

***Children (Education and Care Services National Law Application)  
Amendment Bill 2025 (NSW)***

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**The Independent Education Union of Australia NSW/ACT Branch**

The Independent Education Union of Australia NSW/ACT Branch (**IEU**) welcomes the opportunity to contribute to the Inquiry into the early childhood education and care (**ECEC**) sector in NSW. The IEU represents university educated teachers employed in ECEC services in NSW, including community-based preschools, long day care and occasional care centres. We also represent teachers and support staff in non-government schools and post-secondary services in the non-government sector in NSW and the ACT. At the time of lodging its submission, IEU has approximately 31,000 members.

## OVERARCHING PRINCIPLE

The *Children (Education and Care Services National Law Application) Amendment Bill 2025 (NSW)* (**the Bill**) introduces sweeping child-safety reforms in early childhood education and care. It implements key recommendations of the recent Wheeler Review and national agreements, with the stated aim to “put the rights and best interests of children above all else”. The central innovation is a “paramountcy” principle: all decisions and powers must prioritise children’s safety and best interests above provider interests.<sup>1</sup> In theory, this means if children’s interests conflict with commercial or other concerns, the child’s safety prevails.

### IEU comment

To effectively protect the safety and best interests of young children attending early learning, it is imperative to ensure staffing levels are adequate.

Staff have a myriad of responsibilities. These include:

- supervising children in all indoor and outdoor areas
- planning for, documenting, and evaluating individual children’s learning
- communicating with families
- providing individual support for children with developmental disabilities
- addressing extremely challenging behaviour by children
- documenting and supporting children’s medical needs, including life-threatening conditions such as asthma and anaphylaxis
- engaging with the local community
- ensuring Aboriginal and Torres Strait Islander perspectives are embedded in the curriculum
- ensuring that all incidents are documented and that families and the regulatory authority are notified as necessary
- completing funding applications for children with additional needs
- conducting regular head counts
- conducting checks on infants sleeping every 15 minutes, and
- assisting children with toileting, nappy changes, mealtimes, and other needs.

A crucial factor in child safety is adequate staffing ratios, an issue often within the control of providers rather than nominated supervisors. Despite the crucial and urgent need for staffing reform, the issue of staff-to-child ratios remain unaddressed in the Amendment Bill.

The union considers staff-to-child ratios should be reviewed; for example, to ensure that one adult is never left alone with a group of children. If one staff member leaves a group of 20 children to assist one child in the bathroom, that leaves one adult alone with 19 children. Another example is that line of sight supervision should be possible from another room when an adult is alone with a child in the bathroom.

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<sup>1</sup> Bill s 3A

## **EXPANDED REGULATORY POWERS AND TRANSPARENCY**

The Bill also responds to specific safety issues by increasing the Regulatory Authority's powers to suspend services, revoke quality ratings or supervise educators, expanding transparency (public compliance histories, whistleblower safeguards), and tightening provider obligations (stricter approval conditions, higher fines, mandatory training, and more offences).

### **IEU comment**

Several of these measures will substantially increase the workload, stress and burnout of an already-struggling understaffed workforce. The Bill appears to place a greater emphasis on enforcement and substantial increases to financial penalties for non-compliance, instead of taking a preventative approach to child safety.

## **INCREASED REGULATORY OVERSIGHT**

The Regulatory Authority gains new tools to oversee providers and staff. For example, it can suspend or revoke a service's quality rating during or after an investigation,<sup>2</sup> and can direct an approved provider to supervise a staff member (if a child-safety risk is identified).<sup>3</sup> The Education Minister and Regulatory Authority may also issue binding safety directions to providers in urgent cases (e.g. banning mobile phones or ordering service closures during hazards).<sup>4</sup> These new powers are intended to allow immediate, sector-wide actions in emergencies (for example, imposing compulsory child-safety training or other conditions).

### **IEU comment**

The IEU supports these actions in principle, subject to some reservations outlined below.

## **DISPLAY OF QUALITY AND COMPLIANCE HISTORY AND OWNERSHIP**

Approved providers will be required to display and publish more information relating to their service. Notably, each service must post its "quality and compliance history" on site (in a form approved by the Regulatory Authority).<sup>5</sup> In addition, providers must also disclose and update the names of any related entities or controlling persons to the Regulatory Authority, and clearly show their ownership structure on premises, websites, and in all promotions.<sup>6</sup>

### **IEU comment**

The union supports greater transparency regarding quality and compliance history.

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<sup>2</sup> Bill s 138A

<sup>3</sup> Bill s 178A

<sup>4</sup> Bill ss 223B, 261A

<sup>5</sup> Bill s 172(3)

<sup>6</sup> Bill s 19(2)(d)

## **PUBLICATION OF ENFORCEMENT ACTIVITY**

The Bill explicitly allows the Regulatory Authority to publicise enforcement activity. It may publish details of current investigations, compliance directions and penalties issued to services.<sup>7</sup> In keeping with these transparency goals, the Regulatory Authority must also publish any ministerial orders or directions in the NSW Government Gazette or on the NSW legislation website.<sup>8</sup>

### **IEU comment**

The IEU supports these measures in relation to compliance directions and penalties. In respect of current investigations, the union would be concerned that publicity in relation to unproven allegations against a named employee would be very damaging to the reputation of the employee and could interfere with an investigation. If a person has been charged with a criminal offence, the police already have power to report that to the media.

## **PROTECTED DISCLOSURES**

The amendments bolster legal protection for staff who report safety concerns. They expand the definition of “protected disclosures”,<sup>9</sup> and “serious detrimental action”,<sup>10</sup> and allow courts to grant injunctions or damages if an employee suffers reprisal for reporting.<sup>11</sup> The expanded protections mean teachers and educators can more safely report suspected child abuse or serious breaches without fear of retaliation. In practice, this may encourage staff to use internal “protected disclosure” channels or report directly to the Regulatory Authority if needed, knowing the law explicitly prohibits reprisals.

### **IEU comment**

The union strongly welcomes these measures. Members have previously raised concerns that although they are aware of their reporting obligations and centre policies may appear compliant with the regulations, they have been discouraged from, and punished for, reporting and have faced serious consequences for making reports to the Regulatory Authority. These consequences have included being reprimanded in front of colleagues, being personally blamed for breaches/incidents and experiencing roster changes reducing their hours of work.

The union considers we will be able to assist members in using these protections.

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<sup>7</sup> Bill s 270(5)

<sup>8</sup> Bill s 219A(4)

<sup>9</sup> Bill s 297

<sup>10</sup> Bill Part 14, Division 7, Subdivision 2

<sup>11</sup> Bill s 300A

## **STRICTER APPROVAL CONDITIONS**

The Bill narrows who may seek provider or service approval. It excludes certain ineligible persons (as defined) and imposes a cooling-off period on applicants previously refused approval. For instance, anyone who was refused a provider or service approval in the past 12 months cannot reapply unless the Regulatory Authority explicitly permits it.<sup>12</sup>

Approved providers will face stringent ongoing conditions. Every provider approval will be granted “*subject to*” key conditions:<sup>13</sup> they must comply with all National Law provisions and regulations; they must disclose to the Regulatory Authority the identity of any related entities or owners and immediately report any changes. The grounds for cancelling a provider or service approval are broadened and regulatory actions (refusals or cancellations) for child-safety reasons now cannot be internally reviewed if based on “unacceptable risk”, meaning some emergency decisions (eg cancelling a licence to protect children) are final.<sup>14</sup>

### **IEU comment**

The union supports each of the above provisions.

## **NEW AND AMENDED OFFENCES**

Part 6 of the Act (ss 161 – 175) contains a list of offences applying variously to approved providers, nominated supervisors, employees and volunteers. The Bill introduces several new offences and greatly increases penalties for breaches of the law. All penalties are substantially higher (often 3-10 times previous rates) and scale by provider size (large providers face up to 900% of the base fine).

A few examples include:

- Proposed s 162A of the Bill requires that an approved provider and nominated supervisor must ensure that each employee or volunteer has completed child protection training in accordance with the government protocol. Training is also dealt with in s 169A of the Bill.

There is no requirement as to how often the training must be completed and how it applies to casual employees or volunteers. A breach of s 162A or s 169A of the Bill by the nominated supervisor attracts a penalty of \$17,000.

- The Bill amends s 165(2) of the Act to provide that if a nominated supervisor does not ensure that all children are adequately supervised at all times, there is a penalty of \$34,200.

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<sup>12</sup> Bill s 10(1)

<sup>13</sup> Bill s 19(2)

<sup>14</sup> Bill ss 190(2), 192(2)

- The Bill amends s 166 of the Act which provides that the nominated supervisor must ensure no corporal punishment is used and that any discipline is not unreasonable. It is also an offence for an employee or volunteer to use corporal punishment or unreasonable discipline. The penalty in each case is increased under the Bill to \$34,200.
- The Bill provides for a new offence under s 166A of subjecting a child to inappropriate conduct. A failure by the nominated supervisor to either ensure there is no inappropriate conduct, or any action by an employee or volunteer of subjecting a child to inappropriate conduct, both attract a proposed penalty of \$34,200.

### **General IEU comments on offences**

The IEU does not support these changes.

The union considers the size of the penalties imposed personally on volunteers, employees and nominated supervisors is unfair.

We are particularly concerned about the implications of these proposals on low-income employees. Modern awards provide for a maximum salary for an experienced teacher who is director of a large centre of around \$110,000 with less experienced directors or director of smaller centres being paid less. An educator (ie not a qualified teacher) who is the nominated supervisor could earn a maximum of around \$90,000 under the relevant modern award.

In some cases, the nominated supervisor may not have direct control over staffing ratios and hiring decisions and may not have line of sight supervision of staff at all times (including when on leave). It is important to note that an employee appointed as a nominated supervisor is considered to hold that role even when they are on leave or absent from the centre and the offences are strict liability in that there is no necessity to prove intent (or even knowledge).

The tripling of maximum monetary penalties, with many fines as high as \$34,000 for individual employees, creates a substantial financial risk that is disproportionate to their income, their capacity to pay, and in some cases their culpability.

This is likely to undermine workforce participation and morale.

For providers, the substantial increase in fines, which can exceed \$500,000 for large providers and significant amounts for smaller providers, may threaten their operational viability. This contrasts starkly with larger providers such as G8, which would not be seriously impacted by such a fine as their net profit in 2024 was \$65 million.

Even smaller administrative breaches (eg failing to display required information) incur substantial new fines. Penalty Infringement Notices (on-the-spot fines) may be issued under s 291(1)(a) of the Bill for roughly double the previous number of offences (now up to 30 specified breaches, increased from 15).

The new laws will significantly increase day-to-day compliance work for educators and providers. We remain concerned that broad powers for regulatory review and suspension may unintentionally penalise providers and nominated supervisors for administration failures rather than unsafe practices, with the potential to further reduce workforce stability and retention.

### **Training (ss 162A and 169A)**

Providers and nominated supervisors must ensure every staff member completes specified child protection training (once regulations prescribe it).<sup>15</sup> Failure is a new offence: providers face fines up to \$86,100 (or \$258,300 for large providers) and nominated supervisors or coordinators each face \$17,100.<sup>16</sup>

### **IEU comment**

The IEU supports the requirement for child protection training to be mandatory, provided that employees are given time during work hours to complete all training deemed mandatory by the Regulatory Authority. However, we note there is no indication that teachers or educators will be provided with time during their normal paid hours to complete this training.

Any such training should be available free of charge and online. Otherwise, there is a risk of creating unequal access to approved training, particularly for those in rural or remote areas. Additional financial and time disincentives, added to the current lack of clarity on approved training providers and course content, would further exacerbate these challenges.

### **Inappropriate conduct (s 166A)**

The Bill explicitly bans any person from subjecting a child to “inappropriate conduct” in an ECEC setting. “Inappropriate conduct” is defined broadly as anything a reasonable person would deem inappropriate (given the child’s age and likely harm).<sup>17</sup> The new definition of inappropriate conduct prohibits a wide range of behaviours that could harm a child. The Bill lists factors to consider (age of child, harm risk, expected practice), but the question of whether something is ‘inappropriate’ is left to a reasonable person test. Providers and nominated supervisors will be required to update behaviour guidance policies and codes of conduct to reflect this explicit legal ban, whilst ensuring employees understand the changes. Any breach by a staff member is a serious offence and intention is irrelevant; all that is called in to question is whether a reasonable person would have considered the conduct inappropriate.

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<sup>15</sup> Bill s 162A

<sup>16</sup> Bill s 169A

<sup>17</sup> Bill s 5AA

### **IEU comment**

In relation to the proposed s 166A, the union is concerned the lack of a clear definition of “inappropriate conduct” may lead to confusion in the sector. For example, “inappropriate conduct” could include actions that are reported despite being taken to prevent harm (such as raising one’s voice when a child is about to hurt themselves or others), notifications based on subjective opinion that may not meet the threshold of “inappropriate conduct”, and the potential for manipulation or control of staff on the part of some employers.

Further, any potential benefits may be undermined if approved providers and nominated supervisors are reluctant to report teachers and educators for inappropriate conduct as they themselves can be fined substantial amounts of money for not preventing such conduct from occurring.

### **Working With Children Check (s 174AA)**

Early childhood teachers and educators must now inform their employer within 24 hours if their Working With Children Check (**WWCC**) or teaching registration is refused, cancelled or suspended.<sup>18</sup> Approved providers in turn must notify the Regulatory Authority of such events.<sup>19</sup> These notification duties are new offences: an educator’s failure to report (in writing) a WWCC bar; cancellation or accreditation loss attracts a \$13,500 fine; and providers face penalties if they do not report these staff changes.

### **IEU comment**

Whilst the union supports this in principle, a teacher may not be aware within the 24-hour timeframe that their WWCC or teacher registration has been cancelled or suspended. There is also no similar offence for teachers in schools. Given that the decision to cancel a WWCC is made by the Office of the Children’s Guardian, who notifies the employee and the employer, it would seem easier to require that the OCG advises the Regulatory Authority (as occurs with NESAs).

### **Failure to exclude inappropriate person (s 171)**

Failing to exclude an unauthorised person as directed now carries fines up to \$172,200 (and \$516,600 for large providers) and \$34,000 for a nominated supervisor.

### **IEU comment**

There may be practical difficulties in excluding persons subject to a direction.

### **Suspension and supervision of education and care (ss 178 and 178A)**

The Regulatory Authority can suspend an employee from working in an ECEC service. The only appeal avenue for a suspended employee is to the Regulatory Authority itself and the Authority does not even have to give the employee the opportunity to respond to a show

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<sup>18</sup> Bill s 174AA

<sup>19</sup> Bill s 174AB



cause if it is satisfied that it is necessary to suspend the employee immediately. It would appear that, in these circumstances, the employee would no longer be paid.

The Regulatory Authority may also require an employee to work under supervision if a safety concern is detected.

### **IEU comment**

It is unclear whether there is any procedure for an employee to challenge suspension or a supervision order and that it could have indefinite effect. We therefore do not support this provision.

### **Disciplinary proceedings (ss 188B – 188M)**

The Bill provides for a new process to take disciplinary proceedings against a person involved in the provision of an education and care service who has breached the NSW Law or NSW regulations or national regulations.

Under the process, the matter may be referred to an independent ‘arbiter’ (appointed by the Minister) who determines the matter on the balance of probabilities. The person may be required to pay any relevant penalty in full, but it is unclear which elements of procedural fairness or natural justice would apply. For example, it is ambiguous as to whether there is any right to legal representation, or a right to view the evidence that underpins the allegations.

### **IEU comment**

The option of disciplinary proceedings determined on the balance of probabilities makes it more likely that an action for breach would be successful. The very use of the word ‘arbiter’ suggests the decision-maker is deciding between two competing positions rather than whether the offence occurred on a criminal or civil onus. A civil onus applies under the current legislation in respect of penalties, but the significant increase in the size of penalties exacerbates the problem. Under the current system, members already report feeling unable to defend themselves and without the normal rights that would apply in a disciplinary setting.

Given the size of the penalties and potential orders that may be made under s 188E of the Bill, and the strict liability involved in many offences, this process seems unfair to both employees and providers alike.

### **In summary**

The IEU welcomes the intention of the Bill to address child safety and strongly support some measures; for example, proposed amendments to protected disclosures and the requirement of training.

However, the IEU does not support all aspects of the Bill in its current form for the reasons outlined in this submission. In particular, the size of the penalties applying to employees are unfair, particularly given the strict liability attaching to some breaches.

