



Government of **Western Australia**
Department of **Culture and Arts**
State Records Office of Western Australia

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Hon Nigel Hallett MLC
Deputy Chairman
Standing Committee on Uniform Legislation and Statutes Review Committee
Legislative Council
Parliament House
PERTH WA 6000

Dear Nigel

Inquiry into Education and Care Services National Law (WA) Bill 2011

Thank you for the opportunity to comment on the above Bill.

Please find attached my submission.

Please do not hesitate to contact my officer, Martin Fordham, should you have any queries or require clarification.

Yours sincerely

Cathrin Cassarchis
State Archivist and Executive Director State Records

Standing Committee on Uniform Legislation and Statutes Review

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Education and Care Services National Law (WA) Bill 2011

While I do not wish to discuss the purpose and structure of the national scheme for the regulation of education and care services for children proposed under the *Education and Care Services National Law (WA) Bill 2011* (the Bill), I would like to raise an issue with respect to the records created, received or otherwise managed in the performance of the functions by the various bodies under the Bill.

Background

The *State Records Act 2000* (WA) provides for the keeping of State records and for related purposes. Under the *State Records Act 2000* every government organization in Western Australia is required to have a Recordkeeping Plan (including a Records Retention and Disposal Schedule) approved by the State Records Commission of WA.

The Bill provides for a nationally consistent, integrated approach to regulation and quality improvement for education and care services. To the extent that the education and care services for children are currently regulated under existing Western Australian legislation, the Western Australian government organization/s performing the regulatory functions are already covered by approved Recordkeeping Plans and Records Retention and Disposal Schedules, in accordance with the *State Records Act 2000*.

It is against this background, and on my interpretation of the Bill as drafted, that I provide the following comment on the possible extent and application of some its provisions.

Comment

The Bill establishes the Australian Children's Education and Care Quality Authority (the National Authority) and provides it certain functions.

Clause 5 provides that the *State Records Act 2000* (among other Acts of the Western Australian jurisdiction) does not apply to the Bill except to the extent that the Bill is applicable to the Regulatory Authority and the employees, decisions, actions and records of the Regulatory Authority.

Clause 8 provides that the chief executive officer of the Department principally assisting in the administration of the *Child Care Services Act 2007* is declared to be the regulatory authority for this jurisdiction for the purposes of the Bill.

Clause 265 provides for the *State Records Act 1998* of New South Wales to apply as a law of a participating jurisdiction for the purposes of the National Quality Framework except to the extent that the Bill applies to a Regulatory Authority and the records of a Regulatory Authority.

Therefore, it would be my understanding that the *State Records Act 2000* (WA) applies to the Regulatory Authority performing its functions as provided by the Bill in the Western Australian jurisdiction and the *State Records Act 1998* (NSW) applies to all else, such as, to the National Authority.

This recordkeeping oversight arrangement is similar to that provided in the *Occupational Licensing National Law (WA) Bill 2010*, except that Bill provided for the *Archives Act 1983* of the Commonwealth to apply as a law in Western Australia for the purposes of the national licensing system, with the proviso that the *Archives Act 1983* does not apply to WA state entities performing the regulatory functions as delegated, in which case the *State Records Act 2000* applies to those WA state entities performing the delegated regulatory functions.

The Committee will be aware of the Western Australian Information Commissioner's concerns about the disparate oversight mechanisms adopted, or at least proposed, in national schemes legislation, as outlined in his Issues Paper *COAG Regulatory Reform Agenda: Potential Impact on State Oversight Laws and Mechanisms*, submitted to the Committee's inquiry into the *Criminal Investigation (Cover Powers) Bill 2011*.

In the Issues Paper, the Information Commissioner provided an outline of four different options or models under consideration for oversight arrangements for heavy vehicle regulation and suggested that although each of the models has drawbacks, that model 4 has merit which warrants closer consideration. I would suggest that the recordkeeping oversight arrangements proposed in the Bill appear to be consistent with that proposed in model 4 and to that extent I am satisfied with the Bill's recordkeeping oversight arrangements as drafted.

In regard to the Committee's invitation that as part of my submission I comment on the impacts of the Bill on Western Australia's parliamentary sovereignty and law-making powers, I respectfully decline.