

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

Organisation: Australian Childcare Alliance (ACA) NSW
Date Received: 26 September 2025

25 September 2025

Portfolio Committee No 3 - Education
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

Dear Portfolio Committee No 3 - Education,

**Re: NSW Parliamentary Inquiry into the Children (Education and Care Services
National Law Application) Amendment Bill 2025**

The Australian Childcare Alliance (ACA) NSW is the peak body for over 1,600 privately-owned predominantly small to medium-sized family-owned and operated businesses who provide early childhood education and care services in New South Wales. ACA NSW members employ over 25,000 employees and are committed to providing excellence in early childhood education and care for the more than 125,000 children and their families.

We thank the Parliamentary Committee for inviting us to make a submission and to present tomorrow.

Our primary concern begins with successive NSW Governments who have not yet addressed the growing disconnection between the National Quality Framework and the Australian Early Development Census as they relate to NSW.

	2012	2015	2018	2021	2024
POPULATION: Enrolled Preschool Children in the Year Before School (NSW)	N/A	N/A	85.03%	86.69%	86.99%
QUALITY AREA 1: Education Programming & Practice Services with Meeting the NQS or higher (NSW)	N/A	69.76%	84.64%	92.06%	95.42%
OVERALL RATING: Services with Meeting the NQS or higher (NSW)	N/A	58.53%	79.85%	87.96%	92.00%
AEDC: Children not developmentally on track upon starting school (NSW)	43.90%	44.20%	42.80%	44.50%	45.80%

SOURCES: The Productivity Commission's Report on Government Services (RoGS),
the Australian Children's Education & Care Quality Authority (ACECQA)'s National Register &
the Australian Early Development Census (AEDC) data

If the NSW Government's Brighter Beginnings' central belief of \$13 to every \$1 invested in early childhood education and care is to remain true, then the NSW Government's and NSW families' investments appear to be ineffective at best.

It is appreciated that the Bill and the future independent NSW Regulatory Authority is primarily intended to address the very public child safety incidences since Operation Tenterfield announced in August 2023. That said, NSW children from birth to preschool age remain underserved without a more articulate roadmap of reform that will not only rebuild confidences but more importantly produce demonstrable positive outcomes we want for our children.

Attachments A and B outline our initial and non-exhaustive list of questions and concerns with respect to the Bill and the corresponding National Regulations (in the NSW context). And Attachments C and D are copies of our submission to the NSW Parliamentary Inquiry into Early Childhood Education and Care in NSW as well as the NSW Budget 2025.

ACA New South Wales

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It is worth highlighting the key questions from our submission:

1. What are the demonstrable children's outcomes that the NSW Parliament and the NSW Government want to achieve through early childhood education and care (during birth to preschool as well as beyond) at state, national and global levels?
2. Is the legal, regulatory and support framework consistent, unbiased and fit-for-purpose for the early childhood education and care services across NSW?
3. Is the (future independent) NSW Regulatory Authority appropriately resourced and transparent to provide effective support while also conducting compliance activities?
4. Will the (future independent) NSW Regulatory Authority also be accountable to parents and families?

ACA NSW welcomes the opportunity to engage with the NSW Parliamentary Committee.

And please feel free to contact us should you need any further information/clarification/assistance.

Yours sincerely

Chiang Lim
CEO

Attachments: A – Initial Questions in relation to the *Children (Education and Care Services National Law Application) Amendment Bill 2025*

B – Non-Exhaustive List of Questions in relation to the NSW Regulatory Authority's Implementation of the *Education and Care Services National Regulations 2011*

C – Copy of ACA NSW's Submission to the NSW Parliamentary Inquiry into Early Childhood Education and Care in NSW (14 June 2025)

D – Copy of ACA NSW's Submission to the NSW Budget 2025 (13 January 2025)

**INITIAL QUESTIONS IN RELATION TO THE
CHILDREN (EDUCATION AND CARE SERVICES NATIONAL LAW APPLICATION) AMENDMENT BILL 2025 (NSW)**

Q#	Reference to the Bill	Question(s)	Suggestion(s) (if any)
01	Page 3, line 39 "Paramount consideration [NSW]"	What will be the performance measures against which the NSW Regulatory Authority will judge the service on so as to determine compliance or non-compliance? Already, the NSW Regulatory Authority is concerned about services' consistency and comprehensiveness of applying the term "critical reflection". And since "paramount consideration" is term familiar to lawyers and judges, early childhood education and care services' educators and teachers are not trained to be lawyers, law enforcers nor criminologists. So what training will be given to the sector? And will there be case studies that the sector can learn from to understand how "paramount consideration" is deemed to be complying and non-complying.	
02	Page 4, lines 4 to 26 Section 4 How functions to be exercised	The focus remains on the Approved Provider and the person(s) with management or control. Notwithstanding all the policies, procedures, training, management and oversight of subordinate employees, how will this section be implemented whereby it can be proven that the Approved Provider and the person(s) with management or control remain unaware of the risks to the rights and best interests of a child or children?	
03	Page 5, line 41 "Whether the conduct is expected practice"	Using the example of a school student conduct whereby a school teacher would either engage with that one school student or evacuate the entire class in order to protect the majority. There can be situations whereby conduct may be considered "inappropriate" to a reasonable person. Will the NSW Regulatory Authority publish a minimum set of what is and is not inappropriate conduct so that services can be judged against this provision?	
04	Page 8-52 Penalty — (a) for an individual—\$\$\$; or	Have all these penalties been structured such that the penalties are not only imposed on the Approved Provider or Nominated Supervisor or Person(s) with Management and Control, but also on early childhood educators and/or teachers and others?	We may need a matrix to show the potential penalties that can be imposed against every role, ie Approved Provider, Nominated Supervisor, Responsible Person, Educational

**INITIAL QUESTIONS IN RELATION TO THE
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	Reference to the Bill	Question(s)	Suggestion(s) (if any)
	(b) for a large child care provider—\$\$\$; or (c) otherwise—\$\$\$.	Also, why is the legislation using the term “child care” provider. Should it not be “early childhood education and care” provider?	Leader, early childhood educator, early childhood teacher, etc.
05	Page 19-20, line 40 onwards 174AB Approved Provider must notify Regulatory Authority of event under section 174AA [NSW]	While the emphasis should rightly be on the Approved Provider, what happens if the Approved Provider is not aware or was not made aware of the event? Will the penalties still apply to the Approved Provider?	
06	Page 25, line 39 Civil double jeopardy [NSW]	Does this mean that if an individual(s) who has/have been deemed to be guilty of one offence in one service, but is also guilty of the same offence in other services, cannot be ordered to have multiple penalties imposed?	
07	Page 26, line 28 NSW Minister may appoint independent arbiter [NSW]	What is the scope and powers off this Independent Arbiter? And who in NSW's early childhood education and care sector can engage the NSW Independent Arbiter?	
08	Page 31, lines 20-27 223A NSW Minister may issue guidelines [NSW]	Using the example that currently the National Regulation 168 requires all services to have policies and procedures. That said, since 2012, the NSW Regulatory Authority has never produced a default set of templates to establish minimum requirements, and NSW Authorised Officers have the discretion to impose breaches/non-compliances if the services' policies and procedures are deemed inadequate (which is likely to be a contributor to NSW having record numbers of breaches/non-compliances in the nation for five consecutive years as published in the Productivity Commission's annual Report on Government Services (RoGS)). So as to avoid s223A(c), will and when will the NSW Minister instruct the NSW Regulatory Authority to issue detailed guidelines so that all services can fulfill s223A(a)?	
09	Page 33, line 5 (2) To avoid doubt, the Regulatory Authority is not	Why is the NSW Regulatory Authority not subject to the NSW Minister's direction and control?	

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Q#	Reference to the Bill	Question(s)	Suggestion(s) (if any)
	subject to the direction and control in relation to --		
10	Page 34, lines 7-8 [26] Section 270 Publication of information (5) The Regulatory Authority may publish information about enforcement action taken, or being taken, under this Law, including details about any of the following:	We welcome the transparency intended in this provision. That said, will the publication of information about the enforcement action also include all related information that were collected under the current NSW Regulatory Authority's risk-based approach (https://education.nsw.gov.au/early-childhood-education/operating-an-early-childhood-education-service/approvals-process/risk-based-approach)? And to ensure the fairness of such enforcement actions taken or being taken, will the NSW Government impose any impediments for the Approved Provider to contest such enforcement actions either through the NSW Civil and Administrative Tribunal, the courts and/or appeals to the NSW Ombudsman and/or the NSW Auditor-General? This concern is in the context that the sample of services highlighted by the Wheeler Report (https://education.nsw.gov.au/content/dam/main-education/about-us/strategies-and-reports/media/documents/Final_Report_-_Early_Childhood_Education_and_Care_Regulation_in_NSW_Independent_Review_-_May_2025.pdf) highlighted that 66.6% of the sampled Exceeding the National Quality Standards rated services were also deemed to be High Risk or Very High Risk by the same NSW Regulatory Authority (https://nsw.childcarealliance.org.au/news-current/66-6-of-exceeding-rated-services-regarded-high-or-very-high-risk-by-nsw-regulatory-authority).	
11	Page 35, lines 1-23 270A Protection from liability for publication under section 270 [NSW]	We welcome this proposed provision as new whistleblower protections. However, it would appear that while the person is protected from liability for whistleblowing, there appears to be no protections for anyone in direct relation to the service (ie the early childhood	

**INITIAL QUESTIONS IN RELATION TO THE
CHILDREN (EDUCATION AND CARE SERVICES NATIONAL LAW APPLICATION) AMENDMENT BILL 2025 (NSW)**

Q#	Reference to the Bill	Question(s)	Suggestion(s) (if any)
		educator, teacher, Nominated Supervisor, the Approved Provider, etc). Moreover, there appears no legal nor industrial protections afforded to the service and its personnel should they disclose child safety concerns with any of the NSW authorities. And none of the NSW authorities appear to be obligated to share information with the service's appropriate personnel so as to effectively protect the child/children from any/all child safety risks.	
12	Page 40, lines 19-32 297 Meaning of "protected disclosure" [NSW]	We welcome this proposed provision as new whistleblower protections. That said, it would appear that while the person is protected from liability for whistleblowing, it appears that there are no protections for the Approved Provider and/or personnel of that service from a legal (eg defamation) and industrial perspective to take reasonable action in order to effectively protect the child/children.	
13	Page 50, lines 28-37 (ia) child-safe recruitment practices ... (ib) ongoing child-safe employment practices ...	Given this is to be inserted before Regulation 168(2)(i)(i), since 2012, the NSW Regulatory Authority has never produced a default set of templates to establish minimum requirements as obligated under the National Regulation 168. And NSW Authorised Officers have the discretion to impose breaches/non-compliances if the services' policies and procedures are deemed inadequate (which is likely to be a contributor to NSW having record numbers of breaches/non-compliances in the nation for five consecutive years as published in the Productivity Commission's annual Report on Government Services (RoGS)). So as to avoid the Bill's proposed s223A(c), will and when will the NSW Minister instruct the NSW Regulatory Authority to issue detailed guidelines of what are child-safe recruitment practices and child-safe employment practices so that services can be fairly assessed against by the NSW Authorised Officers?	
14	In relation to this Bill and the broader reform, including	This Bill does not address the disconnections between the Quality Ratings of services and the same services' potential risk	

**INITIAL QUESTIONS IN RELATION TO THE
CHILDREN (EDUCATION AND CARE SERVICES NATIONAL LAW APPLICATION) AMENDMENT BILL 2025 (NSW)**

Q	Reference to the Bill	Q stio (s)	Suggestion(s) (if any)
	addressing child safety and the public's understanding of quality via the published quality ratings	assessments by the same NSW Regulatory Authority in accordance with the current NSW Regulatory Authority's risk-based approach (https://education.nsw.gov.au/early-childhood-education/operating-an-early-childhood-education-service/approvals-process/risk-based-approach). This was highlighted by the Wheeler Report (https://education.nsw.gov.au/content/dam/main-education/about-us/strategies-and-reports/media/documents/Final_Report_-_Early_Childhood_Education_and_Care_Regulation_in_NSW_Independent_Review_-_May_2025.pdf) which showed that 66.6% of the sampled Exceeding the National Quality Standards rated services were also deemed to be High Risk or Very High Risk by the same NSW Regulatory Authority (https://nsw.childcarealliance.org.au/news-current/66-6-of-exceeding-rated-services-regarded-high-or-very-high-risk-by-nsw-regulatory-authority). When and how will the NSW Government address this?	
15	In relation to this Bill and the broader reform, including addressing child safety and the public's understanding of quality via the published quality ratings	When will the NSW Government review the apparent inconsistent use of existing laws, including: 1. National Law: Section 23(1) – The Regulatory Authority can amend provider approval at any time. 2. National Law: Section 25(b) – The Regulatory Authority can suspend a service for failure to comply with a condition of the provider approval at any time. 3. National Law: Section 55(1) – The Regulatory Authority can amend a service approval at any time. 4. National Law: Section 70(b) and 70(f) – The Regulatory Authority can suspend service approval if the service breaches any condition(s) or failed to comply with a direction, compliance notice or emergency order in anywhere across Australia. 5. National Law: Section 73 – The Regulatory Authority can suspend service approval without show cause.	

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

Q#	Reference to the Bill	Question(s)	Suggestion(s) (if any)
		6. National Law: Section 77(a) – The Regulatory Authority can cancel service approval if the service constitutes an unacceptable risk to the safety, health or wellbeing of any child or class of children. 7. National Law: Section 80(1) – The Regulatory Authority can cancel service approval to the extent that it relates to associated children's service 8. National Law: Section 75 – The Regulatory Authority can suspend service approval to the extent that it relates to associated children's service. 9. National Law: Section 70(d) – The Regulatory Authority can suspend service approval for not meeting the National Quality Standards and there have not been any improvements.	
16	In relation to this Bill and the broader reform, including addressing child safety and the public's understanding of quality via the published quality ratings	Notwithstanding the NSW Authorised Officers appointed to regulate services are provided additional training by the NSW Regulatory Authority, their formal training is only 3 weeks conducted with the Australian Children's Education & Care Quality Authority (ACECQA), and their performances (ie reports on reliability drift tests (see page 62 of ACECQA's Annual Report (https://www.acecqa.gov.au/sites/default/files/2024-12/Annual-Report-2024_0.pdf)) are not publicly available. When will the NSW Regulatory Authority mandate a minimum set of qualifications, skills and experiences required of all their NSW Authorised Officers? This is relevant as the NSW Regulatory Authority requires services to have early childhood educators and teachers with very specific minimum set of qualifications, skills and experiences. So why not the NSW Authorised Officers on the basis that they can then be truly effective in regulating the sector.	
17	In relation to this Bill and the broader reform, including addressing child safety	At the NSW Parliamentary Inquiry on Early Childhood Education and Care in NSW (14 August 2025), the representatives from the NSW Police and the NSW Children's Guardian expressed	

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Q#	Reference to the Bill	Question(s)	Suggestion(s) (if any)
		concerns about their visibility of child safety issues that the NSW Regulatory Authority did not share with those other authorities. https://nsw.childcarealliance.org.au/news-current/first-2-days-of-the-nsw-parliamentary-inquiry-into-early-childhood-education-and-care-in-nsw So, when will there be a harmonised, effective, transparent and fair process for reporting and addressing child safety concerns?	
18	In relation to this Bill and the broader reform, including addressing child safety	This Bill does not refer to the anticipated national register of care workers (as called for by ACA NSW (https://nsw.childcarealliance.org.au/news-current/nsw-advocacy-national-register-for-care-workers)). When will we see this occur as well as the comprehensiveness of information to be contained in this national register (via the National Quality Agenda Information Technology System (NQAITS)), especially the timeliness of information delivery to the Approved Provider and services for immediate action to ensure child safety? And when will the NSW Reportable Conduct Scheme achieve information sharing with relevant regulators, agencies as well as jurisdictions?	
19	In relation to this Bill and the broader reform, including addressing child safety	What is the full timeline of these changes/reforms, especially in terms of the effective times for implementation and thus compliance by NSW-based early childhood education and care services?	
20	Emulating the Victorian Parliament's new Shared Intelligence and Risk Assessment Capability	Will the NSW Government emulate Victoria's Shared Intelligence and Risk Assessment Capability? And if so, when?	
21	Consequence of poor quality training	Given Skills NSW already publishes job readiness ratings (https://skills.education.nsw.gov.au/chc30121-g) of training entities (including TAFE is reported to be 70% Job Ready, and there are two training organisations at 98%), when will the NSW	

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Q#	Reference to the Bill	Question(s)	Suggestion(s) (if any)
		Government reward those who provide effective quality training, and address under-performing training entities?	
22	Potentially false and misleading information	Will the NSW Government legally allow the NSW Regulatory Authority to be prosecuted by families for issuing a quality rating and/or all information relating to enforcement actions and risk-based approach assessments that may be deemed as false and misleading information about the service that those families' children attend?	
23	NSW authorities' obligation to prevent child safety risks	Although NSW and Australia's legal philosophy originates from the position of innocent until proven guilty, it also recognises actions as crimes before the crime is committed, for example attempt to murder (see <i>NSW Crimes Act 1900</i>, s29 (https://www5.austlii.edu.au/au/legis/nsw/consol_act/ca190082/s29.html)) and s344A (https://classic.austlii.edu.au/au/legis/nsw/consol_act/ca190082/s344a.html). It should also be noted that the recent <i>Child Protection (Working with Children) and Other Legislation Amendment Bill 2025 [NSW]</i> (https://www.parliament.nsw.gov.au/bill/files/18779/First%20Print.pdf) that was passed recognised that the NSW Children's Guardian may share information with others in order to make a decision (see s30(2), s30D(3) and s44(2)). Hence, the NSW authorities (ie the NSW Regulatory Authority, the NSW Children's Guardian and the NSW Police Force) must have harmonised legal obligations to compel the sharing of information about any child safety concerns so that child safety risks are prevented from occurring.	

**NON-EXHAUSTIVE LIST OF QUESTIONS IN RELATION TO THE NSW REGULATORY AUTHORITY'S IMPLEMENTATION OF THE
EDUCATION AND CARE SERVICES NATIONAL REGULATIONS 2011**

Q#	National Regulation Reference	Question(s)/Concern(s)	Suggestion(s) (if any)
01	Page 28, Section 4 - Definitions <i>"approved education and care qualification"</i> https://legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2011-0653#sec.4	This definition subjects all early childhood educators and teachers to perform based on their training. Unfortunately, their training is dependent on the provider, for example TAFE which according to Skills NSW is shown to be <u>70% job ready</u> (ie the proportion of students who gained an employment benefit from undertaking training). The two training organisations with the highest ratings are at 98% job ready. Yet 41.67% of those listed by Skills NSW do not have any job ready rating and remain supported by <u>NSW Smart and Skilled Funding</u>. Questions: - Given the Australian Early Development Census results about children not developmentally on track upon starting school (from 2009 to 2024), are those qualifications' curriculum fit-for-purpose for the expectations of early childhood educators and teachers, including child safety? - Is the definition of "job ready" appropriately calibrated to demonstrate the correct skills required of graduates? - Should NSW and federal government funding continue to support training organisations who do not produce early childhood educators and teachers that are fit-for-purpose?	
02	Page 37, Section 10 – Meaning of actively working towards a qualification https://legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2011-0653#sec.10	Despite what the National Regulation states, NSW Authorised Officers do not appear to have a consistent interpretation for the purposes of considering <u>Regulation 126(1)</u> (and arguably <u>Regulation 127</u>). Some NSW Authorised Officers may say this requirement is satisfied if a unit is completed every 3 months. Other NSW Authorised Officers may say a unit every 6 months will suffice. There are potentially other interpretations too.	

**NON-EXHAUSTIVE LIST OF QUESTIONS IN RELATION TO THE NSW REGULATORY AUTHORITY'S IMPLEMENTATION OF THE
EDUCATION AND CARE SERVICES NATIONAL REGULATIONS 2011**

Q#	National Regulation Reference	Question(s)/Concern(s)	Suggestion(s) (if any)
		Question: a. What is the definitive interpretation of Section 10 for the purposes of Regulation 126(1)?	
03	Page 53, Section 29 – Condition on service approval – insurance https://legislation.nsw.gov.au/view/whole/html/inforce/current/s1-2011-0653#sec.29	Around March/April 2024, ACA NSW appreciates the updating of the NSW Department of Education's Service Approvals Policy to ensure clarity that insurance is required per service against public liability with a minimum cover of \$10,000,000. However, there is anecdotal evidence that services continue to be approved with an insurance policy that does show public liability cover of at least \$10,000,000 but not explicitly for that specific service. Questions: a. How is the NSW Regulatory Authority ensuring that each insurance policy is specifically for that service being approved? b. Given the removal of an upper limit for the number of places for any early childhood education and care service, is the minimum \$10,000,000 cover adequate? c. How is the NSW Regulatory Authority confirming, a year or years after the service approval, that the service continues to have the required minimum \$10,000,000 insurance cover that is not shared with other services? d. Given the child safety concerns, and in the context that since January 2012 there no longer has been an upper limit on the number of places, ACA NSW is concerned that a \$10,000,000 cover per service would benefit children/parents very differently depending on the number of places approved per service (eg a 477-place service (eg	

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EDUCATION AND CARE SERVICES NATIONAL REGULATIONS 2011**

	National Regulation Reference	Question(s)/Concern(s)	Suggestion(s) (if any)
04	Page 53, Section 31 – Condition on service approval – quality improvement plan https://legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2011-0653#sec.31	SE-40003003) compared to a 4-place service (eg SE-00016939)? While ACA NSW appreciates the importance of transparency and access, the NSW Authorised Officers have to date interpreted this requirement to mean that the Quality Improvement Plan must be printed and made available in hardcopy so as to ensure maximum access (eg anticipating the outages of electricity and/or communications services). If maximum access were the measure, then are services at risk of non-compliance if the hardcopy version were not in all possible languages in the catchment? And must the service provide a Braille version if one or more of their parents/community members sight impaired? Moreover, how will services address the supporting environmental responsibility as required by the National Quality Standard, <u>Element 3.2.3 – Environmentally responsible</u>, in particular: • “sharing information and supporting children to access resources about the environment and the impact of human activities on environments” • “spaces that promote the development of life skills, such as growing and preparing food, waste reduction and recycling, and children being actively engaged in these experiences” • “the service’s environmental strategy being implemented.” Question: a. Why can’t services employ the use of QR codes that are overtly published and accessible in public spaces within their service such that the QR codes point to the always current Quality Improvement Plan of the service and in a multitude of languages, including for the sight-impaired?	

NON-EXHAUSTIVE LIST OF QUESTIONS IN RELATION TO THE NSW REGULATORY AUTHORITY'S IMPLEMENTATION OF THE EDUCATION AND CARE SERVICES NATIONAL REGULATIONS 2011

Q#	National Regulation Reference	Question(s)/Concern(s)	Suggestion(s) (if any)
		b. If services must have hardcopies of their Quality Improvement Plan available, can the NSW Regulatory Authority overtly confirm that one copy in English is the minimum requirement for compliance purposes? Please note, Regulation 171 should also be considered in a similar light.	
05	Page 65, Section 55 – Quality Improvement Plans https://legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2011-0653#sec.55	Although since January 2012, the National Authority (ACECQA) has published and provided resources for services to produce their Quality Improvement Plans (including an optional Quality Improvement Plan template and training modules), the onus is placed on services to develop its own Quality Improvement Plans (QIP) without leveraging explicit consensus-determined examples of QIP content to achieve the full range of expected children's outcomes, including child safety. Moreover, although nationally leading, the NSW Department of Education has a Continuous Improvement Team since late 2019 that assists NSW-based services to ensure compliance with the National Quality Standards as well as support services in anticipation of their upcoming Assessments and Ratings. However, ACA NSW has anecdotally learned of services who did leverage and appreciate the Continuous Improvement Team but did not get the anticipated results following their Assessment and Ratings. Moreover, the Continuous Improvement Team does not seem to be making any positive results due to the record number of breaches/non-compliances by NSW-based services compared to the rest of Australia combined during FY2019/2020 to FY2023/2024. In fact, the Productivity Commission reported an ever-increasing probability for NSW-based services to receive a breach/non-compliance (ie 325% probability per NSW service for FY2023/2024, up from 303% for FY2022/2023).	

**NON-EXHAUSTIVE LIST OF QUESTIONS IN RELATION TO THE NSW REGULATORY AUTHORITY'S IMPLEMENTATION OF THE
EDUCATION AND CARE SERVICES NATIONAL REGULATIONS 2011**

Q#	National Regulation Reference	Question(s)/Concern(s)	Suggestion(s) (if any)
		Question: a. When will the NSW Regulatory Authority publish a minimum Quality Improvement Plan alongside a minimum set of default policies and procedures that any service can adopt and comply with to ensure 100% compliance and zero breaches/non-compliances if literally followed? b. When will the NSW Department of Education's Quality Improvement Team provide sufficiently high confidence for the service to achieve the mutually anticipated Quality Ratings following Assessments and Ratings of the service?	
06	Page 75, Regulation 77 – Health, hygiene and safe food practices https://legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2011-0653#sec.77	For the purposes of clarity and consistency with NSW Authorised Officers, as well as to ensure all services to achieve adequate health and hygiene practices and safe practices for handling, preparing and storing food, it has become clear that the NSW Regulatory Authority must produce explicit and performance-based minimum requirements. Question: a. When will the NSW Regulatory Authority publish a minimum set of tangible standards to achieve compliance with Regulation 77? b. If the NSW Regulatory Authority is unable to do that, can it explicitly refer to a trusted authority whereby their instructions if followed will ensure compliance with Regulation 77?	
07	Page 76, Regulation 78 – Food and beverages	While Regulation 78(1) and 78(2) are focused on the Approved Provider and Nominated Supervisor, they are up to two individuals	

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EDUCATION AND CARE SERVICES NATIONAL REGULATIONS 2011**

Q#	National Regulation Reference	Question(s)/Concern(s)	Suggestion(s) (if any)
	https://legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2011-0653#sec.78	compared to all the early childhood educators and teachers deployed to be working directly with children. Yet, despite the stipulated policies, procedures, training direction given by the Approved Provider and/or the Nominated Supervisor, if any early childhood educator or teacher is deemed to not fulfil the requirements of Regulation 78(1) or 78(2), it is the Approved Provider or the Nominated Supervisor that is subject to a breach/non-compliance or worse, a penalty of \$2,200 for each offence. Question: a. Can Regulation 78(3) be re-worded such that any centre-based educator or teacher, or family daycare educators are obligated to the same expectations?	
08	Page 77, Regulation 79 – Service providing food and beverages https://legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2011-0653#sec.79	For the purposes of clarity and consistency with NSW Authorised Officers, as well as to ensure all services to fulfil the definitions of nutritious and adequate food or beverage, it has become clear that the NSW Regulatory Authority must produce explicit and performance-based minimum requirements. Question: a. When will the NSW Regulatory Authority publish a minimum set of tangible standards to achieve compliance with Regulation 79? b. If the NSW Regulatory Authority is unable to do that, can it explicitly refer to a trusted authority whereby their instructions if followed will ensure compliance with Regulation 79?	
09	Page 78, Regulation 80 – Weekly menu	For the purposes of clarity and consistency with NSW Authorised Officers, it has become clear that the NSW Regulatory Authority	

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Q#	National Regulation Reference	Question(s)/Concern(s)	Suggestion(s) (if any)
	https://legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2011-0653#sec.79	must produce explicit examples and performance-based minimum requirements. Question: a. To what level does the NSW Regulatory Authority require services to publish the weekly menus, especially to fulfil Regulation 80(1)(b) and Regulation 80(2)(b)? To what level of granularity does the NSW Authorised Officer expect the service to publish the components of the composition of the food and beverages? b. If the NSW Regulatory Authority is unable to do that, can it explicitly refer to a trusted authority whereby their instructions if followed will ensure compliance with Regulation 80?	
10	Page 79, Regulation 83 – Staff members and family day care educators not to be affected by alcohol or drugs https://legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2011-0653#sec.83	Based on the way Regulation 83(1) and Regulation 83(2) is worded, could there be a loophole whereby centre-based educators and teachers can still be affected by alcohol or drugs, thereby putting children at risk?	
11	Page 80, Regulation 84 – Awareness of child protection law https://legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2011-0653#sec.84	In this section of the National Regulation, the terms "awareness" and "advised" appear to be inadequate and lack precision in terms of outcomes. Question: a. Is awareness and advice the tests that the NSW Authorised Officers use to determine compliance? b. Can the NSW Regulatory Authority as well as the NSW Children's Guardian use (de-identified) real examples of	

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Q#	National Regulation Reference	Question(s)/Concern(s)	Suggestion(s) (if any)
		child safety failures as well as successes as part of compulsory training and resources to reinforce "awareness" and "advice" to those listed in Reg84(2)?	
12	Pages 80-84, Regulations 84A-84D in relation to sleep and rest https://legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2011-0653#ch.4-pt.4.2-div	It is commonly accepted and expected that services and the NSW Regulatory Authority refer to the Red Nose organisation for their advice as well as articulation of best practices for safe sleeping. That said, it is unclear if the effectiveness of the following may be contributing toward the record number of breaches/non-compliances as well as child safety issues with respect to safe sleep and rest: • qualification training for early childhood educators and teachers (ie Certificate III, Diploma and degree); and • the absence of a published checklist listing a minimum set of performance and outcomes-based requirements of services, educators and teachers. Question: a. Can the NSW Regulatory Authority as well as the NSW Children's Guardian use (de-identified) real examples of safe sleep and rest failures as well as successes as part of compulsory training and resources to reinforce services' ability to ensure the fulfilment of Reg84A-84D?	
13	Page 86, Regulation 89 – First aid kits https://legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2011-0653#sec.89	There is a general question that first aid training currently may not be fit-for-purpose in the context of all circumstances of children with all early childhood education and care services. And the level of expectation is beginning to be that one or more personnel in each service may need to have a medical background in order for any training to be thorough. Trainers themselves do not appear to need medical training in order to train others.	

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		Questions: a. Does first aid training need to be childcare specific and not combined with other course codes? b. When a first aid session for HLTAID012 is combined with other first aid for speed and rostering of the training organisation, then the "childcare" specific elements can go missing. What benefit does the educator get when completing a first aid session that is covering other first aid codes, often the last 20 minutes of the session they make you stay back to do the epi-pen and fill in an incident form. Perhaps the training needs to be early childhood specific and not allowed to be combined with other course codes? c. Is 3 years to renew first aid too long? Currently, HLTAID012 is renewed every 12 months along with CPR. Many educators do not use their first aid skills often so they easily forget and then become flustered when an emergency does arise-training more frequently may mean less incidents occur. d. What is the time frame for educators to complete first aid training before they start their employment? e. Should all educators be first aid trained? Currently you just need someone on site at all times who is first aid, asthma and anaphylaxis trained. f. Will NSW Authorised Officers only use Australian Standard AS 2675 to assess compliance against Regulation 89? And if the NSW Authorised Officer need additional standards to assess compliance, when will the NSW Regulatory Authority publish such standards so that	

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	https://legislation.nsw.gov.au/view/whole/html/inforce/current/s-l-2011-0653#sec.103	Is there a published guide or standard so that both the Approved Provider and the NSW Authorised Officer(s) can be in sync in their understanding of what and when "the premises and all equipment and furniture" are deemed to be "safe, clean and in good repair"? Due to its subjectivity, it is ACA NSW's understanding that there have been instances where the NSW Authorised Officer has issued breaches/non-compliances against services for furniture that are not in good repair (while still being safe and clean) due to: • its discolouration (for being exposed to sunlight); • some of its surface/fabric not in perfect condition (due to general use). Question: a. Can the NSW Regulatory Authority publish an official set of examples of what are premises, equipment and future that are safe, clean and in good repair, versus what are premises, equipment and future that are not safe, clean and in good repair?	
17	Page 105, Regulation 105 – Furniture, materials and equipment https://legislation.nsw.gov.au/view/whole/html/inforce/current/s-l-2011-0653#sec.105	The intention of Regulation 105 is clear and focussed on the need of each child. However, the term "sufficient" and "appropriate" have been at times of debate with NSW Authorised Officers. Question: a. Can the NSW Regulatory Authority publish an official set of minimum quantities and list developmentally appropriate equipment that are suitable for every corresponding child's needs?	
18	Page 107, Regulation 109 – Toilet and hygiene facilities	In light of child safety concerns, should Regulation 109 be expanded to address/overcome potential risks?	

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	https://legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2011-0653#sec.109		
19	Page 108, Regulation 112 – Nappy change facilities https://legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2011-0653#sec.112	In light of child safety concerns, should Regulation 112 be expanded to address/overcome potential risks?	
20	Page 144, Regulation 157 – Access for parents https://legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2011-0653#sec.157	In light of child safety concerns, services' personnel are required to have Working With Children Checks and other child safe related expectations. However, families and the communities currently do not have any legal obligation to advise child safety risks that they might present. Can Part 4.6 be reviewed from that perspective in order to anticipate and avoid all such risks appropriately? NOTE: Regulations 163-164 may also need to be similarly reviewed.	
21	Page 152, Regulation 167 – Record of service's compliance https://legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2011-0653#sec.167	Following the recent child safety incidences, it has become clear that Approved Providers do not have access to <u>all</u> records of their service(s)' compliance, especially with respect to Regulation 167(1)(c). Currently, all Approved Providers access the National Quality Agenda Information Technology Service (NQAITS) to view their compliance history. However, not only are the compliance records incomplete, there is no access with respect to the NSW Department of Education's risk-based approach. When can Approved Providers be given full access to both sets of information? And is amendment to Regulation 167 required?	

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22	Pages 153-155, Regulation 168 – Education and care service must have policies and procedures https://legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2011-0653#sec.168	In light of publicly highlighted failures, perhaps it is now time for the NSW Regulatory Authority to publish a full set of templates of policies and procedures to satisfy Regulation 168 and achieve compliance with all NSW Authorised Officers.	
23	Page 171, Regulation 187 – Prescribed form of identity card https://legislation.nsw.gov.au/view/whole/html/inforce/current/sl-2011-0653#sec.187	In light of child safety incidences, it may be appropriate for an example of what the NSW Authorised Officer's identity card looks like, and an online system to confirm the validity of the identity card.	