



New South Wales

# Children (Education and Care Services National Law Application) Amendment Bill 2025

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney,*

*, 2025*



New South Wales

# **Children (Education and Care Services National Law Application) Amendment Bill 2025**

Act No , 2025

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An Act to amend the *Children (Education and Care Services National Law Application) Act 2010* to modify the application of the *Education and Care Services National Law* as it applies in New South Wales to improve the quality of care provided to children in this State in the early childhood education and care sector; to make consequential amendments to the *Children (Education and Care Services) Supplementary Provisions Act 2011*; and for related purposes.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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**The Legislature of New South Wales enacts—**

**1 Name of Act**

This Act is the *Children (Education and Care Services National Law Application) Amendment Act 2025*.

**2 Commencement**

This Act commences as follows—

- (a) for Schedule 1[4], [6], to the extent it inserts Schedule 1[1B], [1C], to the extent it inserts the definitions of ***disciplinary agreement***, ***disciplinary notice***, ***disciplinary order***, ***disciplinary proceedings***, ***supervision notice*** and ***suspension notice***, [1D], [1H] and [1ZJ], [8], to the extent it inserts Schedule 1[4O], [4Q] and [4X]–[4Z], [9], to the extent it inserts Schedule 1[10], [11], [19], [35], [41], [43] and [44], to the extent it inserts section 300E, and [10], to the extent it inserts Schedule 1A, Schedule 1[10], [16]–[23], [25], [26] and [31]—on a day or days to be appointed by proclamation,
- (b) otherwise—on the date of assent to this Act.

## **Schedule 1      Amendment of Children (Education and Care Services National Law Application) Act 2010 No 104**

### **[1]      Section 4 Adoption of Education and Care Services National Law**

Insert at the end of the section—

- (2) If, after the commencement of this subsection, the Parliament of Victoria amends the Schedule to the *Education and Care Services National Law Act 2010* of Victoria, the amendment (the **Victorian amendment**) does not apply in New South Wales until a regulation is made applying the Victorian amendment, with or without modification, to the *Children (Education and Care Services) National Law (NSW)*.
- (3) A regulation made under subsection (2) applying a Victorian amendment with modification may, for that purpose, make a consequential amendment to this Act, Schedule 1, including a NSW provision.

**Example—** A regulation made under subsection (2) may omit a NSW provision because the Victorian amendment provides for the same matter on a national basis.

### **[2]      Section 5 Exclusion of legislation of this jurisdiction**

Omit “The” from section 5(1). Insert instead “Subject to subsection (1A), the”.

### **[3]      Section 5(1A)**

Insert after section 5(1)—

- (1A) The following provisions apply to NSW regulations made under the *Children (Education and Care Services) National Law (NSW)*—
  - (a) the *Interpretation Act 1987*, Parts 6 and 6A,
  - (b) the *Subordinate Legislation Act 1989*, sections 3, 4, 7 and 8 and Schedule 1.

### **[4]      Section 16 Penalty at end of provision**

Omit “provision is punishable on conviction by a penalty not more than the specified penalty.”.

Insert instead—

provision—

- (a) is punishable on conviction by a penalty not more than the specified penalty, and
- (b) may be the subject of a disciplinary order requiring the payment of a monetary penalty of not more than the specified penalty.

### **[5]      Section 21**

Omit the section. Insert instead—

#### **21      Review of amendments made by amendment Act**

- (1) The NSW Minister must review the amendments made by the amendment Act to determine whether—
  - (a) the policy objectives of the amendments remain valid, and
  - (b) the terms of the amendments remain appropriate for achieving the objectives.

- (2) The review must be undertaken as soon as practicable after the period of 12 months from the date of assent to the amendment Act.
- (3) A report on the outcome of the review must be tabled in each House of Parliament within 2 years after the date of assent to the amendment Act.
- (4) In this section—  
***amendment Act*** means the *Children (Education and Care Services National Law Application) Amendment Act 2025*.

**[6] Schedule 1 Modification of Education and Care Services National Law**

Omit Schedule 1[1]. Insert instead—

**[1] Section 3A**

Insert after section 3—

**3A Paramount consideration [NSW]**

- (1) The protection of the rights and best interests of each child and the children attending education and care services must be the paramount consideration in giving effect to this Law, including in making decisions or otherwise exercising functions under this Law.
- (2) Without limiting subsection (1), the protection of the rights and best interests of each child and the children attending education and care services prevails over—
  - (a) the financial interests of approved providers; and
  - (b) other fiduciary duties owed by persons with management or control of education and care services.

**Note—** This section is an additional NSW provision.

**[1A] Section 4 How functions to be exercised**

Omit “section 3”. Insert instead “sections 3 and 3A”.

**[1B] Section 4(2)–(4)**

Insert at the end of section 4—

- (2) If there is a conflict between the interests of an approved provider and the rights and best interests of a child or the children to whom the approved provider provides education and care, the rights and best interests of the child or children must prevail.
- (3) Without limiting subsection (2), a person with management or control of an education and care service must place the rights and best interests of a child or the children to whom the education and care service provides education and care above—
  - (a) the person’s other duties as a person with management or control of the education and care service; or
  - (b) the other interests of the education and care service.
- (4) Subsections (2) and (3) and section 3A are declared to be Corporations legislation displacement provisions for the *Corporations Act 2001* of the Commonwealth, section 5G in relation to the provisions of the Corporations legislation generally.

**Note—** The *Corporations Act 2001* of the Commonwealth, section 5G enables a State to displace the operation of the provisions of the Corporations legislation of the Commonwealth in favour of provisions of State laws that are declared

under State law to be Corporations legislation displacement provisions for that section.

**Note—** Subsections (2)–(4) are additional NSW provisions.

**[1C] Section 5 Definitions**

Insert in alphabetical order in section 5(1)—

***disciplinary agreement*** means agreed action under section 188D(a);

**Note—** This definition is an additional NSW provision.

***disciplinary notice***—see section 188M(1);

**Note—** This definition is an additional NSW provision.

***disciplinary order***—see section 188E(b)(i);

**Note—** This definition is an additional NSW provision.

***disciplinary proceedings*** means proceedings under Part 7, Division 3A;

**Note—** This definition is an additional NSW provision.

***emergency action notice*** means a notice under section 179;

**Note—** This definition is an additional NSW provision.

***enforceable undertaking*** means an undertaking under section 179A;

**Note—** This definition is an additional NSW provision.

***large child care provider***—

- (a) has the same meaning as in the *A New Tax System (Family Assistance) (Administration) Act 1999* of the Commonwealth; and

- (b) includes a person prescribed by the NSW regulations;

**Note—** This definition is an additional NSW provision.

***NSW Minister*** means the Minister administering this Law as applying in New South Wales and includes a reference to another Minister who is acting on behalf of that Minister;

**Note—** This definition is an additional NSW provision.

***NSW provision*** means—

- (a) a provision that forms part of this Law because of a modification made by the *Children (Education and Care Services National Law Application) Act 2010*; or
- (b) a NSW regulation;

**Note—** This definition is an additional NSW provision.

***NSW regulation*** means a regulation made under section 301A;

**Note—** This definition is an additional NSW provision.

***related provider***, of an approved provider, means an entity that is—

- (a) a related provider under the *A New Tax System (Family Assistance) (Administration) Act 1999* of the Commonwealth, section 4A(3); or
- (b) deemed by the Regulatory Authority to be a related provider under section 5B;

**Note—** This definition is an additional NSW provision.

***supervision notice*** means a notice given under section 178A(4)(c)(i);

**Note—** This definition is an additional NSW provision.

***suspension notice*** means a notice given under section 178(4)(c)(i);

**Note—** This definition is an additional NSW provision.

**[1D] Section 5(1)**

Omit the definition of *family day care residence*. Insert instead—

*family day care residence* means the following at which a family day care educator educates and cares for children as part of a family day care service—

- (a) the family day care educator’s usual place of residence;
- (b) the usual place of residence of another person;

**Note—** This definition is a substituted NSW provision.

**[1E] Section 5AA**

Insert after section 5—

**5AA Meaning of “inappropriate conduct” in relation to child [NSW]**

- (1) In this Law, *inappropriate conduct* in relation to a child means conduct a reasonable person would consider to be inappropriate in an education and care service.
- (2) In deciding whether a reasonable person would consider conduct inappropriate in an education and care service, the following must be considered—
  - (a) whether the conduct is expected practice in the provision of education and care services;
  - (b) the child’s age and stage of development;
  - (c) whether a child is likely to suffer emotional, psychological or physical harm as a result of the conduct;
  - (d) the purpose of the conduct, including whether the conduct, in the circumstances in which the conduct occurs, could be considered sexual or violent.
- (3) In deciding whether conduct is inappropriate conduct in relation to a child, the following is irrelevant—
  - (a) whether the child consents to the conduct;
  - (b) whether the person engaging in the conduct believes the child consents to the conduct.
- (4) A child may be subjected to conduct that is inappropriate conduct—
  - (a) in person, both directly and otherwise; or  
**Example—** conduct witnessed by a child
  - (b) by communication, including—
    - (i) verbal communication; and
    - (ii) electronic communication received in real or close to real time; or
  - (c) by electronic capture, including photography and recording; or
  - (d) through a pattern of behaviour.

**Note—** This section is an additional NSW provision.

**[1F] Sections 5B and 5C**

Insert after section 5A—

**5B Regulatory Authority may deem providers to be related providers [NSW]**

The Regulatory Authority may deem a provider to be a related provider of an approved provider if the provider—

- (a) shares one or more persons with management or control with the approved provider; or
- (b) shares a person who is not a person with management or control in common with the approved provider; or
- (c) owns part of the approved provider or receives dividends from the approved provider; or
- (d) meets the characteristics prescribed by the regulations.

**Note—** This section is an additional NSW provision.

**5C Regulatory Authority's functions and powers in relation to related providers [NSW]**

- (1) The Regulatory Authority has the same functions and powers under this Law in relation to a related provider of an approved provider as the Regulatory Authority has in relation to the approved provider.
- (2) For subsection (1), a reference in this Law to an approved provider is taken to include a reference to the related providers of the approved provider.

**Note—** This section is an additional NSW provision.

**[1G] Section 10 Application for provider approval**

Omit section 10(1). Insert instead—

- (1) A person, other than the following persons, may apply to the Regulatory Authority for a provider approval—
  - (a) a prescribed ineligible person;
  - (b) a person who has, in the previous 12 months, received a notice under section 16 that the Regulatory Authority has refused to grant the person a provider approval, unless the Regulatory Authority has notified the person that the person may apply for a provider approval within 12 months after receiving the notice;
  - (c) a person who has, in the previous 12 months, received a notice under section 50 that the Regulatory Authority has refused to grant the person a service approval, unless the Regulatory Authority has notified the person that the person may apply for a provider approval within 12 months after receiving the notice.

**Note—** This subsection is a substituted NSW provision.

**[1H] Section 19 Conditions on provider approval**

Omit section 19(1) and (2). Insert instead—

- (1) A provider approval—
  - (a) is granted subject to the conditions specified in subsection (2); and
  - (b) may be granted subject to additional conditions—
    - (i) prescribed in the national regulations; or
    - (ii) prescribed in the NSW regulations; or
    - (iii) determined by the Regulatory Authority.



- (2) For subsection (1)(a), a provider approval is subject to the following conditions—
- (a) the condition that the approved provider must comply with this Law, the national regulations and the NSW regulations;
  - (b) the condition that the approved provider must disclose to the Regulatory Authority, as required by the Regulatory Authority, the names of any related entities of the approved provider;
  - (c) the condition that the approved provider must disclose to the Regulatory Authority, as required by the Regulatory Authority, any changes in the names of any related entities of the approved provider;
  - (d) the condition that the approved provider must take reasonable steps to transparently demonstrate the approved provider's ownership structure—
    - (i) at any education and care service premises at which the approved provider operates; and
    - (ii) on the approved provider's website and other digital content; and
    - (iii) in all advertisements for any education and care service operated by the approved provider; and
    - (iv) as part of any information required to be displayed under this Law.

**Note—** Subsections (1) and (2) are substituted NSW provisions.

- (2A) For subsection (2)(d), the Regulatory Authority may provide guidance, either generally or specifically, about what constitutes reasonable steps to transparently demonstrate an approved provider's ownership structure.

**Note—** This subsection is an additional NSW provision.

**[1I] Section 19(4)**

Omit the penalty. Insert instead—

Penalty—

- (a) for an individual—\$34,200; or
- (b) for a large child care provider—\$516,600; or
- (c) otherwise—\$172,200.

**Note—** This penalty is a substituted NSW provision.

**[1J] Section 19(5)**

Insert after section 19(4)—

- (5) In this section—  
*related entity* includes a related entity within the meaning of the *Corporations Act 2001* of the Commonwealth.

**Note—** This subsection is an additional NSW provision.

**[1K] Section 31 Grounds for cancellation of provider approval**

Insert at the end of the section—

- (2) The Regulatory Authority may also cancel a provider approval if the provider has ceased to operate or exist because the provider—

- (a) has been deregistered under the *Corporations Act 2001* of the Commonwealth; or
- (b) is under administration or in liquidation; or
- (c) is an association whose registration has been cancelled under the *Associations Incorporations Act 2009*; or
- (d) has otherwise ceased to operate or exist.

**Note—** This subsection is an additional NSW provision.

**[1L] Section 32 Show cause notice before cancellation**

Omit section 32(2)(c). Insert instead—

- (c) that the approved provider may give the Regulatory Authority a written response to the proposed cancellation—
  - (i) for a proposed cancellation under section 31(1)—within 30 days after the notice is given; and
  - (ii) for a proposed cancellation under section 31(2)—within 14 days after the notice is given.

**Note—** This paragraph is a substituted NSW provision.

**[1M] Section 36 Notice to parents of suspension or cancellation**

Omit section 36(3), penalty. Insert instead—

Penalty—

- (a) for an individual—\$10,200; or
- (b) for a large child care provider—\$154,800; or
- (c) otherwise—\$51,600.

**Note—** This penalty is a substituted NSW provision.

**[1N] Section 43 Application for service approval**

Omit section 43(1). Insert instead—

- (1) A person, other than the following persons, may apply to the Regulatory Authority for a service approval—
  - (a) a person who has, in the previous 12 months, received a notice under section 16 that the Regulatory Authority has refused to grant the person a provider approval, unless the Regulatory Authority has notified the person that the person may apply for a service approval within 12 months after receiving the notice;
  - (b) a person who has, in the previous 12 months, received a notice under section 50 that the Regulatory Authority has refused to grant the person a service approval, unless the Regulatory Authority has notified the person that the person may apply for a service approval within 12 months after receiving the notice.

**Note—** This subsection is a substituted NSW provision.

**[1O] Section 51 Conditions on service approval**

Omit section 51(8), penalty. Insert instead—

Penalty—

- (a) for an individual—\$34,200; or
- (b) for a large child care provider—\$516,600; or
- (c) otherwise—\$172,200.

**Note—** This penalty is a substituted NSW provision.

**[1P] Section 68 Confirmation of transfer**

Omit section 68(1), penalty. Insert instead—

Penalty—

- (a) for an individual—\$13,500; or
- (b) for a large child care provider—\$206,100; or
- (c) otherwise—\$68,700.

**Note—** This penalty is a substituted NSW provision.

**[1Q] Section 69 Notice to parents**

Omit section 69(1), penalty. Insert instead—

Penalty—

- (a) for an individual—\$10,200; or
- (b) for a large child care provider—\$154,800; or
- (c) otherwise—\$51,600.

**Note—** This penalty is a substituted NSW provision.

**[1R] Section 84 Notice to parents of suspension or cancellation**

Omit section 84(3), penalty. Insert instead—

Penalty—

- (a) for an individual—\$10,200; or
- (b) for a large child care provider—\$154,800; or
- (c) otherwise—\$51,600.

**Note—** This penalty is a substituted NSW provision.

**[1S] Section 87 Application for service waiver for service**

Insert “or NSW regulations” after “national regulations” in section 87(1).

**[1T] Section 87(1)**

Insert at the end of the subsection—

**Note—** This subsection is a modified NSW provision.

**[1U] Section 90 Matters to be considered**

Insert after section 90(a)—

- (a1) whether special circumstances disclosed in the application reasonably justify the grant of the service waiver; and

**Note—** This paragraph is an additional NSW provision.

**[1V] Section 91 Decision on application**

Omit section 91(4). Insert instead—

- (4) If a service waiver is granted, the service waiver is subject to the following conditions—
  - (a) that the approved education and care service provider must disclose the fact that the service waiver is in force to the families of children to whom education and care is provided by the service;

- (b) any other conditions placed on the service waiver by the Regulatory Authority, including any condition limiting the use of the service waiver.

**Note—** This subsection is a substituted NSW provision.

**[1W] Section 103 Offence to provide an education and care service without approval**

Omit section 103(1), penalty. Insert instead—

Penalty—

- (a) for an individual—\$68,700; or
- (b) for a large child care provider—\$1,034,100; or
- (c) otherwise—\$344,700.

**Note—** This penalty is a substituted NSW provision.

**[1X] Section 103(3)**

Insert after section 103(2)—

- (3) For subsection (1), an education and care service is taken not to be an approved education and care service during any period in which the service approval for the education and care service is suspended.

**Note—** This subsection is an additional NSW provision.

**[1Y] Section 103A Offence relating to places where education and care is provided as part of a family day care service**

Omit the penalty. Insert instead—

Penalty—

- (a) for an individual—\$68,700; or
- (b) for a large child care provider—\$1,034,100; or
- (c) otherwise—\$344,700.

**Note—** This penalty is a substituted NSW provision.

**[1Z] Section 104 Offence to advertise education and care service without service approval**

Omit section 104(1), penalty. Insert instead—

Penalty—

- (a) for an individual—\$20,400; or
- (b) for a large child care provider—\$309,600; or
- (c) otherwise—\$103,200.

**Note—** This penalty is a substituted NSW provision.

**[1ZA] Section 104(3)**

Insert after section 104(2)—

- (3) For subsection (1), an education and care service is taken not to be an approved education and care service during any period in which the service approval for the education and care service is suspended.

**Note—** This subsection is an additional NSW provision.

**[1ZB] Section 134 Rating levels**

Insert after section 134(2)—

- (3) Despite subsection (2), the Regulatory Authority may give an education and care service operating in this jurisdiction the highest rating level prescribed by the national regulations.

**Note—** This subsection is an additional NSW provision.

**[12C] Section 135 Rating of approved education and care service**

Omit “(other than the highest rating level)” from section 135(1).

**[12D] Section 135(1)**

Insert at the end of the subsection—

**Note—** This subsection is a modified NSW provision.

**[12E] Section 138A**

Insert after section 138—

**138A Regulatory Authority may suspend or revoke rating of approved education and care services [NSW]**

- (1) This section applies if the Regulatory Authority is investigating an approved education and care service under this Law.
- (2) The Regulatory Authority may, if the Regulatory Authority is satisfied it is in the public interest, suspend the approved education and care service’s rating level while the investigation is being conducted.
- (3) On or as soon as practicable after the conclusion of the investigation, the Regulatory Authority may—
  - (a) revoke the approved education and care service’s rating level if the Regulatory Authority considers the revocation necessary or appropriate; and
  - (b) re-rate the approved education and care service against the National Quality Standard or the national regulations.

**Note—** This section is an additional NSW provision.

**[12F] Section 140A**

Insert after section 140—

**140A Application of division to education and care service with highest rating level [NSW]**

To avoid doubt, the Regulatory Authority may reassess, suspend or revoke the rating level for an education and care service even if the rating level is the highest rating level prescribed by the national regulations.

**Note—** This section is an additional NSW provision.

**[12G] Section 161 Offence to operate education and care service without nominated supervisor**

Omit the penalty. Insert instead—

Penalty—

- (a) for an individual—\$17,100; or
- (b) for a large child care provider—\$258,300; or
- (c) otherwise—\$86,100.

**Note—** This penalty is a substituted NSW provision.

**[1ZH] Section 161A Offence for nominated supervisor not to meet prescribed minimum requirements**

Omit the penalty. Insert instead—

Penalty—

- (a) for an individual—\$17,100; or
- (b) for a large child care provider—\$258,300; or
- (c) otherwise—\$86,100.

**Note—** This penalty is a substituted NSW provision.

**[1ZI] Section 162 Offence to operate education and care service unless responsible person is present**

Omit section 162(1), penalty. Insert instead—

Penalty—

- (a) for an individual—\$17,100; or
- (b) for a large child care provider—\$258,300; or
- (c) otherwise—\$86,100.

**Note—** This penalty is a substituted NSW provision.

**[1ZJ] Section 162A**

Omit the section. Insert instead—

**162A Offence relating to child protection training [NSW]**

- (1) An approved provider of an education and care service must ensure each relevant person for the service completes child protection training.

Penalty—

- (a) for an individual—\$17,100; or
- (b) for a large child care provider—\$258,300; or
- (c) otherwise—\$86,100.

- (2) A nominated supervisor of an education and care service must ensure each relevant person for the service completes child protection training.

Penalty—\$17,100.

- (3) A family day care co-ordinator must ensure that each relevant person for the family day care service completes child protection training.

Penalty—\$17,100.

- (4) In this section—

***child protection training*** means the following training relating to education and care services—

- (a) child protection training required by or under the law of this jurisdiction;
- (b) child protection training required by a government protocol applying in this jurisdiction;
- (c) child protection training otherwise required in this jurisdiction;

***relevant person*** means a person involved in the provision of an approved education and care service within the meaning of section 182(2).

**Note—** This section is a substituted NSW provision.

**[1ZK] Section 163 Offence relating to appointment or engagement of family day care co-ordinators**

Omit section 163(1), penalty. Insert instead—

Penalty—

- (a) for an individual—\$17,100; or
- (b) for a large child care provider—\$258,300; or
- (c) otherwise—\$86,100.

**Note—** This penalty is a substituted NSW provision.

**[1ZL] Section 164 Offence relating to assistance to family day care educators**

Omit section 164(1), penalty. Insert instead—

Penalty—

- (a) for an individual—\$17,100; or
- (b) for a large child care provider—\$258,300; or
- (c) otherwise—\$86,100.

**Note—** This penalty is a substituted NSW provision.

**[1ZM] Section 164A Offence relating to the education and care of children by family day care service**

Omit section 164A(1), penalty. Insert instead—

Penalty—

- (a) for an individual—\$34,200; or
- (b) for a large child care provider—\$516,600; or
- (c) otherwise—\$172,200.

**Note—** This penalty is a substituted NSW provision.

**[1ZN] Section 164A(2)**

Omit the penalty. Insert instead—

Penalty—\$6,600.

**Note—** This penalty is a substituted NSW provision.

**[1ZO] Section 165 Offence to inadequately supervise children**

Omit section 165(1), penalty. Insert instead—

Penalty—

- (a) for an individual—\$34,200; or
- (b) for a large child care provider—\$516,600; or
- (c) otherwise—\$172,200.

**Note—** This penalty is a substituted NSW provision.

**[1ZP] Section 165(2)**

Omit the penalty. Insert instead—

Penalty—\$34,200.

**Note—** This penalty is a substituted NSW provision.

**[1ZQ] Section 165(3)**

Omit the penalty. Insert instead—

Penalty—\$34,200.

**Note—** This penalty is a substituted NSW provision.

**[1ZR] Section 166 Offence to use inappropriate discipline**

Omit section 166(1), penalty. Insert instead—

Penalty—

- (a) for an individual—\$34,200; or
- (b) for a large child care provider—\$516,600; or
- (c) otherwise—\$172,200.

**Note—** This penalty is a substituted NSW provision.

**[1ZS] Section 166(2)**

Omit the penalty. Insert instead—

Penalty—\$34,200.

**Note—** This penalty is a substituted NSW provision.

**[1ZT] Section 166(3)**

Omit the penalty. Insert instead—

Penalty—\$34,200.

**Note—** This penalty is a substituted NSW provision.

**[1ZU] Section 166(4)**

Omit the penalty. Insert instead—

Penalty—\$34,200.

**Note—** This penalty is a substituted NSW provision.

**[1ZV] Section 166A**

Insert after section 166—

**166A Offence to subject child to inappropriate conduct [NSW]**

- (1) The approved provider of an education and care service must ensure that no child being educated and cared for by the service is subjected to inappropriate conduct.

Penalty—

- (a) for an individual—\$34,200; or
- (b) for a large child care provider—\$516,600; or
- (c) otherwise—\$172,200.

- (2) A nominated supervisor of an education and care service must ensure that no child being educated and cared for by the service is subjected to inappropriate conduct.

Penalty— \$34,200.

- (3) A staff member of, or a volunteer at, an education and care service must not subject any child being educated and cared for by the service to inappropriate conduct.

Penalty— \$34,200.

- (4) A family day care educator must not subject any child being educated and cared for by the educator as part of a family day care service to inappropriate conduct.

Penalty— \$34,200.



**Note—** This section is an additional NSW provision.

**[1ZW] Section 167 Offence relating to protection of children from harm and hazards**

Omit section 167(1), penalty. Insert instead—

Penalty—

- (a) for an individual—\$34,200; or
- (b) for a large child care provider—\$516,600; or
- (c) otherwise—\$172,200.

**Note—** This penalty is a substituted NSW provision.

**[1ZX] Section 167(2)**

Omit the penalty. Insert instead—

Penalty—\$34,200.

**Note—** This penalty is a substituted NSW provision.

**[1ZY] Section 167(3)**

Omit the penalty. Insert instead—

Penalty—\$34,200.

**Note—** This penalty is a substituted NSW provision.

**[1ZZ] Section 168 Offence relating to required programs**

Omit section 168(1), penalty. Insert instead—

Penalty—

- (a) for an individual—\$13,500; or
- (b) for a large child care provider—\$206,100; or
- (c) otherwise—\$68,700.

**Note—** This penalty is a substituted NSW provision.

**[1ZZA] Section 168(2)**

Omit the penalty. Insert instead—

Penalty—\$13,500.

**Note—** This penalty is a substituted NSW provision.

**[1ZZB] Section 169 Offence relating to staffing arrangements**

Omit section 169(1), penalty. Insert instead—

Penalty—

- (a) for an individual—\$34,200; or
- (b) for a large child care provider—\$516,600; or
- (c) otherwise—\$172,200.

**Note—** This penalty is a substituted NSW provision.

**[1ZZC] Section 169(2)**

Omit the penalty. Insert instead—

Penalty—

- (a) for an individual—\$34,200; or
- (b) for a large child care provider—\$516,600; or
- (c) otherwise—\$172,200.

**Note—** This penalty is a substituted NSW provision.

**[1ZZD] Section 169(3)**

Omit the penalty. Insert instead—

Penalty—\$34,200.

**Note—** This penalty is a substituted NSW provision.

**[1ZZE] Section 169(4)**

Omit the penalty. Insert instead—

Penalty—\$34,200.

**Note—** This penalty is a substituted NSW provision.

**[1ZZF] Section 169(5)**

Omit the penalty. Insert instead—

Penalty—\$34,200.

**Note—** This penalty is a substituted NSW provision.

**[7] Schedule 1[2A]–[2C]**

Insert after Schedule 1[2]—

**[2A] Section 170(2)**

Omit the penalty. Insert instead—

Penalty—

- (a) for an individual—\$3,300; or
- (b) for a large child care provider—\$51,300; or
- (c) otherwise—\$17,100.

**Note—** This penalty is a substituted NSW provision.

**[2B] Section 170(3)**

Omit the penalty. Insert instead—

Penalty—\$3,300

**Note—** This penalty is a substituted NSW provision.

**[2C] Section 170(4)**

Omit the penalty. Insert instead—

Penalty—\$3,300.

**Note—** This penalty is a substituted NSW provision.

**[8] Schedule 1[4A]–[4ZC]**

Insert after Schedule 1[4]—

**[4A] Section 171 Offence relating to direction to exclude inappropriate persons from education and care service premises**

Omit section 171(2), penalty. Insert instead—

Penalty—

- (a) for an individual—\$34,200; or
- (b) for a large child care provider—\$516,600; or
- (c) otherwise—\$172,200.

**Note—** This penalty is a substituted NSW provision.

**[4B] Section 172 Offence to fail to display prescribed information**

Omit section 172(1), penalty. Insert instead—

Penalty—

- (a) for an individual—\$10,200; or
- (b) for a large child care provider—\$154,800; or
- (c) otherwise—\$51,600.

**Note—** This penalty is a substituted NSW provision.

**[4C] Section 172(2)**

Omit the penalty. Insert instead—

Penalty—

- (a) for an individual—\$10,200; or
- (b) for a large child care provider—\$154,800; or
- (c) otherwise—\$51,600.

**Note—** This penalty is a substituted NSW provision.

**[4D] Section 172(3) and (4)**

Insert after section 172(2)—

- (3) An approved provider of an education and care service must ensure the approved provider's quality and compliance history for the education and care service provided by the approved provider is—
  - (a) displayed, in the form approved by the Regulatory Authority, at the education and care services premises in accordance with the NSW regulations; and
  - (b) published in the way prescribed by the NSW regulations or decided by the Regulatory Authority.

- (4) In this section—

*quality and compliance history* means the information prescribed by the NSW regulations.

**Note—** Subsections (3) and (4) are additional NSW provisions.

**[4E] Section 173 Offence to fail to notify certain circumstances to Regulatory Authority**

Omit section 173(1), penalty. Insert instead—

Penalty—

- (a) for an individual—\$13,500; or
- (b) for a large child care provider—\$206,100; or
- (c) otherwise—\$68,700.

**Note—** This penalty is a substituted NSW provision.

**[4F] Section 173(2)**

Omit the penalty. Insert instead—

Penalty—

- (a) for an individual—\$13,500; or
- (b) for a large child care provider—\$206,100; or

(c) otherwise—\$68,700.

**Note—** This penalty is a substituted NSW provision.

**[4G] Section 174 Offence to fail to notify certain information to Regulatory Authority**

Omit section 174(1), penalty. Insert instead—

Penalty—

- (a) for an individual—\$13,500; or
- (b) for a large child care provider—\$206,100; or
- (c) otherwise—\$68,700.

**Note—** This penalty is a substituted NSW provision.

**[4H] Section 174(2)**

Omit the penalty. Insert instead—

Penalty—

- (a) for an individual—\$13,500; or
- (b) for a large child care provider—\$206,100; or
- (c) otherwise—\$68,700.

**Note—** This penalty is a substituted NSW provision.

**[4I] Section 174A Family day care educator to notify certain information to approved provider**

Omit the penalty. Insert instead—

Penalty—\$6,600.

**Note—** This penalty is a substituted NSW provision.

**[4J] Sections 174AA and 174AB**

Insert after section 174A—

**174AA Educators and other staff members of education and care service to notify certain information [NSW]**

- (1) An educator or other staff member of an education and care service must, within the relevant period after either of the following events happening, give the approved provider of the education and care service for which the educator or other staff member provides education and care to children written notice of the event—
  - (a) a negative notice in relation to the educator or other staff member;
  - (b) a change in relation to the educator's accreditation or registration as a teacher.

Penalty— \$13,500.

- (2) In this section—

***negative notice***, in relation to a person, means any of the following—

  - (a) becoming a disqualified person under the *Child Protection (Working with Children) Act 2012*;
  - (b) notice that the person is subject to an interim bar under the *Child Protection (Working with Children) Act 2012*;

- (c) notice of a refusal of an application for a working with children check clearance under the *Child Protection (Working with Children) Act 2012*;
  - (d) notice of a cancellation of a working with children check clearance under the *Child Protection (Working with Children) Act 2012*;
  - (e) a mutual recognition negative notice within the meaning of the *Child Protection (Working with Children) Act 2012*, section 25A;
- relevant period**, in relation to an event, means the earlier of the following—
- (a) 72 hours after the event happens;
  - (b) 24 hours after becoming aware of the event happening.

**Note—** This section is an additional NSW provision.

**174AB Approved provider must notify Regulatory Authority of event under section 174AA [NSW]**

- (1) This section applies if an approved provider becomes aware of an event mentioned in section 174AA(1)(a) or (b) in relation to an educator or other staff member, whether because the approved provider is notified under section 174AA or otherwise.
- (2) The approved provider must, within 24 hours after becoming aware of the event, give the Regulatory Authority written notice of the event.  
Penalty—
  - (a) for an individual—\$13,500; or
  - (b) for a large child care provider—\$206,100; or
  - (c) otherwise—\$68,700.
- (3) The Regulatory Authority must, within 24 hours after receiving a written notice under subsection (2) about an event, notify the Children's Guardian of the event.

**Note—** This section is an additional NSW provision.

**[4K] Section 175 Offence relating to requirement to keep enrolment and other documents**

Omit section 175(1), penalty. Insert instead—

Penalty—

- (a) for an individual—\$13,500; or
- (b) for a large child care provider—\$206,100; or
- (c) otherwise—\$68,700.

**Note—** This penalty is a substituted NSW provision.

**[4L] Section 175(3)**

Omit the penalty. Insert instead—

Penalty—\$13,500.

**Note—** This penalty is a substituted NSW provision.

**[4M] Section 176 Compliance directions**

Omit section 176(3), penalty. Insert instead—

Penalty—

- (a) for an individual—\$6,600; or
- (b) for a large child care provider—\$102,600; or
- (c) otherwise—\$34,200.

**Note—** This penalty is a substituted NSW provision.

**[4N] Section 177 Compliance notices**

Omit section 177(3), penalty. Insert instead—

Penalty—

- (a) for an individual—\$20,400; or
- (b) for a large child care provider—\$309,600; or
- (c) otherwise—\$103,200.

**Note—** This penalty is a substituted NSW provision.

**[4O] Sections 178 and 178A**

Omit section 178. Insert instead—

**178 Suspension of education and care by certain persons [NSW]**

- (1) This section applies if the Regulatory Authority is satisfied that, because of the conduct of, or the inadequacy of the service provided by, a relevant person—
  - (a) the relevant person is not complying with any provision of this Law; or
  - (b) there is a risk to the safety, health or wellbeing of children being educated and cared for by the approved provider or education and care service.
- (2) The Regulatory Authority may give the relevant person a notice (a ***show cause notice***) stating—
  - (a) the Regulatory Authority intends to give the relevant person a notice directing the relevant person that the person is suspended from working in, or being involved in the provision of, any education and care service during the period of suspension; and
  - (b) the reasons for the proposed direction; and
  - (c) that the relevant person may, within 14 days after the show cause notice is given, make submissions to the Regulatory Authority in relation to the proposed direction.
- (3) Subsection (2) does not apply if the Regulatory Authority is satisfied it is necessary, in the interests of the safety, welfare or wellbeing of a child or children, to immediately suspend the relevant person from working in, or being involved in the provision of, any education and care service.
- (4) The Regulatory Authority—
  - (a) must consider any submissions from the relevant person received within the time allowed by subsection (2)(c); and
  - (b) may consider any other submissions and any matters the Regulatory Authority considers relevant; and
  - (c) may—
    - (i) give the relevant person a notice directing the relevant person that—

- (A) the person is suspended from being a person involved in education and care services; and
  - (B) the person must not enter any education and care service premises during the period of suspension, unless the person has another lawful reason for being on the premises; and  
**Example—** The person is the parent of a child being educated or cared for at the premises and the person has not been prohibited or restricted from entering the premises by an order of a court or tribunal.
  - (C) the person must not provide education and care services to children during the period of the suspension; or
- (ii) decide not to give that direction.
- (5) If the Regulatory Authority gives a direction under subsection (4), the Regulatory Authority must, within 24 hours after giving the direction, notify the Children's Guardian that the direction has been given.
- (6) A relevant person must not contravene a direction under subsection (4).  
Penalty—\$20,400.
- (7) An approved provider must not allow a relevant person to be involved in the provision of an approved education and care service operated by the approved provider while a direction under subsection (4) is in force in relation to the relevant person.  
Penalty—
- (a) for an individual—\$20,400; or
  - (b) for a large child care provider—\$309,600; or
  - (c) otherwise—\$103,200.
- (8) In this section—  
**relevant person** means a person involved in the provision of an approved education and care service within the meaning of section 182(2).

**Note—** This section is a substituted NSW provision.

**178A Supervision of certain persons providing education and care [NSW]**

- (1) This section applies if the Regulatory Authority is satisfied that, because of the conduct of, or the inadequacy of the service provided by, a relevant person, the relevant person is not complying with any provision of this Law.
- (2) The Regulatory Authority may give the relevant person and approved provider a notice (a **show cause notice**) stating—
  - (a) that the Regulatory Authority intends to give the approved provider a notice directing that the relevant person must be supervised by the approved provider in providing any education and care service during the period stated in the notice; and
  - (b) the reasons for the proposed direction; and
  - (c) that relevant person or approved provider may, within 14 days after the show cause notice is given, make submissions to the Regulatory Authority in relation to the proposed direction.

- (3) Subsection (2) does not apply if the Regulatory Authority is satisfied it is necessary, in the interests of the safety, welfare or wellbeing of a child or children, to immediately issue a notice to the approved provider directing that the relevant person must be supervised by the approved provider in providing any education and care service.
- (4) The Regulatory Authority—
  - (a) must consider any submissions from the relevant person or approved provider received within the time allowed by subsection (2)(c); and
  - (b) may consider any other submissions and any matters the Regulatory Authority considers relevant; and
  - (c) may—
    - (i) give the approved provider a notice—
      - (A) directing that the approved provider must supervise the relevant person in providing education and care services; and
      - (B) setting out any conditions applying to the supervision of the relevant person; or
    - (ii) decide not to give that direction.
- (5) If the Regulatory Authority gives a direction under subsection (4), the Regulatory Authority must, within 24 hours after giving the direction, notify the Children's Guardian that the direction has been given.
- (6) An approved provider must not contravene a direction or condition under subsection (4).  
Penalty—
  - (a) for an individual—\$20,400; or
  - (b) for a large child care provider—\$309,600; or
  - (c) otherwise—\$103,200.
- (7) In this section—  
**relevant person** means a person involved in the provision of an approved education and care service within the meaning of section 182(2)(b)–(h).

**Note—** This section is an additional NSW provision.

**[4P] Section 179 Emergency action notices**

Omit section 179(3), penalty. Insert instead—

Penalty—

- (a) for an individual—\$20,400; or
- (b) for a large child care provider—\$309,600; or
- (c) otherwise—\$103,200.

**Note—** This penalty is a substituted NSW provision.

**[4Q] Section 186A**

Insert after section 186—

**186A Review of decisions about prohibition notices [NSW]**

- (1) This section applies if the Regulatory Authority makes either of the following decisions (each a **prohibition notice decision**)—



- (a) a decision to issue a prohibition notice to an educator,
  - (b) a decision to refuse to grant an application by an educator for the cancellation of a prohibition notice in force for the educator.
- (2) The educator may, within 30 days after being notified of the prohibition notice decision, apply to the independent arbiter appointed under Division 3C for a review of the decision.
- (3) Despite subsection (2), an educator cannot apply for, and the independent arbiter cannot accept an application for, a review of a prohibition notice decision if the Regulatory Authority has notified the educator and independent arbiter that—
  - (a) the educator is subject to allegations of conduct in New South Wales or another State or Territory that, if proven, would constitute a criminal offence against a child, and
  - (b) the Regulatory Authority considers there may be an unacceptable risk of harm to a child or children if the educator were allowed to—
    - (i) remain on education and care services premises, or
    - (ii) provide education and care to children.
- (4) After reviewing the prohibition notice decision, the independent arbiter may—
  - (a) confirm the prohibition notice decision, or
  - (b) amend the prohibition notice decision, or
  - (c) substitute the prohibition notice decision with another decision that—
    - (i) revokes the decision of the Regulatory Authority to issue the prohibition notice, or
    - (ii) revokes the decision of the Regulatory Authority to refuse to grant the application for cancellation of the prohibition order and directs the Regulatory Authority to cancel the prohibition notice, or
    - (iii) remits the matter to the Regulatory Authority for fresh consideration.
- (5) An application for review of a prohibition notice decision does not stay the operation of the decision.

**Note—** This section is an additional NSW provision.

**[4R] Section 187 Person must not contravene prohibition notice**

Omit section 187(1), penalty. Insert instead—

Penalty—\$68,700.

**Note—** This penalty is a substituted NSW provision.

**[4S] Section 187(2)**

Omit the penalty. Insert instead—

Penalty—\$68,700.

**Note—** This penalty is a substituted NSW provision.

**[4T] Section 188 Offence to engage person to whom prohibition notice applies**

Omit section 188(1), penalty. Insert instead—

Penalty—

- (a) for an individual—\$68,700; or
- (b) for a large child care provider—\$1,034,100; or
- (c) otherwise—\$344,700.

**Note—** This penalty is a substituted NSW provision.

**[4U] Section 188(2)**

Omit the penalty. Insert instead—

Penalty—

- (a) for an individual—\$68,700; or
- (b) for a large child care provider—\$1,034,100; or
- (c) otherwise—\$344,700.

**Note—** This penalty is a substituted NSW provision.

**[4V] Section 188(3)**

Omit the penalty. Insert instead—

Penalty—

- (a) for an individual—\$68,700; or
- (b) for a large child care provider—\$1,034,100; or
- (c) otherwise—\$344,700.

**Note—** This penalty is a substituted NSW provision.

**[4W] Section 188A**

Omit the section. Insert instead—

**188A False or misleading information about certain notices [NSW]**

- (1) A person who is subject to a relevant notice under this Law must not give any of the following persons information about the content or existence of the relevant notice that is false or misleading in a material particular—
  - (a) an approved provider;
  - (b) an approved education and care service;
  - (c) a recruitment agency or labour hire agency that supplies persons involved in the provision of an approved education and care service.

Penalty—\$20,400.

- (2) For subsection (1), a person involved in the provision of an approved education and care service has the same meaning as in section 182(2).

- (3) In this section—

**relevant notice** means the following—

- (a) a suspension notice;
- (b) a supervision notice;
- (c) a prohibition notice.

**Note—** This section is a substituted NSW provision.

**[4X] Part 7, Division 3A**

Insert after section 188A—

**Division 3A Disciplinary action [NSW]**

**Note—** This division is an additional NSW provision.

**188B Definition [NSW]**

In this division—

**relevant person** means a person involved in the provision of an approved education and care service within the meaning of section 182(2)(b)–(h).

**188C Grounds for disciplinary action [NSW]**

Grounds for disciplinary action exist against a relevant person if—

- (a) the person has contravened any of the following—
  - (i) this Law;
  - (ii) the national regulations;
  - (iii) the NSW regulations; or
- (b) the person is a person with management or control of a body corporate that is a relevant person and—
  - (i) the body corporate has failed to comply with this Law, the national regulations or the NSW regulations; and
  - (ii) the person with management or control of the body corporate has failed to exercise due diligence to prevent the failure.

**188D Disciplinary proceedings [NSW]**

If the Regulatory Authority reasonably believes grounds for disciplinary action exist against a relevant person—

- (a) the Regulatory Authority and person may agree on action to be taken in relation to the grounds for disciplinary action; or
- (b) if the Regulatory and relevant person are unable to agree under paragraph (a)—the Regulatory Authority may refer the matter to the independent arbiter for determination.

**188E Disciplinary order [NSW]**

- (1) If a matter is referred to the independent arbiter, the independent arbiter must—
  - (a) consider the matter; and
  - (b) determine, on the balance of probabilities, either—
    - (i) the ground for disciplinary action is proven and make an order (a **disciplinary order**) for one or more of the following actions—
      - (A) to reprimand the person;
      - (B) to require the person to pay a monetary penalty not exceeding the maximum penalty for the offence under this Law, the national regulations or the NSW regulations;

- (C) to take certain actions, or refrain from taking certain actions, to comply with this Law, the national regulations or the NSW regulations; or
  - (ii) the ground for disciplinary action is not proven and the matter is dismissed.
- (2) If the independent arbiter makes a disciplinary order in relation to an individual, the Regulatory Authority must, within 24 hours after the disciplinary order is made, notify the Children's Guardian that the disciplinary order has been made.

**188F Limitation period for disciplinary proceedings [NSW]**

Disciplinary proceedings may be commenced within 2 years after the Regulatory Authority becomes aware of the conduct the subject of the proceedings.

**188G Recovery of a monetary penalty [NSW]**

If the independent arbiter orders a person to pay a monetary penalty—

- (a) the penalty is payable to the Regulatory Authority; and
- (b) the Regulatory Authority may enforce the order as if the order were a judgment of a court.

**Division 3B Additional provisions relating to disciplinary proceedings [NSW]**

**Note—** This division is an additional NSW provision.

**188H Civil double jeopardy [NSW]**

The independent arbiter must not make a disciplinary order against a person if an order has been made against the person in disciplinary proceedings or under a civil penalty provision of another participating jurisdiction in relation to conduct that is substantially the same as the conduct the subject of disciplinary proceedings under this division.

**188I Criminal proceedings during disciplinary proceedings [NSW]**

- (1) Disciplinary proceedings against a person are stayed if—
  - (a) criminal proceedings are commenced or have already commenced against the person for an offence; and
  - (b) the offence is constituted by conduct that is substantially the same as the conduct the subject of the disciplinary proceedings.
- (2) The disciplinary proceedings may be resumed if the person is not convicted or found guilty of the offence.

**188J Criminal proceedings after civil proceedings [NSW]**

Criminal proceedings may be commenced against a person for conduct that is substantially the same as conduct the subject of disciplinary proceedings regardless of whether a disciplinary order has been made against the person.

**188K Evidence given in disciplinary proceedings not admissible in criminal proceedings [NSW]**

- (1) Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if—
  - (a) the individual previously gave the information or produced the documents in disciplinary proceedings, whether or not a disciplinary agreement or disciplinary order was made; and
  - (b) the conduct alleged to constitute the offence is substantially the same as the conduct the subject of the disciplinary proceedings.
- (2) However, subsection (1) does not apply to criminal proceedings under section 218 or 295.

**Division 3C Independent arbiter [NSW]**

**Note—** This division is an additional NSW provision.

**188L NSW Minister may appoint independent arbiter [NSW]**

- (1) The NSW Minister may appoint a person who, in the Minister's opinion, has appropriate skills and qualifications to be the independent arbiter.
- (2) The employment of the independent arbiter must be governed by a contract of employment between the independent arbiter and the NSW Minister.
- (3) The independent arbiter has the functions conferred or imposed on the independent arbiter by—
  - (a) a NSW provision, or
  - (b) the NSW Minister.

**Division 3D Disciplinary notices [NSW]**

**Note—** This division is an additional NSW provision.

**188M Disciplinary notices [NSW]**

- (1) The Regulatory Authority may give a person a notice (a *disciplinary notice*) requiring the person to pay a penalty for a contravention of a disciplinary provision.
- (2) The penalty that may be imposed for a contravention of a disciplinary provision is the amount which is 50% of the maximum penalty for the disciplinary provision.
- (3) The authorised officer or other person must comply with any guidelines issued by the NSW Minister under section 223A in relation to contraventions of disciplinary provisions and the issuing of disciplinary notices.
- (4) In this section—  
*disciplinary provision* means a provision in relation to which an infringement notice may be served on a person under section 291(1).

**[4Y] Section 190 Reviewable decision—internal review**

Insert after section 190(d)(iii)—

- (iv) a person under section 178; or

**Note—** This subparagraph is an additional NSW provision.

**[4Z] Section 190(fg)**

Insert after section 190(ff)—

- (fg) to issue a supervision direction under section 178A; or

**Note—** This paragraph is an additional NSW provision.

**[4ZA] Section 190(2)**

Insert at the end of section 190—

- (2) However, the following decisions are not reviewable decisions if made on the grounds the person or education and care service the subject of the decision poses an unacceptable risk to the safety of children—
- (a) a decision to cancel a provider approval under section 31(1)(b);
  - (b) a decision to refuse to grant a service approval under section 49(1)(a);
  - (c) a decision to cancel a service approval under section 77(a).

**Note—** This subsection is an additional NSW provision.

**[4ZB] Section 191 Internal review of reviewable decisions**

Insert after section 191(2)—

- (2A) An application under subsection (1) does not stay the operation of the reviewable decision.

**Note—** This subsection is an additional NSW provision.

**[4ZC] Section 192 Reviewable decision—external review**

Omit section 192(b)(vi). Insert instead—

(vi)

**Note—** Subparagraph (vi) has been omitted as a NSW modification.

**[9] Schedule 1[7]–[49]**

Insert after Schedule 1[6]—

**[7] Section 192(2)**

Insert at the end of section 192, before the note—

- (2) However, the following decisions are not reviewable decisions for external review if made on the grounds the person or education and care service the subject of the decision poses an unacceptable risk to the safety of children—
- (a) a decision to cancel a provider approval under section 31(1)(b);
  - (b) a decision to refuse to grant a service approval under section 49(1)(a);
  - (c) a decision to cancel a service approval under section 77(a).

**Note—** This subsection is an additional NSW provision.

**[8] Section 196 Identity card**

Omit section 196(3), penalty. Insert instead—

Penalty—\$3,300.

**Note—** This penalty is a substituted NSW provision.

**[9] Section 196(5)**

Omit the penalty. Insert instead—

Penalty—\$3,300.

**Note—** This penalty is a substituted NSW provision.

**[10] Section 197 Powers of entry for assessing and monitoring approved education and care service**

Insert after section 197(5)—

(6) In this section—

*education and care service premises*, in relation to premises used to provide education and care to children as part of a family day care service, includes—

- (a) any part of a residence on the premises, whether or not the part of the residence is used to provide education and care; and
- (b) any other buildings, structures or parts of the premises, whether or not the building, structure or part of the premises is used to provide education and care.

**Note—** This subsection is an additional NSW provision.

**[11] Section 199 Powers of entry for investigating approved education and care service**

Insert after section 199(4)—

(5) In this section—

*education and care service premises*, in relation to premises used to provide education and care to children as part of a family day care service, includes—

- (a) any part of a residence on the premises, whether or not the part of the residence is used to provide education and care; and
- (b) any other buildings, structures or parts of the premises, whether or not the building, structure or part of the premises is used to provide education and care.

**Note—** This subsection is an additional NSW provision.

**[12] Section 206 Power of authorised officers to obtain information documents and evidence**

Omit section 206(4). Insert instead—

(4) In this section—

*specified person* means—

- (a) a person who is or has been involved in the provision of an approved education and care service within the meaning of section 182(2); or
- (b) a recruitment agency or labour hire agency, or an employee of a recruitment agency or labour hire agency, that supplies educators to education and care services.

**Note—** This subsection is an additional NSW provision.

**[13] Section 207 Offence to obstruct authorised officer**

Omit the penalty. Insert instead—

Penalty—

- (a) for an individual—\$27,300; or
- (b) for a large child care provider—\$413,100; or
- (c) otherwise—\$137,700.

**Note—** This penalty is a substituted NSW provision.

**[14] Section 208 Offence to assist authorised officer**

Omit the penalty. Insert instead—

Penalty—

- (a) for an individual—\$27,300; or
- (b) for a large child care provider—\$413,100; or
- (c) otherwise—\$137,700.

**Note—** This penalty is a substituted NSW provision.

**[15] Section 209 Offence to destroy or damage notices or documents**

Omit the penalty. Insert instead—

Penalty—

- (a) for an individual—\$27,300; or
- (b) for a large child care provider—\$413,100; or
- (c) otherwise—\$137,700.

**Note—** This penalty is a substituted NSW provision.

**[16] Section 210 Offence to impersonate authorised officer**

Omit the penalty. Insert instead—

Penalty—\$27,300.

**Note—** This penalty is a substituted NSW provision.

**[17] Section 217 Offence to fail to comply with notice or requirement**

Omit the penalty. Insert instead—

Penalty—

- (a) for an individual—\$27,300; or
- (b) for a large child care provider—\$413,100; or
- (c) otherwise—\$137,700.

**Note—** This penalty is a substituted NSW provision.

**[18] Section 218 Offence to hinder or obstruct Regulatory Authority**

Omit the penalty. Insert instead—

Penalty—

- (a) for an individual—\$27,300; or
- (b) for a large child care provider—\$413,100; or
- (c) otherwise—\$137,700.

**Note—** This penalty is a substituted NSW provision.

**[19] Part 9A**

Insert after section 219—



## Part 9A Emergency powers [NSW]

**Note—** This part is an additional NSW provision.

### 219A Power of Regulatory Authority to close services because of emergency event [NSW]

- (1) This section applies if, because of an emergency event, the Regulatory Authority reasonably believes it is necessary to take any of the following actions (*relevant actions*) to protect children—
  - (a) close all education and care services and family day care services in the State;
  - (b) close all education and care services and family day care services in a part of the State.
- (2) The Regulatory Authority may, by order, take the relevant action.
- (3) An order under this section takes effect on the later of the following—
  - (a) when the order is made by the Regulatory Authority;
  - (b) the date specified in the order.
- (4) An order must be published in the Gazette or on the NSW legislation website as soon as practicable after being made by the Regulatory Authority.
- (5) Failure to comply with subsection (4) does not invalidate the order.
- (6) Notice of the making of an order under this section may be given to approved providers or approved education and care services to which the order applies in the way the Regulatory Authority considers appropriate including, for example, by electronic means or publication in the media or on a Government website.
- (7) An order remains in force—
  - (a) for the period specified in the order, unless revoked earlier; or
  - (b) if no period is specified—until revoked.
- (8) An approved provider or approved education and care service must not operate an education and care service or family day care service in contravention of an emergency order.

Penalty—

- (a) for an individual—\$55,000; or
  - (b) for a large child care provider—\$903,150; or
  - (c) otherwise—\$301,050.
- (9) In this section—

*emergency event* means an emergency due to an actual or imminent occurrence that—
  - (a) endangers, or threatens to endanger, the safety or health of persons in the State; or
  - (b) destroys or damages, or threatens to destroy or damage, property or the environment in the State; or
  - (c) causes a failure of, or a significant disruption to, an essential service or infrastructure;

*emergency order* means an order under subsection (2);

*Gazette* has the same meaning as in the *Interpretation Act 1987*;

*NSW legislation website* has the same meaning as in the *Interpretation Act 1987*;

*occurrence* includes an accident, earthquake, epidemic, explosion, fire, flood, storm, terrorist act and warlike action.

**[20] Part 10A**

Insert after section 223—

**Part 10A Functions and powers of Minister [NSW]**

**Note—** This part is an additional NSW provision.

**223A NSW Minister may issue guidelines [NSW]**

The NSW Minister may issue guidelines about any matter relating to the delivery of education and care services to children in New South Wales, including in relation to the following—

- (a) best practice for early childhood education;
- (b) guidance about standards for ensuring approved providers provide services that are fit for purpose;
- (c) disciplinary proceedings.

**223B NSW Minister may give directions [NSW]**

- (1) The NSW Minister may, by order, direct relevant persons to take specified action to prioritise the safety, welfare or wellbeing of children attending education and care services operated by the relevant persons.
- (2) The NSW Minister may give a direction under this section only if—
  - (a) the NSW Minister believes on reasonable grounds giving the direction is necessary to prevent unacceptable risk to the safety of a child or children; and
  - (b) the NSW Minister has consulted, and considered any advice given by, the Regulatory Authority.
- (3) A direction under this section takes effect on the later of the following—
  - (a) when the order giving the direction is made by the Minister;
  - (b) the date specified in the order.
- (4) Notice of the giving of a direction under this section may be given to the relevant persons to whom it applies in the way the Minister considers appropriate including, for example, by electronic means or publication in the media or on a Government website.
- (5) A relevant person to whom a direction under this section applies must not contravene the direction.

Penalty—

- (a) for an individual—\$55,000; or
  - (b) for a large child care provider—\$903,150; or
  - (c) otherwise—\$301,050.
- (6) In this section—  
*relevant persons* means persons involved in the provision of an approved education and care service within the meaning of section 182(2).

**[21] Sections 261A and 261B**

Insert after section 261—

**261A Power of Regulatory Authority to give directions [NSW]**

- (1) The Regulatory Authority may, by order, direct relevant persons to take action specified in the order for the safety, welfare or wellbeing of a child or children to whom education and care is provided by the relevant persons.
- (2) The Regulatory Authority may give a direction under this section only if the Regulatory Authority has reasonable grounds to believe giving the direction is necessary to prevent unacceptable risk to the safety, welfare or wellbeing of a child or children to whom education and care is provided by the relevant persons.
- (3) A direction under this section takes effect on the later of the following—
  - (a) when the order giving the direction is made by the Regulatory Authority;
  - (b) the date specified in the order.
- (4) Notice of the giving of a direction under this section may be given to the relevant persons to whom it applies in the way the Regulatory Authority considers appropriate including, for example, by electronic means or publication in the media or on a Government website.
- (5) A relevant person to whom a direction under this section applies must not contravene the direction.  
Penalty—
  - (a) for an individual—\$34,200; or
  - (b) for a large child care provider—\$516,000; or
  - (c) otherwise—\$172,000.
- (6) In this section—  
***relevant persons*** means the following persons—
  - (a) persons involved in the provision of an approved education and care service within the meaning of section 182(2);
  - (b) recruitment agencies or labour hire agencies, or employees of recruitment agencies or labour hire agencies, that supply educators to education and care services.

**Note—** This section is an additional NSW provision.

**261B Ministerial control of Regulatory Authority [NSW]**

- (1) The Regulatory Authority is subject to the direction and control of the NSW Minister in relation to the following—
  - (a) policies to be applied by the Regulatory Authority in exercising functions and powers under this Law;
  - (b) other systemic matters relating to the Regulatory Authority's exercise of functions and powers under this Law.
- (2) To avoid doubt, the Regulatory Authority is not subject to the direction and control in relation to—
  - (a) the contents of any advice, report or recommendation given to the NSW Minister; or

- (b) decisions about particular persons, matters or things including the following—
  - (i) decisions about whether to grant, suspend, cancel or take other action in relation to particular approvals;
  - (ii) decisions about instituting criminal or disciplinary proceedings in particular cases.
- (3) However, subsection (2)(b) does not prevent the Minister giving a direction to, or in relation to, a particular person, matter or thing under section 223B.

**Note—** This section is an additional NSW provision.

**[22] Section 269 Register of family day care educators, co ordinators and assistants**

Omit section 269(1), penalty. Insert instead—

Penalty—

- (a) for an individual—\$13,500; or
- (b) for a large child care provider—\$206,100; or
- (c) otherwise—\$68,700.

**Note—** This penalty is a substituted NSW provision.

**[23] Section 269(2)**

Omit the penalty. Insert instead—

Penalty—

- (a) for an individual—\$6,600; or
- (b) for a large child care provider—\$102,600; or
- (c) otherwise—\$34,200.

**Note—** This penalty is a substituted NSW provision.

**[24] Section 269(3)**

Omit the penalty. Insert instead—

Penalty—

- (a) for an individual—\$13,500; or
- (b) for a large child care provider—\$206,100; or
- (c) otherwise—\$68,700.

**Note—** This penalty is a substituted NSW provision.

**[25] Section 269(4)**

Omit the penalty. Insert instead—

Penalty—

- (a) for an individual—\$13,500; or
- (b) for a large child care provider—\$206,100; or
- (c) otherwise—\$68,700.

**Note—** This penalty is a substituted NSW provision.

**[26] Section 270 Publication of information**

Omit section 270(5) and (6). Insert instead—

- (5) The Regulatory Authority may publish information about enforcement action taken, or being taken, under this Law, including details about any of the following—
- (a) compliance directions and compliance notices;
  - (b) suspension notices;
  - (c) supervision notices;
  - (d) disciplinary proceedings, including disciplinary agreements and disciplinary orders, and disciplinary notices;
  - (e) prosecutions for offences against this Law;
  - (f) enforceable undertakings;
  - (g) emergency action notices;
  - (h) amendments of provider approvals or service approvals for enforcement purposes;
  - (i) the suspension or cancellation of provider approvals or service approvals;
  - (j) infringement notices;
  - (k) the emergency removal of children under Part 7, Division 4;
  - (l) directions under section 171 to exclude persons from education and care services premises;
  - (m) directions under section 178 to suspend persons involved in the provision of an approved education and care service;
  - (n) prohibition notices.
- (6) The information the Regulatory Authority may publish under subsection (5) about enforcement action—
- (a) includes the following—
    - (i) information about the nature of enforcement action taken and the outcome of the enforcement action;
    - (ii) details of persons in relation to whom enforcement action has been taken;
    - (iii) the reason for taking enforcement action, including details of the breach or alleged breach;
    - (iv) other information prescribed by regulations made under this subsection; but
  - (b) does not include information that may identify, or lead to the identification of, a child.

**Note—** Subsections (5) and (6) are substituted NSW provisions.

- (7) The Regulatory Authority must not publish the name of an educator being investigated during the period of the investigation unless the Regulatory Authority is satisfied publishing the name is in the public interest.

**Note—** This subsection is an additional NSW provision.

## **[27] Section 270A**

Insert after section 270—

### **270A Protection from liability for publications under section 270 [NSW]**

- (1) This section applies if a protected person, in good faith—

- (a) publishes information in the exercise of functions under section 270; or
  - (b) republishes information published under section 270.
- (2) The protected person is not liable, civilly, criminally or administratively, for the publication or republication of the information.
- (3) Without limiting subsection (2), no liability for defamation is incurred by the protected person because of the publication or republication of the information.
- (4) In this section—  
***protected person*** means—
  - (a) the Minister; or
  - (b) the Regulatory Authority; or
  - (c) the proprietor, editor or publisher of a newspaper; or
  - (d) the proprietor or broadcaster of a radio or television station or the producer of a radio or television show; or
  - (e) an internet service provider or internet content host; or
  - (f) a member of staff of, or a person acting at the direction of, a person referred to in this definition; or
  - (g) a person, or a person belonging to a class of persons, prescribed by the NSW regulations.

**Note—** This section is an additional NSW provision.

**[28] Section 272 Disclosure of information to education and care services**

Omit “At the request of an approved provider, the” from section 272(1).

Insert instead “The”.

**[29] Section 272(1)**

Omit “to the provider”. Insert instead “to an approved provider”.

**[30] Section 272(1)(a)–(e)**

Omit section 272(1)(a) and (b). Insert instead—

- (a) whether a person is or has been subject to a prohibition notice;
- (b) whether a person is or has been subject to a suspension notice;  
**Note—** Paragraphs (a) and (b) are substituted NSW provisions.
- (c) whether a person is or has been subject to a supervision notice;
- (d) whether a person is or has been subject to an enforceable undertaking;
- (e) whether a person is or has been subject to a disciplinary agreement or disciplinary order or has been given a disciplinary notice.

**Note—** Paragraphs (c)–(e) are additional NSW provisions.

**[31] Section 272(1)**

Insert at the end of the subsection—

**Note—** This subsection is a modified NSW provision.

**[32] Section 272(2)**

Omit “this section”. Insert instead “subsection (1)”.

**[33] Section 272(3)**

Insert after section 272(2)—

- (3) The Regulatory Authority may disclose the following information to a recruitment agency or labour hire agency about a person the agency supplies or offers to supply to education and care services—
- (a) whether the person is or has been subject to a disciplinary notice;
  - (b) whether the person is or has been subject to a supervision notice;
  - (c) whether the person is or has been subject to an enforceable undertaking;
  - (d) whether the person is or has been subject to a prohibition notice;
  - (e) whether the person is or has been subject to a disciplinary agreement or disciplinary order or has been given a disciplinary notice.

**Note—** This subsection is an additional NSW provision.

**[34] Section 273 Duty of confidentiality**

Omit section 273(1), penalty. Insert instead—

Penalty—\$17,100.

**Note—** This penalty is a substituted NSW provision.

**[35] Part 14, Division 1A**

Insert after section 278—

**Division 1A NSW Regulatory Authority Fund [NSW]**

**Note—** This division is an additional NSW provision.

**278A Education and Care Services Regulatory Authority Fund [NSW]**

- (1) There must be established in the Special Deposits Account an Education and Care Services Regulatory Authority Fund (the *Fund*).
- (2) The following must be paid into the Fund—
  - (a) all money received by the Regulatory Authority under the following, including fees and monetary penalties—
    - (i) this Law;
    - (ii) the national regulations;
    - (iii) the NSW regulations;
  - (b) all money appropriated by Parliament for the purposes of the Regulatory Authority exercising functions or powers under this Law.
- (3) Subject to subsection (4), the following may be paid out of the Fund—
  - (a) all amounts required to meet expenditure incurred by the Regulatory Authority in exercising its functions and powers;
  - (b) amounts authorised by the NSW Minister to be paid from the Fund.

- (4) Money received by the Regulatory Authority and paid into the Fund in relation to monetary penalties may only be paid out of the Fund to invest in support of, and improvements within, the early childhood education and care services sector in New South Wales.

**[36] Section 284**

Omit the section. Insert instead—

**284 When proceedings may be brought [NSW]**

- (1) Subject to section 181(6) and subsection (2), proceedings for an offence under this Law must be commenced within 2 years after the later of the following—
- (a) the Regulatory Authority becoming aware of the alleged offence;
  - (b) the commencement of this section.
- (2) If the Regulatory Authority is required to suspend taking action in relation to the alleged offence under this Law because of a concurrent investigation or proceedings in relation to or involving matters connected with or incidental to the same conduct under another Act, proceedings for the offence under this Law must be commenced within 2 years after any proceedings in relation to the conduct under the other Act have been finalised.

**Note—** This section is a substituted NSW provision.

**[37] Section 287A**

Insert after section 287—

**287A Additional orders [NSW]**

- (1) This section applies if—
- (a) a court convicts an offender of an offence against the following—
    - (i) this Law;
    - (ii) the national regulations;
    - (iii) the NSW regulations; or
  - (b) a court makes an order under the *Crimes (Sentencing Procedure) Act 1999*, section 10 against an offender in relation to an offence against the following—
    - (i) this Law;
    - (ii) the national regulations;
    - (iii) the NSW regulations; or
  - (c) the independent arbiter makes a disciplinary order in relation to a person in relation to an offence against the following—
    - (i) this Law;
    - (ii) the national regulations;
    - (iii) the NSW regulations.
- (2) The court or independent arbiter may, in addition to any penalty or other disciplinary action that may be imposed or any other action taken in relation to the penalty, order the offender to take specified action to publicise—
- (a) the offence, including the circumstances of the offence; and
  - (b) the consequences of the offence.



**Note—** See the *Children (Criminal Proceedings) Act 1987*, section 15A, which provides for a prohibition on the publishing and broadcasting of names in connection with criminal proceedings if the publishing or broadcasting would connect a child with the criminal proceedings.

**Note—** This section is an additional NSW provision.

**[38] Section 291 Infringement offences**

Insert before section 291(1)(a)—

- (a1) sections 19(4), 36(3), 51(8), 68(1), 69(1), 84(3), 161, 161A, 162(1), 163(1), 164A(1) and (2), 169(1)–(5), 170(2)–(4), 171(2), 174(1) and (2), 175(1) and (3), 177(3), 178(6) and (7), 179(3), 217 and 261A(5); or

**Note—** This paragraph is an additional NSW provision.

**[39] Section 291(1)(c)**

Omit “this section.” from section 291(1)(b).

Insert instead—

this section; or

- (c) offences against the national regulations that are prescribed by the NSW regulations for this section.

**Note—** This paragraph is an additional NSW provision.

**[40] Section 291(5)**

Omit the subsection. Insert instead—

- (5) The NSW regulations may provide for matters relating to infringement offences, including—
  - (a) prescribing additional offences as infringement offences; and
  - (b) modifying the maximum infringement penalties for offences; and
  - (c) prescribing offences as disciplinary notice offences; and
  - (d) providing for the maximum penalties for disciplinary notice offences.

**Note—** This subsection is a substituted NSW provision.

**[41] Section 292A**

Insert after section 292—

**292A Offence for holding insurance indemnifying against financial penalties [NSW]**

A person must not hold an insurance policy that indemnifies the person against payment of financial penalties for contraventions of any of the following—

- (a) this Law;
- (b) the national regulations;
- (c) the NSW regulations.

Penalty—

- (a) for an individual—\$34,200; or
- (b) for a large child care provider—\$516,000; or
- (c) otherwise—\$172,000.

**Note—** This section is an additional NSW provision.

**[42] Section 295 False or misleading information or documents**

Omit section 295(1), penalty. Insert instead—

Penalty—

- (a) for an individual—\$20,400; or
- (b) for a large child care provider—\$309,600; or
- (c) otherwise—\$103,200.

**Note—** This penalty is a substituted NSW provision.

**[43] Part 14, Division 6A**

Insert after section 295—

**Division 6A Miscellaneous [NSW]**

**Note—** This division is an additional NSW provision.

**295A Offence for providing education and care in residence of service providers [NSW]**

- (1) A person (a *service provider*) who operates a service providing education and care to children must not provide the education and care in the service provider's residence.  
Penalty—\$68,700.
- (2) The Regulatory Authority may issue a notice to a service provider contravening subsection (1)—
  - (a) specifying that it is an offence to provide education and care to children in the service provider's residence; and
  - (b) directing the service provider to cease providing the care until the service provider registers with an approved family day care service.
- (3) A service provider issued with a notice under subsection (2) must not contravene the notice.  
Penalty—\$68,700.
- (4) For this section, a service provider does not include a person operating a service providing education and care to children in the service provider's residence as part of a service that is delivered through the use of 2 or more educators to provide education and care to children in residences.

**295B Incentive schemes [NSW]**

If requested by the Regulatory Authority for the purposes of ensuring compliance with section 3A, a large child care provider must provide copies of the following to the Regulatory Authority—

- (a) any employee performance incentive scheme provided by the large child care provider;
- (b) any management or executive incentive scheme provided by the large child care provider.

Penalty—\$258,300.

**Note—** This section is an additional NSW provision.

**[44] Part 14, Division 7**

Omit the division. Insert instead—

**Division 7 Serious detrimental action [NSW]**

**Note—** This division is a substituted NSW provision.

**Subdivision 1 Preliminary [NSW]**

**296 Definitions [NSW]**

In this division—

**detriment**, to a person, means disadvantage to the person including the following—

- (a) injury, damage or loss caused to the person;
- (b) damage caused to the person's property;
- (c) damage caused to the person's reputation;
- (d) intimidation, bullying or harassment;
- (e) unfavourable treatment in relation to the person's career, profession, employment or trade;
- (f) discrimination, prejudice or adverse treatment, whether in relation to employment or otherwise;
- (g) disciplinary proceedings or disciplinary action;

**manager**, of an approved provider or approved education and care service, means a person, however described, who is responsible for controlling or administering either of the following—

- (a) the approved provider or approved education and care service;
- (b) the staff of the approved provider or approved education and care service;

**protected disclosure**—see section 297;

**serious detrimental action**—see section 298;

**serious detrimental action offence** means an offence against section 299.

**297 Meaning of “protected disclosure” [NSW]**

- (1) In this division, a **protected disclosure** means a disclosure of information or provision of documents—
  - (a) to the Regulatory Authority in compliance with a request under, or otherwise in accordance with, this Law; or
  - (b) to the Regulatory Authority or to a manager of an approved provider or approved education and care service, if the person making the disclosure honestly, and on reasonable grounds, believes the disclosure shows or tends to show—
    - (i) an offence against this Law has been or is being committed; or
    - (ii) the safety, health or wellbeing of a child or children being educated and cared for by an education and care service is at risk.
- (2) A disclosure is not a protected disclosure if the information disclosed or documents provided—

- (a) relate only to a grievance about a matter relating to the employment or former employment of an individual; and
  - (b) do not have significant implications beyond matters personally affecting or tending to personally affect the individual.
- (3) However, subsection (2) does not apply if the grievance arises from—
  - (a) a decision made by an approved provider or approved education and care service in dealing with a previous protected disclosure; or
  - (b) alleged detrimental action relating to a previous protected disclosure.

## **298 Meaning of “serious detrimental action” [NSW]**

- (1) In this division, *serious detrimental action* against a person means an act or omission causing, comprising, involving or encouraging—
  - (a) detriment to the person; or
  - (b) the threat of detriment to the person, whether express or implied.
- (2) To avoid doubt, the following actions are not serious detrimental action for this division—
  - (a) lawful action taken by a person or body to investigate a possible contravention of this Law;
  - (b) prosecuting a person for a criminal offence;
  - (c) referring a matter about a person to the independent arbiter;
  - (d) making a disciplinary agreement or disciplinary order in relation to a person;
  - (e) giving a disciplinary notice to a person.

## **Subdivision 2 Serious detrimental action offences [NSW]**

### **299 Detrimental action offences [NSW]**

- (1) A person must not take detrimental action against another person if—
  - (a) the person suspects, believes or is aware, when taking the detrimental action, that the other person or a third person has made, may have made, may make or proposes to make a protected disclosure; and
  - (b) the suspicion, belief or awareness is a contributing factor to the taking of the detrimental action.

Penalty—

- (a) for an individual—\$34,200; or
  - (b) for a large child care provider—\$516,600; or
  - (c) otherwise—\$172,200.
- (2) The fact the suspicion or belief was mistaken is not a defence to a prosecution for a detrimental action offence.
- (3) In a prosecution for a detrimental action offence, the accused bears the onus of proving, in relation to detrimental action established by the prosecution to have been taken by the accused—
  - (a) the accused did not have the suspicion, belief or awareness mentioned in subsection (1)(a); or

- (b) if the accused had the suspicion, belief or awareness—the suspicion, belief or awareness was not a contributing factor to the taking of the detrimental action.

**300 Serious detrimental action—recovery of damages [NSW]**

- (1) A person who takes serious detrimental action against another person is liable in damages under this section for injury, damage or loss suffered as a result by the other person or a third person if—
  - (a) the person suspects, believes or is aware, when taking the serious detrimental action, that any person has made, may have made, may make or proposes to make a protected disclosure; and
  - (b) the suspicion, belief or awareness is a contributing factor to the taking of the serious detrimental action.
- (2) The damages may be recovered in a court of competent jurisdiction.
- (3) The person's liability is not affected by the fact the suspicion or belief was mistaken.
- (4) In proceedings under this section, the defendant bears the onus of proving, in relation to serious detrimental action established by the plaintiff to have been taken by the defendant—
  - (a) the defendant did not have the suspicion, belief or awareness mentioned in subsection (1)(a); or
  - (b) if the defendant had the suspicion, belief or awareness—the suspicion, belief or awareness was not a contributing factor to the taking of the serious detrimental action.
- (5) Damages recovered under this section may include damages in the nature of exemplary damages.
- (6) A person's entitlement to recover damages under this section—
  - (a) does not affect another right or remedy available to the person as a result of the relevant serious detrimental action; and
  - (b) does not constitute redress in relation to dismissal from employment for the *Industrial Relations Act 1996*, section 90 or another law.
- (7) To avoid doubt, liability under this section is not liability in tort.

**300A Injunctions relating to serious detrimental action [NSW]**

- (1) The Supreme Court may, on the application of a person who believes serious detrimental action has been taken or may be taken against the person, grant an injunction relating to the commission or possible commission of a serious detrimental action offence.
- (2) The terms of the injunction may—
  - (a) restrain a person from engaging in conduct that would constitute a serious detrimental action offence; or
  - (b) require a person to do an act or thing to remedy conduct that constitutes a serious detrimental action offence.
- (3) An injunction restraining a person from engaging in conduct that would constitute a serious detrimental action offence may be granted—
  - (a) whether or not the person has previously engaged in conduct of that kind; and

- (b) whether or not it appears to the Supreme Court the person intends to continue to engage in conduct of that kind; and
  - (c) whether or not there is an imminent danger of substantial damage to another person if the person engages in conduct of that kind.
- (4) To avoid doubt, an injunction granted under this section may—
  - (a) require a formal apology to be made to a person against whom serious detrimental action has been taken; or
  - (b) restrain serious detrimental action comprising an attempt to terminate a person's employment in a particular position or role; or
  - (c) require the reinstatement in the same or a substantially similar position or role of a person against whom serious detrimental action comprising termination of employment in a particular position or role has been taken.
- (5) An injunction granted in the terms specified in subsection (4)(c) must be complied with despite an inconsistent provision in another Act or law.
- (6) The Supreme Court may grant an interim injunction pending determination of an application under this section.
- (7) The Supreme Court may not require an undertaking as to damages as a condition of granting the interim injunction.
- (8) The Supreme Court may discharge or vary an injunction or interim injunction granted under this section.

**300B Immunity from costs orders [NSW]**

- (1) A person who institutes proceedings under section 300 or 300A is not liable to pay costs incurred by another party to the proceedings unless—
  - (a) the person instituted the proceedings vexatiously or without reasonable cause; or
  - (b) the person's unreasonable act or omission caused the other party to incur the costs.
- (2) The other party bears the onus of satisfying the court of the matters specified in subsection (1).

**300C Serious detrimental action—relationship between criminal and civil proceedings [NSW]**

A person may institute proceedings under section 300 or 300A even if—

- (a) no prosecution has been brought in relation to the relevant serious detrimental action; or
- (b) the person against whom the proceedings are instituted has been acquitted of a serious detrimental action offence on the same, or substantially the same, facts relied on in the proceedings.

**Subdivision 3 Miscellaneous [NSW]**

**300D Protections from liability for makers of protected disclosures [NSW]**

- (1) Except as provided by this section, a person making a protected disclosure, in relation to the making of the disclosure—

- (a) does not incur civil liability, including liability for breaching a duty of secrecy or confidentiality or another restriction on disclosure applicable to the person, whether or not imposed by an Act; and
- (b) does not incur criminal liability, including liability for breaching a law or code of conduct imposing a duty of confidentiality or other restriction in relation to the disclosure of information; and
- (c) is not liable to disciplinary action.

**Note—** The person making a protected disclosure may also have, in relation to the making of the disclosure, a defence of absolute privilege under the *Defamation Act 2005* in proceedings for defamation. See the *Defamation Act 2005*, Schedule 1, clause 26.

- (2) Subsection (1) does not protect a person against liability for past conduct of the person that is disclosed by the person while making a protected disclosure.

### **300E Requirement for policy about protected disclosures [NSW]**

- (1) Each approved provider and approved education and care service must—
  - (a) have a protected disclosures policy in accordance with this section; and
  - (b) provide regular training and awareness sessions to the staff of the provider or service about the importance of, and protections provided to, persons making protected disclosures.

Penalty—

- (a) for an individual—\$34,200; or
  - (b) for a large child care provider—\$516,600; or
  - (c) otherwise—\$172,200.
- (2) The Regulatory Authority may issue a model protected disclosures policy (a *model policy*).
- (3) If the Regulatory Authority issues a model policy, an approved provider or approved education and care service must ensure the provider's or service's protected disclosures policy incorporates the provisions of the model policy.

### **300F Regulatory Authority may make arrangements for receipt of protected disclosures [NSW]**

The Regulatory Authority may arrange for another entity to receive protected disclosures on behalf of the Regulatory Authority.

### **300G Corporations legislation [NSW]**

An approved provider or approved education and care service is declared to be an excluded matter for the *Corporations Act 2001* of the Commonwealth (the *Corporations Act*), section 5F in relation to the Corporations Act, section 1317AAB.

**Note—** The Corporations Act, section 5F provides that if a State law declares a matter to be an excluded matter for that section in relation to all or part of the Corporations legislation of the Commonwealth, the provisions that are the subject of the declaration will not apply in relation to the matter in the State concerned. This section ensures an approved provider or approved education and care service will not be a regulated entity under the Corporations Act, Part 9.4AAA.

**[45] Section 301 National Regulations**

Omit section 301(4)(g). Insert instead—

- (g) may impose penalties not exceeding \$20,000.

**Note—** This paragraph is a substituted NSW provision.

**[46] Section 301(5)**

Insert after section 301(4)—

- (5) The national regulations apply in New South Wales with the modifications set out in the NSW regulations.

**Note—** This subsection is an additional NSW provision.

**[47] Section 301A**

Insert after section 301—

**301A NSW regulations [NSW]**

- (1) The Governor may make regulations about—
  - (a) a matter that by a NSW provision of this Law is required or permitted to be prescribed; or
  - (b) a matter that is necessary or convenient to be prescribed for carrying out or giving effect to a NSW provision of this Law.
- (2) Without limiting subsection (1), regulations made under this section may provide for matters relating to the following—
  - (a) penalties for offences against the regulations, including providing for the modification of penalties for offences against the national regulations;
  - (b) training that must be completed by educators and other members of staff of education and care services;
  - (c) best practice for early childhood education;
  - (d) guidance about standards for ensuring approved providers provide services that are fit for purpose;
  - (e) disciplinary proceedings.
- (3) In this section—

**Governor—**

  - (a) means the Governor with the advice of the Executive Council; and
  - (b) includes a reference to a person for the time being lawfully administering the Government.

**Note—** This section is an additional NSW provision.

**[48] Section 322 Information retention and sharing**

Omit section 322(3), penalty. Insert instead—

Penalty—

- (a) for an individual—\$13,500; or
- (b) for a large child care provider—\$206,100; or
- (c) otherwise—\$68,700.

**Note—** This penalty is a substituted NSW provision.



**[49] Part 15, Division 8A**

Insert after Division 8—

**Division 8A Provisions consequent on Children (Education and Care Services National Law Application) Amendment Act 2025 [NSW]**

**Note—** This division is an additional NSW provision.

**340A Definition [NSW]**

In this section—

*amendment Act* means the *Children (Education and Care Services National Law Application) Amendment Act 2025*.

**340B Application of section 284 [NSW]**

Section 284, as modified by the amendment Act, extends to an offence committed before the commencement of the amendment Act.

**340C First NSW regulations [NSW]**

- (1) Schedule 1A is taken to be and has effect as a regulation made by the Governor under section 301A.
- (2) The following provisions do not apply to the regulation but apply to an amendment or repeal of the regulation—
  - (a) the *Subordinate Legislation Act 1989*, sections 4 and 6–10 and Schedule 1; and
  - (b) the *Interpretation Act 1987*, sections 39–41.
- (3) Schedule 1A is repealed on the day after the schedule commences.
- (4) The *Interpretation Act 1987*, section 30 applies to the repeal of Schedule 1A.

**[10] Schedule 1A**

Insert after Schedule 1—

**Schedule 1A Children (Education and Care Services) NSW Regulation 2025**

**1 Name of regulation**

This regulation is the *Children (Education and Care Services) NSW Regulation 2025*.

**2 Commencement**

This regulation commences on the day on which the *Children (Education and Care Services National Law Application) Amendment Act 2025*, Schedule 1[10] commences.

**3 Modification of national regulations—the Law, section 301(5)**

The national regulations apply in New South Wales with the modifications set out in Schedule 1.

## **Schedule 1      Modification of Education and Care Services National Regulations**

### **[1]      Regulation 4 Definitions**

Omit regulation 4(1), definition of *excursion*. Insert instead—

*excursion* means an outing organised by an education and care service or family day care educator, but does not include the following—

- (a) an outing organised by an education and care service provided on a school site if—
  - (i) the child or children leave the education and care service premises in the company of an educator; and
  - (ii) the child or children do not leave the school site;
- (b) the mere provision of the same education and care services at different education and care service premises;

### **[2]      Regulation 12 Meaning of *serious incident***

Omit “premises.” from regulation 12(e)(iii). Insert instead—

premises; or

- (iv) appears to have been involved in a sexual offence or sexual misconduct, within the meaning of the *Children’s Guardian Act 2019*, Part 4.

### **[3]      Regulation 25 Additional information about proposed education and care service premises**

Omit regulation 25(1)(d). Insert instead—

- (d) a soil assessment for the site of the proposed education and care service premises;
- (da) any soil assessments for the site of the proposed education and care service premises that have previously been undertaken;

### **[4]      Regulation 25(1)(g)(i)**

Omit “building certificate,”.

### **[5]      Regulation 41 Service waiver—prescribed regulations**

Insert “, other than regulation 115,” after “Part 4.3” in regulation 41(b).

### **[6]      Regulations 72(1) and (2), 72A, 77(1), 78(1), 79(1), 82(1), 83(1), 84C(1), 86, 88(1)–(3), 89(1), 93(1), 97(2)–(4), 99(1), 100(1), 102AAC(1), 102B(1), 102E(2), 102F(2), 103(1), 104(1), 107(2), 108(2), 110, 116(1) and (1B), 116A(1), 136(1) and (3), 143A(1), 143B, 163(1) and (2), 164(1), 166(1), 177(2) and (3), 181, 191(1) and 344(1)**

Omit “Penalty: \$2200.” wherever occurring. Insert instead—

Penalty—

- (a) for a large child care provider—\$19,800; or
- (b) otherwise—\$6,600.

### **[7]      Regulations 77(2) and (3), 78(2) and (3), 79(2) and (3), 82(2), 83(2) and (3), 89(2), 93(3) and (4), 99(2) and (3), 100(2) and (3), 102B(2) and (3), 102E(3), 102F(3), 164(2), 166(2), 178(2) and (3) and 182**

Omit “Penalty: \$2200” wherever occurring.

Insert instead “Penalty—\$6,600”.

**[8] Regulations 80(1), 84(1), 84A(1), 93(2), 98, 102(1), 102D(1), 112(3), 114, 119, 120, 157(1) and 168–171**

Omit “Penalty: \$1100.” wherever occurring. Insert instead—

Penalty—

- (a) for a large child care provider—\$9,900; or
- (b) otherwise—\$3,300.

**[9] Regulations 80(2) and (3), 84A(2) and (3), 102(2) and (3), 102D(2) and (3), 157(2) and (3) and 187(3)**

Omit “Penalty: \$1100” wherever occurring.

Insert instead “Penalty—\$3,300”.

**[10] Regulation 84 Awareness of child protection law**

Insert “and understands” after “advised of” in regulation 84(1).

**[11] Regulation 84(3)**

Insert after regulation 84(2)—

- (3) A provider is taken to have met the provider’s obligation to ensure a specified person understands the matters set out in subregulation (1)(a) and (b) if the provider can ensure the specified person can explain the following—
  - (a) the obligations of the specified person as a mandatory reporter;
  - (b) the circumstances under which the specified person must make a report;
  - (c) how to submit a report.

**[12] Regulation 84C Risk assessment for purposes of sleep and rest policies and procedures**

Omit “or” from regulation 84C(2)(g)(i). Insert instead “and”.

**[13] Regulation 84D Prohibition of bassinets**

Omit “Penalty: \$2,200.” from regulation 84D(1). Insert instead—

Penalty—

- (a) for a large child care provider—\$19,800; or
- (b) otherwise—\$6,600.

**[14] Regulation 84D(2) and (3)**

Omit “Penalty: \$2,200”. Insert instead “Penalty—\$6,600”.

**[15] Regulation 86 Notification to parents of incident, injury, trauma and illness**

Omit “if the child is involved in”.

Insert instead “or alleged occurrence, if the child is involved in, or alleged to be involved in,”.

**[16] Regulation 87 Incident, injury, trauma and illness record**

Insert after “notifications;” in regulation 87(3)(e)(ii)—

and

- (iii) the name and signature of the person who provided or attempted to provide the notice;

**[17] Regulation 116 Assessments of family day care residences and approved family day care venues**

Insert “, including any premises, structures or areas that may be accessible to children attending the service,” after “venue of the service” wherever occurring in regulation 116(1) and (1B).

**[18] Regulation 116(1C)**

Insert after regulation 116(1B)—

- (1C) An assessment conducted under subregulation (1) or (1B) must set out the part of the premises that are used or are to be used for the family day care service.

**[19] Regulation 116(2)(d) and (e) and (3)(a)**

Insert “, including any premises, structures or areas that may be accessible to children attending the service” after “residence or venue” wherever occurring.

**[20] Regulation 116(3)(b) and (c)**

Insert “, including any premises, structures or areas that may be accessible to children attending the service,” after “residence or venue” wherever occurring.

**[21] Regulation 118 Educational leader**

Insert at the end of the regulation, before the note—

- (2) The person designated by the approved provider under subregulation (1) must agree to accept the position in writing for the designation to take effect.
- (3) The approved provider of an education and care service must ensure that the educational leader is advised of and understands—
  - (a) the existence and application of this division; and
  - (b) any obligations the educational leader has under the Law or these Regulations.
- (4) A provider is taken to have met the provider’s obligation to ensure the educational leader understands the matters set out in subregulation (3)(a) and (b) if the provider can ensure the educational leader can explain the obligations of the educational leader to lead the development and implementation of educational programs in the service.

**[22] Regulation 151 Record of educators working directly with children**

Omit “service.” from regulation 151(b). Insert instead—

service;

- (c) the rooms and times that each educator is allocated to work directly with children being educated and cared for by the service;
- (d) the working with children check number of each educator.

**[23] Regulation 158 Children's attendance record to be kept by approved provider**

Omit regulation 158(1)(c). Insert instead—

- (c) when the child arrives and departs, is signed by—
  - (i) the person who delivers the child to the education and care service premises or collects the child from the education and care service premises; or
  - (ii) if the signature of the person who delivers or collects the child cannot be reasonably obtained—a nominated supervisor or an educator.

**[24] Regulation 162 Health information to be kept in enrolment record**

Omit regulation 162(d). Insert instead—

- (d) the following plans to be followed in relation to a specific healthcare need, medical condition or allergy referred to in paragraph (c)—
  - (i) a medical management plan;
  - (ii) an anaphylaxis medical management plan;
  - (iii) a risk minimisation plan; and

**[25] Regulation 168 Education and care service must have policies and procedures**

Omit regulation 168(2)(h). Insert instead—

- (h) providing a child safe environment, including matters relating to the promotion of a culture of child safety and wellbeing within the service, by having policy and procedures that provide for the following—
  - (i) a commitment that for an action or decision that concerns a particular child, the safety, welfare and wellbeing of the child is paramount;
  - (ii) ensuring requirements for child protection training under the Law, generally, including under section 162A, are met;
  - (iii) a register for child protection concerns;
  - (iv) the reporting decision tree, including the requirement to keep the reporting decision tree in a place accessible by all staff;
  - (v) child protection risk assessments;
  - (vi) day-to-day use of the attendance record required under regulation 158 and other practices to ensure children are accounted for throughout the day;

**[26] Regulation 168(2)(i)(ia)and (ib)**

Insert before regulation 168(2)(i)(i)—

- (ia) child-safe recruitment practices, including a requirement for reasonable enquiries to be made about whether a prospective staff member at the service is subject to a suspension notice, supervision notice, prohibition notice or enforceable undertaking; and
- (ib) ongoing child-safe employment practices, including a requirement for reasonable enquires to be made about whether a staff member at the service is subject to a

suspension notice, supervision notice, prohibition notice  
or enforceable undertaking; and

**[27] Regulations 173(1)(d)(ii) and 173A(1)(d)(ii)**

Insert after “service;” wherever occurring—

and

- (iii) if a rating under subparagraph (i) or (ii) is suspended or  
revoked—the rating that is suspended or revoked;

**[28] Regulation 175 Prescribed information to be notified to Regulatory Authority**

Insert after regulation 175(2)(e)—

- (ea) a sexual offence or sexual misconduct, within the meaning of the  
*Children’s Guardian Act 2019*, Part 4, committed by any person  
who engages in work for the service, including the following—
  - (i) a person employed by the service; or
  - (ii) a person permitted to be a volunteer at the service; or
  - (iii) a student who participates in the service;

**[29] Regulation 227**

Omit the regulation. Insert instead—

**227 Compliance and enforcement information**

For the Law, section 270(6)(a)(iv), the information is the following—

- (a) the details of the person in relation to whom the enforcement  
action was taken, including the following—
  - (i) the name and provider approval number of the approved  
provider;
  - (ii) for a centre-based service—
    - (A) the address of the service; and
    - (B) the name by which the service is known;
  - (iii) for a family day care service—
    - (A) the address of the service, unless the address is also  
the home address of a family day care educator; and
    - (B) the service approval number; and
    - (C) the name by which the service is known;
  - (iv) for an individual—the name of the individual;
- (b) details of the enforcement action taken, including the  
following—
  - (i) for a prosecution leading to a conviction or finding of guilt  
or a plea of guilt—
    - (A) the provision of the Law or these Regulations that  
the person was convicted or found guilty of, or  
pleaded guilty to, breaching; and
    - (B) the date of the conviction, finding of guilt or the  
making of the plea of guilt for the offence; and
    - (C) any penalty imposed for the offence; and

- (D) information about any steps taken to remedy the subject of the prosecution and the date the steps were taken;
- (ii) for an enforceable undertaking—
  - (A) the terms of the enforceable undertaking; and
  - (B) the date of the enforceable undertaking; and
  - (C) information about any steps taken to remedy the subject of the enforceable undertaking and the date the steps were taken;
- (iii) for a compliance notice—
  - (A) the steps specified in the compliance notice that the person must take to comply with the provision of the Law or these Regulations; and
  - (B) the date specified in the notice by which the steps must be taken; and
  - (C) information about any steps taken to remedy the subject of the compliance notice and the date the steps were taken;
- (iv) for the amendment of a provider approval or service approval—
  - (A) the details of the amendment; and
  - (B) the date on which the amendment took effect;
- (v) for a suspension of a provider approval or service approval—
  - (A) the date on which the suspension took effect; and
  - (B) the date on which the suspension ends;
- (vi) for a cancellation of a provider approval or service approval, the date on which the cancellation took effect.

**Note—** This section is a substituted NSW provision.

**[30] Regulation 228 Timing of publication where internal or external review of enforcement action is available**

Insert after regulation 228(5)—

- (6) The Regulatory Authority may publish information about an enforcement action for which an application for internal review or external review can be made under the Law, section 191 or 193 before the end of a period set out in subregulations (2)–(5) if the Regulatory Authority is satisfied that publishing the information is in the public interest.

**[31] Chapter 7 Jurisdiction-specific and transitional and saving provisions**

Insert at the end of the chapter, with appropriate part and regulation numbering—

## **Part      Transitional and savings provisions—Children (Education and Care Services National Law Application) Amendment Act 2025**

### **Assessments of family day care residences and approved family day care venues**

Regulation 116(1), (1B) and (1C), as amended by the *Children (Education and Care Services National Law Application) Amendment Act 2025*, do not apply to an assessment submitted, but not determined, before the commencement of the amendment.



## **Schedule 2      Amendment of Children (Education and Care Services) Supplementary Provisions Act 2011 No 70**

### **[1]    Section 3 Definitions**

Omit section 3(1), definitions of *National Law* and *National Law Alignment Provisions*.

Insert—

*large child care provider* has the same meaning as in the National Law (NSW).

*National Law (NSW)* means the *Children (Education and Care Services) National Law (NSW)*.

*National Law (NSW) Alignment Provisions*—see section 17.

### **[2]    Sections 3(1), definitions of “approved provider”, “provider approval”, “Regulatory Authority” and “service approval”, 4(3)(a), 6, 11–13, 14A, 15(1), 19, 20, 21(1), 22, 23, 24(2)–(4), 25–31, 36(2)(a) and 37(2)**

Omit “National Law” wherever occurring. Insert instead “National Law (NSW)”.

### **[3]    Section 8 Unauthorised provision of education and care service**

Omit the penalty. Insert instead—

Maximum penalty—

- (a) for an individual—\$68,700, or
- (b) for a large child care provider—\$618,700, or
- (c) otherwise—\$344,700.

### **[4]    Section 9 Advertising of unauthorised education and care service**

Omit the penalty wherever occurring in section 9(1), (2) and (4). Insert instead—

Maximum penalty—

- (a) for an individual—\$20,400, or
- (b) for a large child care provider—\$183,600, or
- (c) otherwise—\$103,200.

### **[5]    Section 12 Contravention of provider approval**

Omit the penalty. Insert instead—

Maximum penalty—

- (a) for an individual—\$34,200,
- (b) for a large child care provider—\$307,800,
- (c) otherwise—\$172,200.

### **[6]    Section 14 Contravention of service approval**

Omit the penalty. Insert instead—

Maximum penalty—

- (a) for an individual—\$34,200,
- (b) for a large child care provider—\$307,800,
- (c) otherwise—\$172,200.

**[7] Part 4, heading**

Insert “(NSW)” after “Law”.

**[8] Part 4, Division 1, heading**

Insert “(NSW)” after “Law”.

**[9] Section 17**

Omit the section. Insert instead—

**17 Alignment with National Law (NSW)**

The National Law (NSW), as in force from time to time—

- (a) applies to State regulated education and care services as if the State regulated education and care services were education and care services within the meaning of the National Law (NSW), and
- (b) applies with the modifications provided for by this Act or the regulations under this Act, and
- (c) as so applying may be referred to as the *Children (State Regulated Education and Care Services) Act 2011* or the *National Law (NSW) Alignment Provisions*.

**[10] Section 18 Application of Children (Education and Care Services National Law Application) Act 2010**

Omit “National Law Alignment Provisions” wherever occurring in section 18(1) and (2).

Insert instead “National Law (NSW) Alignment Provisions”.

**[11] Section 18(1)**

Omit “National Law, subject”. Insert instead “National Law (NSW), subject”.

**[12] Part 4, Division 2, heading**

Insert “(NSW)” after “Law”.

**[13] Section 21 Excluded provisions**

Omit “are to be disregarded” from section 21(1). Insert instead “do not apply”.

**[14] Section 21(1)(aa)**

Omit “271, 272(1)”. Insert instead “270A, 271, 272(1) and (3)”.

**[15] Section 24 References to Regulatory Authority**

Omit “National Law” wherever occurring in section 24(1), excluding the note.

Insert instead “National Law (NSW)”.

**[16] Section 25 References to regulations**

Insert “, including the NSW regulations,” after “regulations made under that Law”.

**[17] Section 27A Specific variations**

Insert after section 27A(3)—

- (4) Sections 8, 9, 12 and 14 of this Act, and related definitions in sections 3 and 4, apply as if the sections and definitions were additional NSW provisions

inserted in the appropriate order in the *National Law (NSW) Alignment Provisions*.

**[18] Part 4, Division 3, heading**

Insert “(NSW)” after “**Law**”.

**[19] Section 36 Regulations**

Insert after section 36(2)(a)—

- (b) a matter for which NSW regulations may be made by the Governor under the National Law (NSW),

**[20] Section 36(3)**

Omit “\$2,000”. Insert instead “\$20,000”.