



New South Wales

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

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to make amendments to the *Children (Education and Care Services National Law Application) Act 2010* that modify the *Children (Education and Care Services) National Law (NSW)* (the **National Law**) and the *Education and Care Services National Regulations* (the **national regulations**), following the Early Childhood Education and Care Regulation in NSW Independent Review, to—

- (a) provide that protection of the rights and best interests of children is paramount in the provision and regulation of early childhood education and care, and
- (b) improve the quality and performance of the early childhood education and care sector (the **sector**), and
- (c) strengthen regulatory presence, intensity and efficacy in the sector, including through increased penalties, additional offences, and heightened monitoring and enforcement, and
- (d) increase transparency, proactive publication and information sharing in the sector, and
- (e) improve public confidence in the sector.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

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

Schedule 1[1] provides that amendments to the *Education and Care Services National Law Act 2010* of Victoria made by the Parliament of Victoria after the commencement of the proposed Act do not apply in New South Wales until a regulation is made applying the Victorian amendments with or without modification.

Schedule 1[3] applies the *Interpretation Act 1987*, Parts 6 and 6A and the *Subordinate Legislation Act 1989*, sections 3, 4, 7 and 8 and Schedule 1 to the New South Wales regulations. **Schedule 1[2]** makes a consequential amendment.

Schedule 1[5]–[8] modify the application of the National Law in New South Wales to—

- (a) provide that protection of the rights and best interests of children must be the paramount consideration in giving effect to the National Law, and that those rights and interests prevail over the interests of approved providers and any other duties owed by persons with management or control of education and care services, and
- (b) limit the definition of *family day care residence* to usual places of residence only, and
- (c) extend the functions and powers of the New South Wales Early Childhood Education and Care Regulatory Authority (the **Regulatory Authority**) to related entities of approved providers, and
- (d) limit the classes of persons that may apply for provider approval and service approval, and
- (e) amend provisions relating to conditions on provider approvals, including to impose certain mandatory conditions relating to compliance and transparency and to broaden the scope of potential additional conditions, and
- (f) amend provisions relating to the suspension and cancellation of provider approvals, including to expand the grounds for cancellation, and
- (g) triple the maximum monetary penalty amounts and provide for scaled penalties, including for offences relating to—
 - (i) advertising and providing an education and care service without approval, and
 - (ii) inadequate supervision of children and inappropriate discipline, and
 - (iii) non-compliance with requirements for staffing arrangements and education programs, and
 - (iv) unauthorised and inappropriate persons on premises, and
 - (v) non-compliance with compliance directions, compliance notices, emergency action notices and prohibition notices, and
 - (vi) monitoring and enforcement and registers, and
- (h) insert offences relating to—
 - (i) subjecting a child to inappropriate conduct, and
 - (ii) non-compliance with requirements for the mandatory training of staff, and
 - (iii) providing notice of changes to an educator's working with children check, accreditation or registration, and
 - (iv) holding an insurance policy that indemnifies persons against the payment of financial penalties for contraventions of the National Law, the national regulations or New South Wales regulations made under the National Law, proposed section 301A (the **NSW regulations**), and
- (i) expand the following powers of the Regulatory Authority—
 - (i) control over the rating levels of education and care services,

- (ii) the power to direct the suspension of the provision of education and care by certain persons because of non-compliance with the National Law or risks to the safety, health or wellbeing of children,
- (iii) the power to direct the supervision of certain persons in the provision of education and care because of non-compliance with the National Law,
- (iv) the powers to enter premises and obtain information, and
- (j) establish procedures for disciplinary action and disciplinary proceedings to be taken against a person linked to an education and care service in New South Wales, or a person with management or control of a body corporate that is so linked, who has contravened the National Law, the national regulations or the NSW regulations, and
- (k) provide that an application for internal review does not stay the operation of the decision being reviewed, and that certain decisions made on the grounds of an unacceptable risk to the safety of children are not subject to external review, and
- (l) grant the Regulatory Authority emergency powers to close all education and care services and family day care services in the State or part of the State in the event of certain actual or imminent emergencies, and
- (m) enable the Minister to issue best practice guidelines about the delivery of education and care services to children in New South Wales, and
- (n) enable the Minister and the Regulatory Authority to give directions to certain persons to take action to prioritise the safety, welfare or wellbeing of children attending education and care services, and
- (o) set out the matters in relation to which the Regulatory Authority is, and is not, subject to the direction and control of the Minister, and
- (p) set out the information that the Regulatory Authority may publish about enforcement action taken, or being taken, under the National Law, provide protections from liability for certain persons for publication of the information, and make other amendments relating to disclosure and confidentiality, and
- (q) establish the Education and Care Services Regulatory Authority Fund to receive all money obtained by the Regulatory Authority through its compliance and enforcement actions or otherwise appropriated by Parliament for the exercise of the Regulatory Authority's functions and powers, and for the payment out of all amounts required to meet expenditure incurred by the Regulatory Authority in the exercise of its functions and powers and any other amounts authorised by the Minister, and
- (r) suspend the two year limit on legal proceedings taken by the Regulatory Authority in the event of a concurrent investigation of proceedings under another Act, and
- (s) provide that a court may, in legal proceedings relating to offences under the National Law, the national regulations or the NSW regulations, impose additional orders requiring the publication of information relating to the offences, and
- (t) listing additional offences as infringement offences and enabling the NSW regulations to prescribe additional offences as infringement offences and modify their maximum infringement penalties, and
- (u) expand the protections from reprisal (also known as serious detrimental action), the avenues for legal relief available to persons who make disclosures to the Regulatory Authority, the scope of protected disclosures, and the definition of *serious detrimental action*, and
- (v) amend provisions relating to the application of the national regulations to New South Wales, insert proposed section 301A into the National Law to allow NSW regulations to be made for the purposes of the National Law as it applies in New South Wales, and enable approved providers to apply for service waivers in relation to NSW regulations.

Schedule 1[4] makes a consequential amendment.

Schedule 1[8] also inserts savings, transitional and other provisions consequent on the enactment of the proposed Act into the National Law.

Schedule 1[9] modifies the application of the national regulations as the regulations apply in New South Wales to—

- (a) limit the definition of *excursion* to exclude the provision of the same education and care service at a different location, and
- (b) expand the definition of *serious incident* to include circumstances of sexual offending or sexual misconduct, and
- (c) require an application for a service approval to include information about soil assessments for the site, and
- (d) prevent a service waiver from being sought in relation to the obligation of approved providers to ensure that premises are designed to facilitate the supervision of children, and
- (e) triple the maximum monetary penalty amounts and provide for scaled penalties, and
- (f) impose an obligation on approved providers to ensure that a person who works with children understands child protection law, and set out how that obligation can be met, and
- (g) expand the obligations of approved providers in relation to notifications to parents and recording of incidents, injuries, traumas and illnesses, and
- (h) exempt approved providers from the requirement to display emergency and evacuation procedures, in the event of a lockdown because of a risk posed to children by a violent person, and
- (i) expand the scope of assessments of family day care residences and approved family day care venues to include surrounding premises, and
- (j) make technical amendments relating to educational leaders, records of educators working directly with children and health information in enrolment records, and
- (k) provide that a nominated supervisor may only sign the attendance record for a child when the signature of the person who delivers or collects the child cannot be reasonably obtained, and
- (l) expand the obligation of approved providers to have policies and procedures to include further requirements relating to child safety, welfare and wellbeing, child protection, child-safe recruitment practices and attendance records, and
- (m) expand the scope of prescribed information to be displayed, and notified to the Regulatory Authority, by approved providers, and
- (n) make consequential amendments to align with the modifications of the National Law, and
- (o) insert savings, transitional and other provisions consequent on the enactment of the proposed Act into the national regulations.

Schedule 2 Amendment of Children (Education and Care Services) Supplementary Provisions Act 2011 No 60

Schedule 2 amends the *Children (Education and Care Services) Supplementary Provisions Act 2011*, consequent on the modifications made to the National Law in Schedule 1, to ensure State regulated education and care services are regulated consistently with education and care services regulated under the National Law.