

**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]”	<p>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?</p> <p>Already, the NSW Regulatory Authority is concerned about services’ consistency and comprehensiveness of applying the term “critical reflection”.</p> <p>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.</p>	
02	Page 4, lines 4 to 26 Section 4 How functions to be exercised	<p>The focus remains on the Approved Provider and the person(s) with management or control.</p> <p>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?</p>	
03	Page 5, line 41 “Whether the conduct is expected practice”	<p>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.</p> <p>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?</p>	
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

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	(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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	subject to the direction and control in relation to --		
10	<p>Page 34, lines 7-8</p> <p>[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:</p>	<p>We welcome the transparency intended in this provision.</p> <p>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)?</p> <p>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?</p> <p>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).</p>	
11	<p>Page 35, lines 1-23</p> <p>270A Protection from liability for publication under section 270 [NSW]</p>	<p>We welcome this proposed provision as new whistleblower protections.</p> <p>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</p>	

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		<p>educator, teacher, Nominated Supervisor, the Approved Provider, etc).</p> <p>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.</p> <p>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.</p>	
12	<p>Page 40, lines 19-32</p> <p>297 Meaning of "protected disclosure" [NSW]</p>	<p>We welcome this proposed provision as new whistleblower protections.</p> <p>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.</p>	
13	<p>Page 50, lines 28-37</p> <p>(ia) child-safe recruitment practices ...</p> <p>(ib) ongoing child-safe employment practices ...</p>	<p>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)).</p> <p>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?</p>	
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	

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	addressing child safety and the public's understanding of quality via the published quality ratings	<p>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).</p> <p>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).</p> <p>When and how will the NSW Government address this?</p>	
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	<p>When will the NSW Government review the apparent inconsistent use of existing laws, including:</p> <ol style="list-style-type: none"> 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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		<p>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.</p> <p>7. National Law: Section 80(1) – The Regulatory Authority can cancel service approval to the extent that it relates to associated children's service</p> <p>8. National Law: Section 75 – The Regulatory Authority can suspend service approval to the extent that it relates to associated children's service.</p> <p>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.</p>	
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	<p>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.</p> <p>When will the NSW Regulatory Authority mandate a minimum set of qualifications, skills and experiences required of all their NSW Authorised Officers?</p> <p>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.</p>	
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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		<p>concerns about their visibility of child safety issues that the NSW Regulatory Authority did not share with those other authorities.</p> <p>https://nsw.childcarealliance.org.au/news-current/first-2-days-of-the-nsw-parliamentary-inquiry-into-early-childhood-education-and-care-in-nsw</p> <p>So, when will there be a harmonised, effective, transparent and fair process for reporting and addressing child safety concerns?</p>	
18	In relation to this Bill and the broader reform, including addressing child safety	<p>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)).</p> <p>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?</p> <p>And when will the NSW Reportable Conduct Scheme achieve information sharing with relevant regulators, agencies as well as jurisdictions?</p>	
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-q) 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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		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	<p>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).</p> <p>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)).</p> <p>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.</p>	