

1 November 2019

The Hon Sarah Mitchell MLC  
NSW Minister for Education and Early Childhood Learning  
Parliament of New South Wales  
52 Martin Place  
SYDNEY NSW 2000

Dear Minister Mitchell,

**Re: Continuing lack of transparency from the NSW Department of Education  
with respect to alleged breaches and non-compliances by services**

Firstly, thank you for sending the Hon Kevin Conolly MP to represent you at the 2019 Excellence in Early Childhood Education Awards. The event was yet another sold-out event but this time with 120 people on the waiting list and remains the largest of its kind.

As you know, the Australian Childcare Alliance (ACA) NSW members operate about 1,600 childcare services, 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.

You will recall on 19 March 2018, we presented to you our report, "*Early Childhood Education in NSW: A Better Direction*" (see <https://nsw.childcarealliance.org.au/images/Documents/Submissions/2018-03-19---ACA-NSW---ECEC-in-NSW---A-Better-Direction.pdf>). Consequently, you asked your then Executive Director for Early Childhood Education and Care, Tracy Mackey, from the NSW Department of Education, to meet with me to begin addressing the issues raised.

Our first meeting was conducted on 27 April 2018 at Level 4, 1 Oxford Street, Sydney. And given we were allocated a maximum of an hour, the NSW Department of Education sought to address 3 issues out of the possible 14 identified in our submission. As your office knows, no further meetings or discussions were entertained by the NSW Department of Education since that meeting.

Ms Mackey assured us that all such breaches and non-compliances would be available to every service's National Quality Agenda IT System (NQAITS) operated by the Australian Children's Education and Care Quality Authority (ACECQA). However, as pointed out by ACECQA, the NQAITS does not carry such information for services, even though such information is available to and populated by the NSW Department of Education as the local Regulatory Authority.

In relation to what is now proven to be a lack of transparency and accountability by the NSW Department of Education in relation to alleged breaches and non-compliances issued to services, ACA NSW continues to be concerned that:

- (a) upon the Department's officer issuing the breach/non-compliance notice, and the approved provider then having resolved/addressed them, no further response is received from the Department as to whether the breach/non-compliance notice is withdrawn, addressed, or remains unresolved;
- (b) all approved providers do not have access to their service(s)' historical breaches/non-compliances and their respective status of whether they were withdrawn or adequately addressed;
- (c) without direct and consistent access to the evidence the Department's officer(s) relied upon to issue the breach/non-compliance notice(s), approved providers are at a severe disadvantage from a lack of due process and natural justice; and
- (d) the NSW Department of Education does not appear to have any system monitoring officers' consistency or success/failure rates of prosecuting breaches/non-compliances.

ACA NSW is committed to ensure that all services must always be compliant with the National Law and National Regulations. This will not only ensure quality early childhood education, but also the safe care of children enrolled.

But what we are seeing is an unacceptable level of Department officers who issue breach/non-compliance notices that are either based on insufficient evidence or the wrong interpretation of legal requirements.

ACA NSW had previously asked on 19 March 2018:

1. that each time a breach/non-compliance notice is issued by the NSW Department of Education, once the matter has been cleared, a formal advice must be provided stating that the matter has been resolved;
2. that the NSW Department of Education provide an on-line register of all current alleged non-compliances, all withdrawn allegations of unproven non-compliances and all resolved non-compliances;
3. that the information recorded on the abovementioned on-line register be accessible only to the corresponding approved providers and the NSW Department of Education who administers it;
4. that only proven breaches that attract financial penalties (ie fines) will be considered as part of the risk assessment profiles of each approved provider; and
5. that the NSW Department of Education introduce a transparent process of an independent panel where any approved provider can challenge the allegations and/or decisions of the NSW Department of Education.

To date, it would appear none of our suggestions/recommendations were considered nor implemented.

As of 1 November 2019, of the 5,510 approved services in NSW to date:

- 1,330 services were rated as Working Towards the National Quality Standards;
  - of which 99 were last assessed in 2015, 290 were last assessed in 2016, and 373 were last assessed in 2017; and
- 8 services were rated as Significant Improvement Required;
  - of which 2 were last assessed in May 2018 and September 2018, while 1 was last assessed in December 2017.

What is now even more troubling is that the current Review of the National Quality Framework, led by the NSW Department of Education, has raised the prospect of even more fees, penalties and fines for those services that are non-compliant. Given the lack of consistency, transparency and accountability by the NSW Department of Education, we are gravely concerned that there could be an inadvertent substantive increase in the number of breaches/non-compliances in the near future without a demonstrable and direct benefit to all services and children.

We remain open to having a robust discussion with you and your Department on how these issues can be resolved.

Looking forward to your response. And thanking you in anticipation.

Yours sincerely,



Chiang Lim  
CEO

- encl 1. Copy of Agenda of 27 April 2018 with the NSW Department of Education  
2. Copy of e-mail to Tracy Mackey (25 May 2018), including response from ACECQA

- cc
1. Jodie Harrison MP, NSW Shadow Minister for Early Childhood Education
  2. The Hon Mark Latham MLC, Chair, NSW Legislative Council's Education Committee
  3. The Hon Matthew Mason-Cox MLC, Deputy Chair, NSW Legislative Council's Education Committee
  4. The Hon David Shoebridge MLC, Member, NSW Legislative Council's Education Committee
  5. The Hon Kevin Conolly MP, NSW Parliamentary Secretary for Education

## ACA Meeting

### MEETING DETAILS

<b>Purpose</b>	Discuss ACA NSW members issues	
<b>Date</b>	Friday, 27 April 2018	11:30am -12:30pm
<b>Location</b>	Level 4 Conference, 1 Oxford Street	
<b>Attendees</b>	Tracy Mackey - Executive Director, Early Childhood Education Nancy Chang - Director, Regulatory Strategy and Performance Esther Jago - Advisor, Minister for ECE	Chiang Lim - Chief Executive Officer, Australian Childcare Alliance
<b>Sensitivity classification</b>	Sensitive: Standard	

### AGENDA

<b>1. Welcome and Meeting Overview</b>
<b>2. Discussion of Issues inferred in the Discussion Paper</b>
<ul style="list-style-type: none"> <li>▪ Supply and affordability</li> <li>▪ Regulatory framework and processes</li> <li>▪ Focus on YBS participation</li> </ul>
<b>3. Engaging with the NSW Government</b>
<ul style="list-style-type: none"> <li>▪ Established regular mechanisms and methods of communication</li> </ul>

## Chiang Lim

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**From:** Chiang Lim  
**Sent:** Friday, 25 May 2018 6:44 PM  
**To:** Mackey, Tracy  
**Cc:** Lyn Connolly @ Clovel; Esther Jago  
**Subject:** Unresolved: Seeking a transparent and fair compliance system for ECEC approved providers and service providers

Dear Tracy,

Apologies for taking this while to get back to you following our meeting of 27 April 2018 discussing our Briefing Paper (see <https://nsw.childcarealliance.org.au/images/Documents/Submissions/2018-03-19---ACA-NSW---ECEC-in-NSW---A-Better-Direction.pdf>).

During that meeting, according to my notes, Nancy Chang said that approved providers and service providers could use the NQAITS access to see all their current and historical non-compliances, including validated, not-validated, resolved, etc. This of course depends on how the approved providers had set up their NQAITS access for each of their services.

Following some exchanges with ACECQA, they have recently confirmed that such access is not available as a feature of the NQAITS. This concurs with our own investigation of the NQAITS portal from a number of approved providers and service providers' perspective.

Regardless of whether we did or did not understand the NSW Department of Education's advice at the meeting of 27 April 2018, **it confirms what ACA NSW has long had concerns with regarding the access to each service's current and historical non-compliances and how they were dealt with. Hence, Section 9 of our Briefing Paper seeking a transparent and fair compliance system remains unresolved.**

I would appreciate if you would respond to this as to how you would like to address Section 9 of our Briefing Paper going forward.

Thanking you in anticipation.

Chiang



(formerly Child Care New South Wales)

**Chiang (Xavier) Lim**

*Chief Executive Officer*

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**From:** NQAITS Servicedesk <[nqaits@acecqa.gov.au](mailto:nqaits@acecqa.gov.au)>  
**Sent:** Monday, 21 May 2018 3:48 PM  
**To:** Chiang Lim <[chiang.lim@childcarealliance.org.au](mailto:chiang.lim@childcarealliance.org.au)>  
**Subject:** RE: Request for training of use of NQAITS

Hi Chiang,

Thanks for your patience for a response, we've been waiting to hear from our contacts in NSW regarding this one.

There appears to be some confusion about what you may have been told. I believe when you spoke to Nancy, they confirmed that the Regulatory Authority (DET NSW in this instance) is able to see all breaches/information on their end of the NQA ITS, and that the approved provider could not. Lyn Connolly was supposedly present at this meeting you attended and had offered to show you what is available in the public portal.

Currently there is no function to view a list of breaches or non-compliances in the NQA ITS Public Portal (that approved providers can access), and at this stage there is no plan to make this available just yet.

Hopefully that clears up any confusion.

Regards,

**Christopher**

Business Systems Officer

1300 667 319

Level 6, 175 Liverpool Street, Sydney NSW 2000

PO Box A292, Sydney NSW 1235



Australian Children's Education & Care Quality Authority

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**From:** Chiang Lim [<mailto:chiang.lim@childcarealliance.org.au>]

**Sent:** Monday, 14 May 2018 5:25 PM

**To:** NQAITS Servicedesk <[nqaits@acecqa.gov.au](mailto:nqaits@acecqa.gov.au)>

**Subject:** RE: Request for training of use of NQAITS

Dear Nic,

Thank you for your e-mail response. And apologies for not responding sooner.

I tried calling you today but you weren't in today.

The "breaches" that the NSW Department of Education and ACA NSW are talking about are non-compliances to the National Regulations that are identified from spot-checks and assessments and ratings. According to the NSW Department of Education (in particular Tracy Mackey and Nancy Chang) on 27 April 2018, such information are available via the NQAITS to approved providers and service providers. They are also presented (in summary format) as either validated or non-validated "breaches" or non-compliances.

I have been on a few approved providers' and service providers' NQAITS logins and I cannot find the information which the NSW Department of Education refers to.

I am hoping ACECQA can assist me with where to find and how such information can be accessed by any approved provider or service provider via their NQAITS login.

And if such compliance-related information is not available to approved providers and/or service providers, where COULD such information be stored within ACECQA? Because the NSW Department of Education appears to be suggesting that all such information is stored centrally by ACECQA.

Thanking you in anticipation.

Chiang



(formerly Child Care New South Wales)

**Chiang (Xavier) Lim**

*Chief Executive Officer*

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**From:** NQAITS Servicedesk <[nqaits@acecqa.gov.au](mailto:nqaits@acecqa.gov.au)>

**Sent:** Tuesday, 8 May 2018 9:02 AM

**To:** Chiang Lim <[chiang.lim@childcarealliance.org.au](mailto:chiang.lim@childcarealliance.org.au)>

**Subject:** RE: Request for training of use of NQAITS

Hi Chiang. What do you mean by access to "breaches"? The NQA ITS allows you to view and update your provider and service details and submit application and notification forms to the department. We don't typically provide training, but I'll be happy to answer any questions you have regarding the portal.

Regards

**Nic McRobie**

Business Systems Officer

----- Original Message -----

**From:** Chiang Lim [[chiang.lim@childcarealliance.org.au](mailto:chiang.lim@childcarealliance.org.au)]

**Sent:** 7/05/2018 3:57 PM

**To:** [enquiries@acecqa.gov.au](mailto:enquiries@acecqa.gov.au)

**Subject:** Request for training of use of NQAITS

Dear ACECQA,

Following a meeting on 27 April 2018 with Tracy Mackey (Executive Director of the NSW Department of Education – Early Childhood), she and her senior executive staff have advised that ACECQA's NQAITS platform provides every approved provider and service providers with access to their service(s)' breaches, both validated and unvalidated.

As the peak association representing 1,600 centre-based childcare services predominantly across NSW, would it be possible to arrange a time to receive training for staff from the Australian Childcare Alliance NSW to learn how to engage with the NQAITS?

We would be happy to come to the ACECQA office in Sydney for such a training.

Thanking you in anticipation.

Chiang

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**Chiang (Xavier) Lim**

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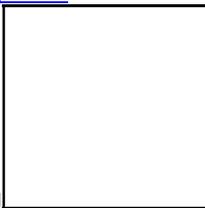
**E:** [chiang.lim@childcarealliance.org.au](mailto:chiang.lim@childcarealliance.org.au)

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The ACECQA Team

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