcare service—see the *Children and Young People Act 2008*, section 728.

21 Transitional definitions

- (1) For the definition of *declared approved family day care service* in the *Education and Care Services National Law (ACT)*, section 305, a family day care scheme that was a licensed childcare service is a declared approved family day care service.
- (2) For the definition of *declared approved provider* in the *Education and Care Services National Law (ACT)*, section 305—
 - (a) a person who was a licensed proprietor of a licensed childcare service is a declared approved provider; and
 - (b) the director-general responsible for the administration of the *Education Act 2004* is a declared approved provider.
- (3) For the definition of *declared approved service* in the *Education and Care Services National Law (ACT)*, section 305—
 - (a) a service that was a licensed childcare service is a declared approved service; and
 - (b) a government preschool is a declared approved service.

- (4) For the definition of ***declared certified supervisor*** in the *Education and Care Services National Law (ACT)*, section 305, a person is a declared certified supervisor if—
- (a) the person held any of the following positions mentioned in the childcare services standards:
 - (i) qualified service director, designated qualified team leader or qualified primary contact staff member of a licensed childcare service providing centre based care;
 - (ii) qualified service director or qualified service coordinator of a licensed childcare service providing school aged care;
 - (iii) qualified staff member of the coordination unit for a licensed childcare service providing family day care;
 - (iv) qualified senior teacher or qualified teacher of a licensed childcare service operating an independent preschool; and
 - (b) the person held, or had completed the requirements for, the qualification required under the childcare services standards for the position.
- (5) For the definition of ***declared compliance notice*** in the *Education and Care Services National Law (ACT)*, section 305, a compliance notice issued under the *Children and Young People Act 2008*, chapter 20, is a declared compliance notice.
- (6) For the definition of ***former approval*** in the *Education and Care Services National Law (ACT)*, section 305—
- (a) a childcare service licence issued under the *Children and Young People Act 2008*, chapter 20, is a former approval; and
 - (b) the establishment of a government preschool under the *Education Act 2004*, section 20, is a former approval.

22 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything else in this Act or another territory law.
- (4) This section expires 1 year after the day it commences.

23 Expiry—pt 4

This part expires 3 years after the day it commences.

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- chief executive (s 163)
- domestic partnership (s 169 (2))
- Magistrates Court
- Supreme Court
- territory law.

Education and Care Services National Law (ACT) means the provisions applying in this jurisdiction because of section 6.

Victorian Act means the *Education and Care Services National Law Act 2010* (Vic).

Note 1 The Victorian Act is accessible at www.legislation.vic.gov.au.

Note 2 A reference to a law (including a Victorian Act) includes a reference to the law as originally made and as amended (see Legislation Act, s 102).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 7 April 2011.

2 Notification

Notified under the Legislation Act on 3 November 2011.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Education and Care Services National Law (ACT) Bill 2011, which was passed by the Legislative Assembly on 25 October 2011.

Clerk of the Legislative Assembly

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