**Submission No 8**

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

**Organisation:** Joint NFP Submission

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# Submission to Portfolio Committee No. 3

### Inquiry into the Children (Education and Care Services National Law Application) Amendment Bill 2025 (NSW)

### Joint Submission by KU Children's Services, SDN Children's Services, Gowrie NSW, Big Fat Smile & Goodstart Early Learning

## About Us

As five of New South Wales' most trusted not-for-profit early childhood education and care (ECEC) providers, we have a long and proven history of delivering high-quality, inclusive education and care for children and families across the state and beyond. Between us, KU Children's Services, SDN Children's Services, Gowrie NSW, Big Fat Smile & Goodstart Early Learning, we directly operate more than 320 services in NSW, representing almost four centuries of continuous service to our communities. Together, we reflect the evolution of the not-for-profit sector in NSW with our innovations in pedagogy, inclusion, workforce development and family engagement now core features of the ECEC ecosystem.

Importantly, our record demonstrates that we do not shy away from the responsibility to strengthen quality and safety. Each of our organisations has consistently advocated for stronger regulatory standards, clearer safeguards for children, and more consistent enforcement mechanisms. We have invested in workforce capability, improved safeguarding practices, and built transparent systems of accountability to drive a culture of reporting because we recognise that children's safety and wellbeing must always come first.

## 1. Introduction

We welcome the opportunity to provide input on the *Children (Education and Care Services National Law Application) Amendment Bill 2025 (NSW)*. We strongly support reforms that improve the safety, rights and wellbeing of children, and that strengthen transparency and accountability in the early childhood education and care (ECEC) sector.

However, we are equally concerned that new obligations must be practical, sustainable for providers and educators, and to the fullest possible extent - nationally consistent.

While it is admirable that the NSW Government seeks to lead the way in reform, we note that significant changes to the National Law have traditionally been subject to Regulatory Impact Assessment and robust sector consultation. These are vital processes for minimising unintended consequences and ensuring reforms are workable in practice and the absence of such processes in this instance is of particular concern.

We note and welcome the agreement of the Education Ministers Meeting in August, supported by NSW, to pursue an expedited national amendment package by the end of 2025, led by Victoria, covering:

- the paramountcy of children's safety, rights, and best interests;
- mandatory child-safety training for all staff, volunteers, and students;
- the establishment of a National Educator Register (mandatory from February 2026);
- stronger inter-agency information-sharing on prohibited individuals;
- removal of service waivers that compromise adequate supervision;
- tripling fines under the National Law and National Regulation;
- mandatory Working With Children Checks (WWCCs) before work commences and notification of any changes; and
- an extended limitation period for prosecutions.

The rationale for NSW pressing ahead with this legislation now - without consultation and in parallel to the agreed national process - is therefore somewhat unclear, particularly considering the significant work already underway and via the current NSW Parliamentary Inquiry.

Deviation from the National Quality Framework and the National Law should not be undertaken lightly. The National Quality Framework is a unique Australian achievement that has, over the past 15 years, raised the quality of early childhood education and care across Australia. It provides a foundation for the Commonwealth to provide funding to the ECEC sector – currently around 70% of the funding for centre-based day care services in NSW comes from the Commonwealth. As the Commonwealth embarks on the journey of building a universal ECEC system for Australia, it would seem poor timing to embark on a legislative exercise creating significant divergence from the National Law. Indeed, we have been advocating for Commonwealth and State Governments to work together to provide a more effective stewardship and policy leadership role for the ECEC sector nationally. We have also called for a National ECEC Commission to hold providers and regulators to account for the delivery of agreed national policy objectives for ECEC articulated in a National ECEC Vision. All jurisdictions working together is the best way of delivering a universal high quality ECEC system.

We agree the Wheeler Review recommendations are an important springboard for further work should the Government wish to go beyond the nationally agreed reforms, noting that the Wheeler Review is an important input into the current package of reforms of the National Law. However, in the absence of a comprehensive Government response to the Report, some changes in the Bill appear to go beyond those publicly released recommendations, and/or propose to give effect to these recommendations in ways that have not been tested with sector stakeholders, and it is unclear if they have been considered by other state and territory regulators.

We remain steadfast advocates for a zero-tolerance safety and safeguarding culture within early childhood education and care. But we are particularly concerned that the Bill:

- risks diverging from other jurisdictions, creating inconsistency across states instead of reinforcing a nationally unified framework for safety, transparency, and accountability;
- introduces significant fines for our workforce, for offences which may be ambiguously defined and applied, and which may be disproportionate to the offence and the salaries of teachers and educators, and are in stark contrast to the conditions applying to teachers in state school settings;
- delegates significant detail to Ministerial regulation-making powers, including custodial penalties, in ways that appear to breach fundamental legislative principles;
- narrows procedural fairness and removes or limits review rights, contrary to natural justice; and
- subjects the ECEC workforce to processes and disclosures not applied in comparable school settings, creating disproportionate risk and disincentives for staff, which will likely have the unintended consequence of driving teachers and educators away from the sector and into schools and the Government's public preschools, where their employment conditions are higher.
- Given the very limited time available for consultation, we have not been able to engage with the Bill's provisions in detail. Our comments therefore focus on overarching principles, areas of alignment and concern, and broader implications for providers, educators, and families. We reserve the right to provide further detailed input as more time and information become available.

Our core recommendation is that the Committee recommend the Bill be laid on the table for **three months** to enable:

1. the Department to undertake a proper round of consultations with providers, educators, and families, if not a full impact assessment; and
2. the completion of the national amendment package currently being developed by Education Ministers.

This approach would ensure reforms are well-designed, workable in practice, and are as far as possible nationally consistent - delivering stronger and safer outcomes for children, families, and the sector.

## 2. Areas of Support

We acknowledge and support many provisions of the Bill in principle:

### 2.1 Enshrining children's best interests as the paramount consideration

We strongly support enshrining children's safety, rights, and best interests as the paramount consideration. This aligns with community expectations and international conventions.

However, this reform requires clear operational guidance, training, and alignment with existing obligations under the federal Fair Work Act and Workplace Health and Safety laws. Without this, providers may be placed in situations where prioritising children's safety exposes them to employment law challenges and significant IR costs.

Goodstart, for example, has faced cases before the Fair Work Commission when we acted to prioritise children's safety by standing staff down during investigations. In these cases, our child-first approach has conflicted with industrial relations frameworks. Clear statutory guidance and coordinated Commonwealth reform is therefore essential to reconcile obligations and avoid perverse outcomes.

We also note the Bill also leaves key terms - "best interests" and "rights" - undefined. As Professor Newman argues, without statutory definitions, these concepts risk being applied inconsistently, leading to legal disputes or ethical dilemmas for providers and our workforce as well as the Regulator and Authorised Officers.

Noting there has been National Agreement to fast-track these changes before the end of 2025 – our strong recommendation would be for NSW to lead this work nationally via the established processes for pursuing unified changes to the National Law.

This approach would have the benefit of carefully unpacking the implications of this provision and coordinating any necessary reform to federal employment, workplace health and safety and family assistance (CCS) legislation.

### 2.2 Transparency and publication of enforcement actions

Parents and families have a right to accessible compliance information. We support publication where it strengthens trust and accountability. However, safeguards are necessary to prevent reputational damage from unsubstantiated allegations or comparatively minor matters that have been rectified. We would reinforce Professor Newman and CELA's submissions that have both cautioned against publication without due process.

We consider that national consistency in this area is also crucial. Current differences in thresholds for compliance notices and variations across AO interpretations mean parents in NSW already see more "red flags" than in other jurisdictions, contributing to false impressions of risk.

We further note that in August Education Ministers agreed to:

> *Improved transparency for parents – The Starting Blocks website will be upgraded to display information about conditions imposed on centres and regulator visits from September. The website will also be updated to show compliance breaches and enforcement actions from November. The Commonwealth will invest $2 million for this work and provide a further $5 million to ACECQA to support families to better understand safety and quality in ECEC.*
>
> *Services will also be required to physically display meaningful information, including in other languages where appropriate, on compliance and enforcement breaches. Work will commence immediately to determine what information, as well as what legislative changes will be required to*

*implement this, with a progress update to be provided to Education Ministers in October 2025. (Ministerial Communique)*

Given the Starting Blocks upgrade agreed by Ministers will introduce transparency nationally by November 2025, we would strongly support NSW in aligning with this important work in the first instance.

### 2.3 Whistleblower protections

We support new protections for individuals making disclosures in good faith and recognise that stronger safeguards may encourage staff and others to report concerns without fear of reprisal. As leading not-for-profit providers, we're committed to maintaining the highest standards of ethical conduct across all areas of our organisations and we actively encourage our employees to speak up. For example, Goodstart and KU, already have national whistleblowing policies supported by an independent whistleblowing service.

We also note that Wheeler recommended a sunset clause on these provisions, to be triggered by an appropriate amendment to the National Law. This recommendation reflects an important underlying point – that NSW can and should take a leadership role in national work to strengthen the National Law.

### 2.4 Child-safe recruitment and employment practices

Strengthening recruitment practices through clearer obligations is positive for safeguarding.

Consistent guidance from the Regulator, for example on what to look for and how to look for it at recruitment, will assist providers, especially small and community-based services, to implement these consistently and avoid subjective or inconsistent interpretations.

### 2.5 Investment in regulatory capability

While not directly provided for in the Bill - we support the Government's investment in strengthening the capability of the Regulatory Authority. The sector has long raised concerns about inconsistency in Authorised Officer experience and judgment.

Investment must be directed toward improving regulatory training, calibration, and consistency - otherwise new powers risk being exercised unevenly and unfairly.

We do note however that the provision to direct the revenue raised via fines to the new Independent Regulator may create perverse incentives and reliance in the Regulator on this revenue, particularly over time. In this regard we would draw the Committee's attention to the full recommendation made in the Wheeler Report, and recommend this is reflected in the legislation:

- Decisions about the funding of the NSW RA to include an amount indexed to the numbers of Services being approved each year.
- The NSW RA should be exempt from efficiency dividends.
- The Department's Audit Directorate should conduct an efficiency audit of the NSW RA every 2 years. (Rec 12)

# 3. Key Concerns

### 3.1 Process

While we are broadly supportive of the recommendations made in the Wheeler report, we note that many of these – such as the key recommendation for children's interests to the be the paramount consideration require further significant consideration.

Given the Government did not release a formal response to the Report, or engage in any discussion with the sector regarding how some of these recommendations could be implemented, the unexpected introduction of this Bill without a Regulatory Impact Assessment or any sector consultation is both disappointing and inconsistent with best-practice legislative development.

We would stress that insufficient consultation risks unintended consequences and undermines sector trust, which has been raised in the few other submissions made on the Bill.

### 3.2 Divergence from the national Law

ECEC is a co-operative national system, with 70% of funding for services in NSW coming sourced from the Commonwealth. Divergence undermines the National Quality Framework and creates complexity for providers and educators operating across jurisdictions such as our casual workforce.

National Ministers have already agreed to fast-track reforms by end-2025. NSW should be at the forefront of that process, not diverging from it.

Furthermore, if the key justification for NSW acting now and diverging from the national law is that other states did not support some of these measures when NSW consulted with them, then it would be helpful for the Department to provide transparency to the sector and to Parliament about why other states did not support these measures. This is particularly important given the significant breadth and depth of experience across state regulators in administering the National Law.

### 3.3 Overly-broad Ministerial powers

Section 301A grants wide regulation-making powers, including creating new offences and penalties. Section 223A allows binding Ministerial guidelines that effectively operate as "de facto" regulations without parliamentary scrutiny.

We share the concerns raised by the Legislative Review Committee that these provisions may breach the principles of good regulation.

### 3.4 Publishing information about compliance history and current investigations

In the absence of a full Regulatory Impact Assessment, we strongly oppose provisions in the Bill that would enable information about current investigations to be published without any safeguards. We note that investigations have a range of thresholds and categories, and that these provisions open the possibility for:

- significant breaches of child and staff privacy and safety;
- reputational damage before findings are made; and
- undue negative impact on trust between families and providers.

We are also concerned that much of the detail about how these provisions will operate is being left to regulation/ Ministerial discretion – for example:

- What is the threshold for "compliance matters"?
- Will it include everything that now gets noted after a spot visit that is already corrected?

We note the older a service is, the longer the list may appear to be, and this may disadvantage long-standing providers. We therefore recommend checks and balances on the publication of regulatory information to prevent reputational harm.

As outlined in 2.2, we strongly support national consistency in this area and note that National Ministers are due to consider changes to the *Starting Blocks* website support greater transparency for parents this month.

We have previously advocated for further transparency measures, such as ensuring reported fees on Starting Blocks are up to date, that financial information about large providers is published and that families are informed of quality assessment outcomes. What needs to be provided to families on compliance activity should be first tested with providers and families to ensure that it is relevant, fair and useful.

### 3.5 Tripling penalties and extending these to individual teachers and educators

The Bill extends significant penalties to individual educators, nominated supervisors, and even volunteers — up to $34,200 for broadly defined offences such as "inappropriate conduct." While we note that the tripling of fines was agreed at the August Education Ministers Meeting, we share the concerns of others that, in the absence of definitions and significant guidance, new offences framed around a "reasonable person" test risks confusion, over-reporting and penalising good-faith actions. Higher fines should be reserved for the most serious offences, and regulators must ensure that fines are proportionate to avoid perceptions of revenue raising that is ultimately paid for by parents through increased fees.

The National Child Safety Review Decision Regulatory Impact Statement approved by Education Ministers in August considered stakeholder feedback on the offence of 'inappropriate conduct' and acknowledged that further work would need to be undertaken. It noted:

> *Stakeholder feedback reinforced a range of considerations that would need to be considered in implementing these options. This included, for example, feedback that:*
> - *The preferred definition of inappropriate conduct will need to be clarified.*
> - *The legislative approach should align with current legislation and processes related to inappropriate conduct, including the alignment with the Fair Work Act and jurisdictional reportable conduct schemes.*
> - *The requirement for confirmed definitions of inappropriate conduct to be communicated in and integrated within mandatory child safety training (Chapter 6.1), such that stakeholders are well informed about what constitutes inappropriate conduct, and how to prevent and manage it appropriately.*
>
> *In proceeding to implement option 3, the governments will ensure that the provisions prescribing inappropriate conduct as an offence are consistent with fundamental legislative principles. For example, taking into consideration potential overlap between existing offences in other legislation and the definition of inappropriate conduct (with the intent that no act already prescribed as an offence in other legislation would also be prescribed as an offence under a definition of inappropriate conduct).*
>
> *In response to this feedback, further policy work will be undertaken to determine the specific definition and design of any legislative instrument to prescribe inappropriate conduct as an offence, to alleviate potential risks and concerns of stakeholders noted above.*[1]

We are particularly concerned that the increased penalties will apply to individual educators and teachers in stark contrast to penalties in comparable school settings. Penalties must be proportionate to the nature of the breach and to the level of income and responsibility. We share concerns with the IEU and others that this creates a risk of deterring staff from leadership roles in our sector, creating fear and attrition in an already

[1] National Child Safety Review Decision Regulation Impact Statement, August 2025, p 149-150

stretched workforce, and undermining morale. This was certainly our experience during Covid, when the role of the nominated supervisor again carried significantly increased risks. We will be providing this feedback to the review of the National Law as well.

There is also a risk of disproportionate cumulative penalties. Clarity is needed to ensure sanctions are fair and proportionate, while also providing greater levers for the Regulator to drive unscrupulous providers from the sector. We note that NSW already issues breaches at more than twice the rate of the Victorian regulator, even though the Victorian regulator's approach appears to achieve higher levels of quality and fewer waivers.[2] This highlights the value of nationally consistent approaches to regulation, breaches and penalties, and of regulators learning from each other's best practice.

We therefore urge NSW to instead work via the nationally agreed processes to clarify "inappropriate conduct" and to increase fines under the National Law and National Regulation. It would be premature for the New South Wales Parliament to legislate for such a vaguely worded offence until this important clarifying work is undertaken.

Once this process is complete – additional penalties proposed for NSW should be subject to a full Regulatory Impact Assessment.

### 3.6 Disciplinary matters and the removal of procedural fairness and review rights

The Bill empowers the Regulator to suspend educators or impose supervision orders with little opportunity to respond. Sections 190 and 192 then remove external review for decisions based on "unacceptable risk."

Removing appeal rights for "unacceptable risk" decisions represents a serious curtailment of procedural fairness. While safety must be paramount, natural justice remains essential.

The Bill also provides for Minister-appointed arbiters to adjudicate disciplinary matters on the "balance of probabilities." However, it is unclear how this will interact with existing Industrial Relations law, and whether educators and providers will have rights to representation, access to evidence, or avenues for appeal. Who, for example, will be liable to cover wages if the Department stands a teacher or educator down?

We note the concerns of others that removing independent review concentrates too much power in the Regulator, and we share these concerns. When combined with strict liability offences and substantial penalties, the absence of clear procedural protections heightens the risk of unfair or inconsistent outcomes. Given the high stakes, it is critical that disciplinary processes are underpinned by transparent rules and natural justice.

### 3.7 Enabling the regulator to suspend or revoke quality ratings during or following an investigation.

We do not support this provision in its current form and would urge the Department to take this proposal instead to National Ministers for further consideration and potentially a national Consultation RIS.

A regulator will either have evidence that quality has substantially changed and that a new A&R is necessary or they don't. Suspending the rating is likely to leave families and providers in limbo.

Key questions that require further detailed work include:

- On what grounds would the Regulator revoke or suspend a rating while an investigation is being conducted?
- How will they assess when this is required and what would this mean in practice?

[2] Report on Government Services (2025) Table 3A.32, ACECQA NQS Snapshot Q2 2025

- How will providers be protected from reputational and financial impacts where findings from an investigation are in the service's favour?

### 3.8 Workforce and regulator capability

We are concerned that Authorised Officers may not have sufficient qualifications, skills or experience to exercise new powers consistently. Our experience has been that there is a high level of inconsistency in officer experience and capability, including investigative capabilities.

Internal review processes will be important to develop a consistent approach. We do not support expanded enforcement powers without a parallel uplift in regulator training, capability and consistency testing.

## 4. Recommendation for a Three-Month Pause

We support the intent of the Bill and share the Government's commitment to child safety, transparency, and accountability. However, several provisions are premature, overly broad, and/or inconsistent with concurrent national processes.

Providers, educators, and families have waited a long time for these reforms and deserve meaningful consultation. We therefore urge the Committee to recommend that the **Bill be laid on the table for three months**, to allow:

- **Consultation and Regulatory Impact Assessment with the sector and community** –This would allow assessment of costs, benefits, and alternative approaches. This is especially important for penalty structures, transparency provisions, and ministerial powers.
- **Alignment with National Reforms to the fullest extent possible** - Education Ministers have already agreed to a national amendment package by end-2025.

We reiterate our support for what this Bill, and the Wheeler Review, is trying to achieve. But in doing so, the Parliament should not compromise on long established principles of good legislative practice. Nor should it inadvertently undermine a decade long commitment to the National Quality Framework shared by Governments, providers and educators alike. A short pause for detailed work to be undertaken should result in a Bill that better serves the interests of children, families, providers, and the Regulator itself - not a delay for delay's sake.

We thank the Committee for considering this submission and for providing an extension to enable additional time to engage with the significant reforms proposed, and we will look forward to engaging constructively in upcoming consultations that the Department is planning.