



CHILDREN'S SERVICES AMENDMENT BILL 2019

CONTEXT OF THE BILL

Early childhood services in Victoria are currently regulated either under the Children's Services Act 1996 (CS Act) or under the National Quality Framework (NQF). The NQF provides a national approach to regulation of education and care services across Australia, and in Victoria covers 4,200 long day care, family day care, preschool and outside school hours care services.

Currently, about 350 (8 per cent of) regulated children's services in Victoria remain out of scope of the NQF and are licensed under the CS Act. Most of these services provide occasional care, where children attend for short periods of time, for example up to five hours of care per day in a service operating in a Neighbourhood House, or two hours of care in a gym or leisure centre.

It is important that services in the occasional care sector are underpinned by a quality, contemporary regulatory framework. This reform follows a national decision to keep occasional care services outside the NQF.

WHAT DOES THE BILL DO?

The Bill aims to ensure a consistent and contemporary regulatory regime for all regulated early childhood services operating in Victoria, regardless of which regulatory regime applies.

The CS Act and the Education and Care Services National Law (National Law) contain the architecture of the licensing frameworks, requirements for provider accountability and oversight of services, principles for the safety, health and wellbeing of children, and the regulator's powers and duties.

The Bill amends the Children's Services Act 1996 (CS Act) to align it with the regulatory regime in the National Quality Framework (NQF), where appropriate. The proposed reform is to be implemented in May 2020.

DETAILS OF THE BILL

The two regulatory regimes are similar but not consistent. The Bill better aligns the two regimes to simplify regulatory arrangements and ensure more consistent minimum standards. The reform has potential to realise benefits for the sector as well as the regulatory authority.

In addition, the Bill provides an enhanced suite of compliance and enforcement powers to the regulator that will include the additional power to prohibit an individual from working in children's services if they pose an unacceptable risk of harm to children.

The Bill has no impact on staffing and premises requirements, which are in the Children's Services Regulations, not the CS Act.

CONSULTATION

Sector consultation at group information sessions across Victoria in May and June 2019 indicated broad support for aligning the CS Act with the National Law. Feedback noted that it would be easier for providers operating under both regimes to comply with consistent requirements.

In addition to the public consultation sessions, key stakeholders, including peak bodies and larger multi-service providers, were consulted directly via meetings (Early Learning Association Australia, Municipal Association of Victoria, Community Child Care Association, YMCA and Neighbourhood Houses Victoria) and forums such as the Early Childhood Education and Care Regulatory Reference Group and the Victorian Children's Council.

The Bill has no implications for industrial relations. The Australian Education Union and United Voice Victoria have been informed, and have not raised any concerns.

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Examples of alignment of *Children's Services Act 1996* with the Education and Care Services National Law[^]

Area of change	CS Act*	National Law [^]	Result/Example
Licensing and Approvals			
Terminology	Licensee, children's service	Approved provider, service approval	Consistent terminology under both schemes.
Assessment and approval processes for service approval	There is a two-step application process for premises.	There is an integrated, one-step application process for service approval.	A single application reduces red tape and time for applicant and enables regulatory authority to consider all relevant matters about the service premises together.
Provider approvals – suitability of applicant	Licensees must be fit and proper persons.	Approved providers must be fit and proper persons. Matters for the Regulatory Authority to consider in granting provider approval are more comprehensive.	There are more explicit requirements to consider fitness and propriety of an applicant, e.g. the applicant's past conduct under other relevant laws.
Provider approvals – flexibility to operate multiple services	Every service must have a separate licence. A licensee must make a separate licence application for each service. A licensee can only operate children's services under the CS Act.	An approved provider can operate multiple services under a single provider approval. An approved provider can operate NQF# services and 'approved associated children's services' (AACS).	Provider approvals will be equivalent under both schemes – an approved provider under CS Act can operate multiple services under the CS Act. An approved provider under the NQF will be able to operate services under both regimes without having to obtain a second provider approval under the CS Act, reducing regulatory burden.
Licensing approach	Fixed term licences of up to 5 years have to be renewed on application and payment of fee.	Perpetual service approval with annual fee payable on invoice. Service approval be suspended or cancelled by the Regulatory Authority at any time.	There is reduced red tape as a provider no longer needs to re-apply for a licence.
Licence transferability	Licences are not transferable between licensees.	Services can be transferred between approved providers (subject to approval/intervention power of Regulatory Authority).	There is greater market flexibility for approved providers.
Approved Associated Children's Services (AACS)	Not applicable.	An approved provider operating a service under the NQF may operate a service under the CS Act at the same location, and must comply with the CS Act.	Following alignment, the AACS model will be redundant in Victoria. Approved providers under the NQF will be able to operate separate services under both regulatory regimes, and enjoy the same flexibility as under the AACS model, such as reciprocal recognition of supervisors.

*Children's Services Act 1996

[^]National Law

#National Quality Framework

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Examples of alignment of *Children's Services Act 1996* with the Education and Care Services National Law[^]

Area of change	CS Act*	National Law [^]	Result/Example
Compliance and enforcement			
Additional compliance and enforcement powers	There are powers of entry, search and seizure; the power to obtain information and documents; the power to issue notices to enforce requirements; the power to take emergency action; the ability to impose conditions on licences and the power to suspend or cancel a licence.	There are additional powers not available under CS Act including the power to prohibit unsuitable persons from working in the sector, and enforceable undertakings (explained below).	Although rarely needed, the suite of compliance and enforcement powers currently available in the NQF will provide a greater range of options for the Regulatory Authority.
Enforcement: alternative to prosecution	Not applicable.	There are enforceable undertakings when a non-compliant provider enters a voluntary binding agreement to undertake tasks to settle contravention of the law.	A non-compliant provider can be offered an alternative to prosecution. This helps bring a provider into compliance by reducing time, expense and the uncertainty of court proceedings.
Enforcement: approach to unsuitable individuals	Not applicable	A prohibition notice can be issued to prevent an individual from working in the sector if they present an unacceptable risk of harm to a child or children, or to prevent a person who is not fit and proper from being a nominated supervisor.	Unsuitable individuals can be prohibited from working in the sector. Prohibited status information is available to potential employers, thereby ensuring the safety, health and wellbeing of children.
Operational Requirements			
Powers to exempt services from regulatory requirements	The Minister for Education has a non-delegable power of exemption. The Secretary, Department of Education and Training has a non-delegable limited power to exempt services from staffing requirements.	The Regulatory Authority has power to exempt services from certain matters prescribed in regulations, generally staffing and premises requirements. This power can be delegated to appropriate senior officers in the Regulatory Authority.	The Minister's exemption power will remain. Powers can be delegated to approved senior officers to waive prescribed requirements for individual services to improve flexibility and respond to sector needs.
Key personnel	Requirements to have primary nominees, nominees and responsible persons.	Requirements to have nominated supervisors and persons in day-to-day charge. Prescribed matters to be taken into account when appointing persons.	Fundamentally the same, but more explicit requirements in the NQF will apply to the due diligence to be undertaken by approved provider in appointing people to these roles.
Educational program	Must provide an educational or recreational program based on the developmental needs, interests and experiences of each child, that is designed to take into account the individual differences of those children, and that enhances each child's development. Current recommended practice is for program to be based on either the Victorian or the national approved learning framework.	Must provide a program based on an approved learning framework under the NQF, that is delivered in a manner that accords with the approved learning framework, is based on the developmental needs, interests and experiences of each child, and which is designed to take into account the individual difference of each child.	Requirement will be strengthened through becoming explicit that the program must be based on an approved learning framework. The current approved learning frameworks are: Victorian Early Years Learning and Development Framework Belonging, Being and Becoming: The Early Years Learning Framework for Australia My Time, Our Place: Framework for School Age Care in Australia.

*Children's Services Act 1996

[^]National Law

#National Quality Framework