

**INQUIRY INTO CHILDREN (EDUCATION AND CARE
SERVICES NATIONAL LAW APPLICATION)
AMENDMENT BILL 2025**

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NSW Legislative Council Inquiry into the Children (Education & Care Services National Law Application) Amendment Bill 2025

Community Early Learning Australia (CELA)

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Submitted by: Community Early Learning Australia (CELA)

Date: 25 September 2025

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About Us

Community Early Learning Australia™ (CELA) is the voice for Australia's early education and care sector. As a peak body, our vision is for all of Australia's children to have access to quality early education, regardless of economic circumstance or where they live.

CELA supports over 1,800 members employing more than 27,000 educators and teachers nationally. Our members include community-managed not-for-profit, government, and privately owned small providers, delivering preschool, long day care, outside school hours care, and family day care services.

Our Mission is to:

- ▶ deliver effective and expert support for our members, enabling them to deliver quality early education and care for all Australia's children
- ▶ influence policy makers and government by amplifying the voices of community based and small providers
- ▶ promote the value and importance of community managed early education.

Executive Summary

Community Early Learning Australia welcomes the opportunity to contribute to the Portfolio Committee No. 3 – Education inquiry into the Children (Education and Care Services National Law Application) Amendment Bill 2025 (the Amendment Bill).

CELA welcomes this Amendment Bill as an important first step to strengthen regulations, improve transparency and rebuild trust in the early childhood education and care sector.

Our submission outlines our response the substance of this Bill with a focus on recommendations to ensure:

- ▶ community managed and small services receive appropriate ongoing support to implement new child safety requirements
- ▶ the NSW Government prioritises preventative and capacity building measures that build a child safe culture in all services.

This submission outlines two priorities to ensure this Amendment Bill drives an urgent uplift in the quality and safety of our sector:

Firstly, the safety of children must be our highest priority.

Too often, options for effective child safety reforms are dismissed because they place additional administrative imposts on services and require additional government funding to implement.

Child safety must be prioritised over:

- ▶ funding and regulatory challenges for the NSW Government
- ▶ administrative and change management issues for sector stakeholders.

The NSW Government must invest in the elements of a safe high quality system including:

- ▶ a provider market that puts children's safety first, with high quality services, robust governance and strong educational leadership informed by expert pedagogy
- ▶ staff ratios that are sufficient to provide supervision and care at a level that is appropriate to the needs of children and responsive to the physical environment of the service
- ▶ a stable workforce that results in high retention of staff and low use of temp staff and waivers, ensuring children can maintain consistent attachments with educators and teachers
- ▶ a qualified experienced workforce with paid access to ongoing professional development
- ▶ a National Quality System with effective assessment, rating and compliance levers.

Secondly, the NSW Government must invest in the effective implementation of this Amendment Bill.

The NSW Government has an unprecedented opportunity to build consistent quality, compliance and regulatory standards across all service types. However, this requires a sustained commitment to effective implementation that recognises and supports the diversity of ECEC services and their operating models.

Understanding and fulfilling child safety responsibilities is a legal and ethical imperative for all ECEC professionals. If we are serious about changing outcomes for children, the NSW Government must commit to fully supporting the implementation of this Amendment Bill. This is particularly important for service types which do not have access to affiliated administrative and governance support including:

- ▶ community managed providers which predominantly operate a single service and rely on volunteer parent committees who are responsible for all aspects of operating the early childhood service
- ▶ small providers which operate one to two services using similar values to not-for-profit services.

This includes investing in:

- ▶ centralised business support for services provided through trusted professional sector experts such as CELA who have demonstrated understanding of the regulatory and legislative obligations required to run ECEC services
- ▶ professional peak bodies to provide dedicated change management support to assist community managed and small providers to rapidly upskill and comply with new child safety requirements
- ▶ access to paid high quality professional development and training for staff, leaders and volunteer management committees
- ▶ professional wages for community preschool educators and teachers.

These measures are the proven levers to quickly and efficiently drive an uplift in quality and safety across the NSW ECEC sector. Without investing in this, the NSW Government's Amendment Bill will not be effective, and further children will be put at risk.

We encourage the Committee to adopt our recommendations to create the safe high quality education and care system that children and families need.

Response to the Amendment Bill

Schedule 1 [5.1]: Paramount consideration (pp. 3 – 4)

- ▶ CELA supports this amendment.
- ▶ However, the implementation of this principle must support community managed and small providers to embed a child safe culture in all ECEC services.
- ▶ This will ensure:
 - service leaders can identify systemic drivers of inappropriate conduct and take effective preventative actions
 - all ECEC services can uphold clear enforceable expectations for professional behaviour
 - service types with different needs, sizes and contexts can all deliver safe quality education and care
 - staff are supported to effectively implement this requirement through mandatory professional development and training, reinforcing high standards across the NSW ECEC sector.

Schedule 1 [5]: Tripling the maximum monetary penalty amounts & provide for scaled penalties

- ▶ CELA welcomes the significant increase of penalties for non-compliance with the National Law.
- ▶ However, the practical impact of this may result in increased challenges with recruitment of volunteer parent committees in community managed services due to increased personal liability.
- ▶ The implementation of these changes in penalties will require:
 - increased funding to cover professional indemnity insurance for staff and volunteers with management control responsibilities
 - support to educate community managed committees, community providers, small providers and their staff on compliance with the National Law.
- ▶ Enforcement action under these provisions must also actively consider the level of agency and control the liable person or persons had in regard to the offense.
 - For example: In some services, the person with management or control may include both a service director and a business owner, or a volunteer parent committee and the director. These different roles may have different levels of financial, or management decision making control.

Schedule 1 [5.1D] Section 5AA: Meaning of inappropriate conduct (p. 5)

- ▶ CELA welcomes the addition of inappropriate conduct as an offence as outlined in the Amendment Bill.
 - We recommend this include a ‘reasonable person test’ to consider of whether the approved provider did everything within their span of control to prevent the incident.
- ▶ 1ZR: We also recommend that there are provisions to ensure educators have right to privacy and due process.
 - However, we also recommend that there be a specified timeline for suspensions and clear thresholds for consideration of the severity of the offence, their history of conduct and appropriate sanctions.
- ▶ To ensure this amendment is appropriately applied, NSW Regulatory Authority must have the resources to effectively assess and respond to inappropriate conduct with a focus on early intervention and systemic improvement.

Schedule 1 [7.4J]: 174AA Educators & other staff members of education & care service to notify certain information (p. 17)

- ▶ The Amendment Bill must clarify the responsibilities of:
 - ECEC staff when making a written report about a notifiable event within 24 hours to their approved provider
 - approved providers providing written notice to the NSW Regulatory Authority within 24 hours after becoming aware of a notifiable event.
- ▶ A ‘reasonable person test’ should be applied to clarify the methods of reporting and notification which are acceptable under the Amendment Bill, for example reporting after hours, on weekends and when staff are on leave.

Schedule 1 [7.4W]: Division 3C 188L: Appointment of an Independent Arbiter (p. 26)

- ▶ CELA supports the power of the Minister to appoint an independent arbiter if they consider the span of control and decisions taken by individuals to comply with National Law, particularly nominated supervisors.
 - The independent arbiter must assess the legitimate control that an individual may have over compliance with the National Law.
- ▶ Under community managed models, an individual with management control may:
 - be a volunteer
 - not have financial or administrative delegation to make decisions that support compliance with National Law such as hiring sufficient staff.

- ▶ The Amendment Bill does not define the skills and capabilities required by the independent arbiter to ensure they have the necessary deep knowledge of ECEC sector operations to make fair and informed determinations.
 - This is critical to ensuring the independent arbiter can effectively fulfill their role.
- ▶ The independent arbiter must be able to demonstrate:
 - their independence from the NSW Government and NSW Regulatory Authority
 - a deep and practical knowledge of ECEC sector operations across service types
 - capability to make fair, impartial and independent decisions on compliance with National Law and regulations
 - an ability to foster trust in Australia's early childhood education regulatory system.

Schedule 1 [8. 26]: Section 270: Publication of information (p. 34)

- ▶ As the peak body for community and small early education and care providers across NSW, CELA actively encourages our members to report all incidents that occur at ECEC services.
 - A strong culture of incident reporting is a key element of a robust and effective child safe system.
- ▶ The release of early child educator and teacher names as proposed by this Amendment Bill sets a dangerous precedent which will undermine the culture of child protection reporting that the NSW Government and our sector has worked so hard to grow.
 - By reporting incidents, staff are acting in good faith on their professional responsibility.
 - The release of educator and teachers' names will be seen as punishment for doing the right thing.
 - Early educators and teachers will be reluctant to report incidents due to the very real fear that their names will be publicly available and connected with particular incidents in perpetuity online.
- ▶ We note that where incidents result in a cancellation of a Working With Children Check, the affected staff member would be prevented from working in early childhood settings.
- ▶ CELA recommends that the NSW Regulatory Authority is empowered to:
 - anonymise information on alleged breaches of National Law by individuals
 - share the status of an ECEC employee under investigation for breaches of the National Law
 - once a determination has been made, share a summary including enforcement actions without sharing the ECEC employee's name.

- ▶ The NSW Government should establish guidelines that govern how personal information in incident reporting is managed by the NSW Regulatory Authority to comply with privacy laws and specify permissible use, including safeguards to protect procedural fairness for individuals involved.
- ▶ This will ensure:
 - incidents in ECEC services can be examined publicly to improve child safety outcomes without compromising staff privacy and safety
 - educators and teachers have the confidence to report incidents.

Schedule 1: [8. 35] Establish the Education & Care Services Regulatory Authority Fund (p. 36)

- ▶ CELA has strong concerns over the creation of a Fund to receive all money obtained by the NSW Regulatory Authority through its compliance and enforcement actions which would then fund the operation of the Regulatory Authority.
- ▶ This approach risks creating a perverse incentive and conflict of interest for the NSW Regulatory Authority to use enforcement actions as a revenue raising mechanism.
 - This approach undermines its primary objective of driving high quality outcomes for NSW children and communities.
- ▶ The implementation of this Amendment Bill requires a strong initial focus on upskilling the ECEC sector to understand and comply with new child safety measures.
 - A reliance on this Fund would be a significant barrier to the NSW Regulatory Authority's effective implementation of new child safety measures in this Amendment Bill.
 - The NSW Regulatory Authority should be funded independently to support the prevention, assessment, rating, compliance and enforcement activities necessary to build a child safe culture in all NSW education and care services.
 - Funds received as the result of compliance action should be used to deliver quality and safety uplift programs.