

INQUIRY INTO EARLY CHILDHOOD EDUCATION AND CARE SECTOR IN NEW SOUTH WALES

Organisation: Divergent Education

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Submission to the NSW Parliamentary Inquiry into the Early Childhood Education and Care Sector

Divergent Education welcomes the opportunity to make this submission to the NSW Parliamentary Inquiry into the Early Childhood Education and Care (ECEC) sector. As an independent organisation supporting educators, leaders and services across NSW, Divergent Education advocates for a safe, sustainable and equitable early childhood sector that prioritises child wellbeing, educator safety, and transparent regulatory practice.

This submission draws on national regulatory data, publicly released government correspondence, and primary-source insights collected via a targeted workforce survey.

(a) The Safety, Health and Wellbeing of Children in ECEC Services

Child safety is the primary objective of the Education and Care Services National Law. However, systemic data indicates significant failures in NSW. Between 2020 and 2024, NSW long day care services reported 26,344 serious incidents - including events involving serious injury, risk to life, or children being unaccounted for.

In 2023-24 alone, NSW services reported 8,291 serious incidents and 19,515 compliance breaches, far exceeding other states.

Workforce insights corroborate the severity of these figures:

"Constantly having a lack of staff members to support supervision and care. Ratios are often not met but justified 'under the roof'. This is dangerous."

"Our centre is very tight with their money. When we don't have essentials like tissues or gloves, safety suffers."

These incidents are disproportionately concentrated in the private for-profit sector. In 2024, 72 for-profit services recorded five or more serious incidents, compared to 25 services across all other management types.

(c) The Safety, Pay and Conditions of Workers Within the ECEC Sector

Workforce conditions have deteriorated rapidly since 2020. The Workforce is chronically underpaid, overworked, and exposed to unsafe working environments. More than 80% of survey respondents described themselves as "significantly underpaid" in relation to the responsibilities they hold.

"We're responsible for children's safety, learning, health, and development — but paid like casual retail workers."

A culture of fear prevents workers from reporting safety breaches. Survey responses reveal:

Retaliation after reporting: *"I was fired from my job after reporting to the department. My identity was not protected."*

Regulator inaction: *"I submitted a report. There was no follow-up. Nothing changed. I stopped reporting after that."*

Alarming, 65% of surveyed educators stated they had experienced or witnessed bullying in their workplace. Further, 45% reported having their timesheets adjusted to remove overtime, a likely breach of industrial law and a contributor to workforce attrition.

In addition, professional development is frequently unpaid and inadequate:

"All our training is unpaid and outside work hours. There's no such thing as protected time for programming."

Reported Training gaps include:

- Inclusion support
- Medical emergencies
- Behavioural needs

- Understanding legal responsibilities

Educators also feel systematically excluded from decision-making:

"No one listens — our leadership, the regulatory authority, the government. It's like we're invisible."

(d) The Effectiveness of the Regulatory Framework for the ECEC Sector in NSW

The NSW application of the National Law fails to ensure transparency or deterrence. Most regulatory actions are not disclosed to the public. Parents cannot access service compliance histories without requesting them directly from the provider (Regulation 177), which is intimidating and ineffective.

This transparency failure undermines core NQF principles:

- It deprives families of critical safety information.
- It enables repeat offenders to operate without scrutiny.
- It silences workers who fear retaliation.

"You're told you're protected, but your employer always finds out. Then the bullying starts."

NSW lags behind Queensland and Victoria, both of which maintain public registers of enforcement actions. NSW instead relies on high-level quarterly statistics with no identifying details.

(e) The Effectiveness of the NSW ECEC Regulatory Authority

Public trust in the NSW Regulatory Authority is eroding. Complaints about the authority's impartiality and efficacy rose from 24 in 2022 to 63 in 2024, with one referred to the Ombudsman. Survey responses echo a lack of faith in the Authority:

"I don't feel safe reporting. It always gets back to the director."

"Our voices are not heard in our centre leadership or by the department."

Critically, there is an ongoing and unaddressed risk posed by repeat non-compliant providers. The current enforcement regime fails to deter chronic safety breaches or respond with adequate sanctioning power. The underuse of infringement penalties by the NSW Regulatory Authority undermines the core objectives of the National Quality Framework.

In 2013 the Early Childhood Education and Care Directorate successfully prosecuted Guardian Early Learning, resulting in a \$30,675 fine for multiple breaches that occurred between 22 and 26 November 2010, including:

- Failing to ensure adequate supervision of children.
- Operating without the required number of teaching staff on premises.
- Failing to maintain accurate attendance records.

This level of regulatory action was once standard. Today, however, the majority of enforcement actions - including for similar or repeated breaches, go unpublished or unpenalised. This failure to escalate penalties or restrict licences allows high-risk providers to continue operations with limited accountability, directly jeopardising the safety and wellbeing of children in their care.

A regulator that does not enforce its own standards invites non-compliance and devalues the rights of children to safe, quality education and care.

(f) The Collection, Evaluation and Publication of Reliable Data in Relation to ECEC Services and the Level of Public Knowledge and Access to Information Made Available About Each ECEC Service

The NSW Department of Education's reliance on quarterly summary reports and the passive disclosure mechanism of Regulation 177 stands in stark contrast to other jurisdictions. In NSW, families cannot easily view the compliance history or risk profile of individual services. Instead, they must request the compliance record directly from the provider, a process that can deter even the most concerned parent due to its confrontational nature.

By comparison:

Queensland operates a detailed, online Register of Published Enforcement Actions, listing provider names, nature of breaches, penalties, and legal citations.

Victoria publishes enforcement outcomes in a regularly updated, searchable PDF, including details of compliance notices, suspensions, and cancellations.

Internationally, jurisdictions such as Ontario (Canada) and Idaho (USA) provide exemplary transparency. Ontario's public registry documents all confirmed violations, including those by unlicensed providers, while Idaho's "Child Care Check" system includes full inspection reports, safety criteria checklists, and substantiated incidents.

These systems operate on the principle that public safety is best served by proactive, accessible, and comprehensive information. In contrast, NSW's approach is reactive, fragmented, and incomplete. It undermines the objectives of the National Law, including:

- Ensuring public access to reliable data about ECEC services;
- Supporting informed decision-making by families;
- Promoting quality improvement through accountability.

Without meaningful reform, NSW will continue to operate in a state of informational inequity, where the ability to assess risk and quality depends on a postcode lottery rather than a unified national framework.

(h) The Composition of the ECEC Sector and the Impact of Government Funding on the Type and Quality of Services

The current distribution of government funding programs demonstrates systemic inequity. Large for-profit providers receive disproportionately high levels of grant support, despite already operating at significant profit margins and possessing considerable administrative infrastructure.

For example, under the Professional Development and Paid Practicum Subsidy program:

Affinity Education Group received \$1,569,755.30 in 2024, while reporting a \$5.9 million profit in 2023 and benefiting from additional incentives via partnered training organisations.

G8 Education received \$3,414,967.08 in 2024, while reporting a \$56 million profit in 2023.

In contrast, smaller not-for-profit and community-managed services, many of which operate in high-need or rural areas, face significant barriers to accessing these same grants due to limited staffing and administrative capacity.

This funding imbalance risks entrenching a two-tiered ECEC system in NSW - one where the providers least in need of financial support are best positioned to obtain it, and those most committed to community outcomes are left under-resourced.

Recommendations

- Mandate a public enforcement register in line with Queensland and Victoria, including breaches, enforcement outcomes and ratings.
- Introduce whistleblower protections for ECEC professionals, including anonymity and anti-retaliation provisions.
- Fund and enforce protected non-contact time for programming, training and documentation.
- Monitor access to high-quality, relevant professional development, particularly in child protection, behaviour support, medical emergencies, and regulatory compliance.
- Establish an independent ECEC workforce advisory council, inclusive of educators, to inform policy and sector reform.
- Work with the Fair Work Ombudsman to audit and monitor services for wage theft and underpayment, particularly in relation to unpaid overtime and adjusted timesheets.
- Develop and communicate clear reporting pathways for workplace misconduct, regulatory breaches, and wage concerns, including education for the workforce on which issues should be reported to which governing body.

- Restrict access to non-CCS government grants for for-profit services that report over \$3 million in annual profit and prohibit access for those reporting over \$5 million to ensure funding prioritises small, community-based or financially constrained providers.

Appendix – Compiled Workforce Survey Results

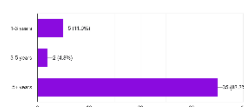
What type of service do you work in?

41 responses



How many years have you worked in ECCO?

46 responses



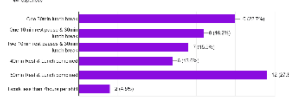
Are you responsible for the preparation and/or implementation of the learning program? If yes, for average how much non-contact (programming) time do you get per week?

46 responses



If you work more than 10 hours a day, how long are your breaks?

46 responses



Do you believe the current training and qualification courses adequately prepare new entrants for real world practice?

46 responses



What type of provider operates your service?

46 responses



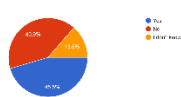
Have you ever felt unable to meet children's basic safety or wellbeing needs due to lack of staffing or resources?

46 responses



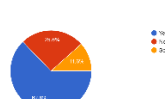
When you have worked over time, has there been instances where your incentives were adjusted to remove the overtime?

46 responses



Was any of this training expected to be completed outside work hours? (weekend or evenings)

46 responses



Note: The full dataset from the survey results have been provided separately.