
3 Child care

Key points

- The child care industry suffers from significant regulatory overlap and duplication between the Commonwealth Government and state and territory governments. COAG has agreed to establish a rigorous National Quality Agenda to remove the overlaps, gaps and inconsistencies from July 2009. It is imperative that the forthcoming final Regulation Impact Statement (RIS) on the National Quality Agenda conducts a transparent assessment of the costs and benefits of the enhanced regulatory framework, particularly the compliance cost savings (if any) to business.
- At the same time it is important that the Australian Government maintains efforts to unilaterally reduce regulatory burdens in areas where it has responsibility even though other reform processes, involving other jurisdictions, are on-going. For example, some streamlining of the accreditation arrangements should take place now, prior to the implementation of the COAG reforms, to remove unnecessary administrative burdens on child care services.
- Under current regulations there is a lack of credible sanctions for child care services that are not satisfactorily participating in Child Care Quality Assurance systems. This effectively penalises those services that are meeting the accreditation standards without improving the welfare of children attending sub-standard services. The Department of Education, Employment and Workplace Relations should amend the regulations so that it is clear that a service can have its Child Care Benefit approval removed if it is not accredited by the National Childcare Accreditation Council.
- The National Childcare Accreditation Council should also reform some of its internal processes to reduce the regulatory burden on child care services without affecting service quality. In particular, it should scrap unannounced validation visits and paper validation surveys and improve the coordination of visits of the Council and state/territory regulators to child care services.
- In recent years there have been some additional regulatory requirements foisted on the industry, such as anticipated vacancy reporting, that have imposed costs on child care services without providing an offsetting benefit to services or the community. The Department of Education, Employment and Workplace Relations should improve the way child care services report anticipated vacancy information so that industry compliance costs are constrained and the information provided to parents is more useful.

3.1 Child care industry background

The child care industry is focused on meeting the care, education and development needs of young children. Over recent decades there has been strong growth in the number of child care places, driven by growing demand from the increased participation of women in the workforce and government-subsidised service provision.

Responsibility for the operation and management of child care services in Australia is shared by the government, community and private sectors — although the private sector dominates in most states (table 3.1).

Since the mid 1980s, Australia has gradually moved from a supply-side style of funding, which provided funds directly to (not-for-profit or community) services, to demand-side funding, which provided funds primarily to parents to enable them to choose the kind of child care provision they want. With the changed funding arrangements came strong growth in market share by private for-profit services.

Table 3.1 Proportion of state and territory licensed and/or registered children’s services, by management type, 2007- 08 (per cent)^a

	<i>NSW</i>	<i>Vic^b</i>	<i>Qld</i>	<i>WA</i>	<i>SA^c</i>	<i>Tas</i>	<i>ACT</i>	<i>NT</i>
Child care								
Community managed ^d	27.8	34.6	37.0	20.9	35.1	50.7	81.6	71.3
Private ^e	69.5	53.5	59.9	75.2	40.6	32.4	18.4	28.8
Government managed	2.7	11.8	3.1	3.9	24.3	16.8	–	na
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

^a Includes all Australian, state and territory government supported services. ^b All government managed pre-schools in Victoria are managed by local government. ^c The majority of government managed child care services in SA are small occasional care programs attached to government pre-schools. ^d Community managed services include not-for-profit services provided or managed by parents, churches or co-operatives. ^e Private for-profit services provided or managed by a company, private individual or non-government school. **na** Not available. – Nil or rounded to zero.

Source: SCRGSP (2009).

This recent restructuring of the industry has created tensions between not-for-profit and for-profit providers of child-care — with the former alleging the latter may attempt to maximise profits by reducing the quality of care (e.g. by employing only the minimum number of qualified staff) to the detriment of children and families. For example, Community Child Care said:

State children’s services regulations and national quality assurance systems are important mechanisms to protect young children from harm and to maximise opportunities for positive development during the crucial formative years. These mechanisms are especially crucial in the mixed economy of child care, to prevent

unscrupulous commercial operators from maximising profits at the expense of children and families. (sub. 27, p. 2)

On the other hand, the for-profit sector suggests the community sector is creating a ‘sense of crisis’ about the current quality of care in the industry in an attempt to claw-back market share. For example, Child Care New South Wales said:

Despite the attempts of certain people with ulterior motives to create a sense of crisis, the real issue for centres is not service quality — it is affordability and accessibility.

It is important to think about ways to improve quality. But a challenge for Australia is not to ‘beat up’ on the imperfections in our Long Day Care systems. We suspect that those who focus their attention on these weaknesses really have a separate agenda. The people trying to create the impression of a crisis are concerned that the bulk of service-delivery is provided by the private sector.

As we see it, the claims of many who talk about wanting to make changes to quality are really interested in making changes to market-share. (sub. 20, attachment b, p. 19)

The Australian Government’s roles and responsibilities for child care include:

- paying Child Care Benefit (CCB) to families using approved child care services or registered carers (\$2.0 billion in 2008-09)
 - CCB assists parents with the cost of approved and registered care. The payment of CCB varies depending on family income, the number of children in care, the hours of care, and the type of child care used
- paying Child Care Tax Rebate (CCTR) to eligible families using approved child care services (\$1.1 billion in 2008-09)
 - CCTR is an additional payment to help families with their out-of-pocket costs after CCB has been received
- funding the National Childcare Accreditation Council (NCAC) to administer quality assurance systems for child care services
- funding organisations to provide information, support and training to service providers
- providing operational and capital funding to some providers.

The Australian Government supported 668 124 child care places in 2007 compared to 517 654 places in 2003 — an increase of nearly 30 per cent. The majority of Australian Government supported child care places were:

- outside school hours care places (45.4 per cent)
- centre-based long day care places (42.8 per cent)
- family day care places (11.2 per cent)

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- occasional care places (0.4 per cent)
 - other care places (0.2 per cent).

3.2 Overview of child care regulation

Child care regulation in Australia is shared between the Commonwealth and state and territory governments.

The Commonwealth family assistance law (*A New Tax System (Family Assistance) (Administration) Act 1999* and *A New Tax System (Family Assistance) Act 1999*) imposes conditions on child care services that must be met if they are to receive financial assistance from the Australian Government and be able to offer fee reductions to families through the provision of the Child Care Benefit (CCB).

It is a condition of initial approval and continued approval for CCB purposes that child care services and carers register and satisfactorily participate in Child Care Quality Assurance (CCQA) systems. These services include centre-based Long Day Care (LDC), Outside School Hours Care (OSHC) and Family Day Care (FDC) schemes. The quality assurance schemes are different for each care type.

The CCQA systems are administered on behalf of the Australian Government by the National Childcare Accreditation Council (NCAC).

CCQA is designed to build on and complement state and territory licensing regulations, where they exist (table 3.2), which generally provide a minimum standard of operations for services. These state and territory regulations cover a range of factors including:

- space (the size of rooms and playgrounds)
- health and safety requirements
- number of staff and their qualifications
- number and ages of children.

These licensing systems cover the requirements that must be met before a child care service can commence operations. Ongoing monitoring of compliance with these regulations by respective jurisdictions can result in a service being closed if any of these requirements are not met. However, not all states and territories have comprehensive regulations in place (table 3.2).

Table 3.2 Licensing arrangements in each state and territory^a
2008

<i>Service model</i>	<i>NSW</i>	<i>Vic</i>	<i>Qld</i>	<i>WA</i>	<i>SA</i>	<i>Tas</i>	<i>ACT</i>	<i>NT</i>
Centre-based long day care	L	L	L	L	L	L	L	L
Occasional care	L	L	L	L	G/L	L	L	L
Family day care schemes/agencies	L	L	L	X	G/L	L	L	X
Family day care carers	R	X	R	L	R	R	X	X
Outside school-hours care	R	L	L	L	R	L	L	X
Home-based care	L	X	X	X	L	L	X	X
Other care ^b	X	X	X	X	L	L	L	X
Preschool/kindergarten	L/G	L	L/G	G	G	G/R	L/G	G/R

^a L = Services require a licence to operate, R = Services require registration or approval to operate, G = Services are provided by state/territory governments, X = Services do not require licence, registration or approval to operate, but may be required to meet regulatory standards.

^bOther Care = nannies, playschools and in-home care

Source: SCGRSP (2009) and DEEWR (sub. DR90)

State and territory governments also regulate preschool/kindergarten. While the arrangements vary between states and territories, preschools are mostly subject to a regulatory system different from that of child care services. Unlike child care services, there is no similar national quality assurance system for preschool/kindergarten.

3.3 Concerns about regulation of child care

Duplicate regulation between the Commonwealth and state/territory governments

Inadequate quality accreditation and licensing arrangements

Some child care associations raised concerns about the duplication of requirements under the quality assurance system administered by the Australian Government and state and territory licensing regulations. For example, Australian Community Children's Services stated:

Some of the quality areas and underpinning principles sit on top of or duplicate existing state/territory children's services licensing requirements ... Service providers are required to complete and submit (mostly) bi-annual reports to NCAC and state/territory

licensing authorities to ensure compliance with quality assurance and licensing. (sub. 7, pp. 2-3)

Others, like Child Care New South Wales, sheeted home responsibility for the duplication to inadequate regulation decision-making processes at the state level:

The biggest problem by far is the extent of duplication between existing state childcare regulation and the Commonwealth's regulatory system for quality improvement and accreditation. That duplication can be traced back to the root cause — inadequate regulation decision-making processes. The central problem is that the people who make the rules at the state level have inadequate regard for cost or affordability impact on parents or on other governments. (sub. 20, attachment b, p. 27)

But Community Child Care said that the cost of this duplication to child care providers has been overplayed:

CCC believes that it is a myth that the workload of fulfilling existing regulation, licensing and quality assurance requirements is overly burdensome. (sub. 27, p. 1)

Assessment

This issue of duplicate child care regulation is not new. It was most recently raised at the Australian Government level by the Regulation Taskforce (2006) and it provided the following explanation for the regulatory duplication in areas such as child care (and aged care):

Particular difficulties arise because of the imbalance in regulatory and fiscal responsibilities between the Australian Government and state and territory governments. Specifically, while the states and territories have had formal responsibility for areas like aged care, child care and education, the Australian Government provides some funding for these services. To ensure 'value for money' from its subsidies, the Australian Government has increasingly been overlaying existing state and territory regulation with its own quality accreditation mechanisms and reporting requirements. (p. 166)

The Regulation Taskforce (2006) recommended the Australian Government should commission an independent public review of:

- the role of the Australian Government and state and territory governments in regulating the childcare sector, including possible mechanisms to reduce duplication between governments
- measures to enhance the efficiency of the childcare sector to deliver desired quality outcomes
- the merits of aligning regulatory approaches across jurisdictions towards achieving minimum effective regulation. (Recommendation 4.41, p. 49)

In August 2006, the previous Australian Government agreed in principle to this recommendation and indicated that any possible overlap between Commonwealth and state and territory regulatory requirements would be considered as part of a (previously) announced review of the three levels of the National Quality Assurance system.

The issue has also been examined by the New South Wales Government. The New South Wales Independent Pricing and Regulatory Tribunal (IPART) conducted its own investigation into the duplication of regulation within child care services as part of its *Investigation into the burden of regulation and improving regulatory efficiency* (2006).

Its desktop comparison highlighted the degree of overlap between the Commonwealth Quality Improvement and Accreditation System (QIAS) for long day care centres and the New South Wales Children's Services Regulation. Of the 33 QIAS principles of quality care, there was 'some overlap' with 20 principles and 'significant overlap' with 8 principles. Only 5 principles had 'no overlap' with the New South Wales regulations (IPART 2006, appendix 6). While this is persuasive evidence of the prevalence of overlap, it must be acknowledged that there is little quantified information on the extent of business detriment associated with this duplication, particularly compliance costs.

IPART (2006) recommended that the New South Wales Government support a COAG review of the role of the Commonwealth and state and territory governments in regulating the children's services sector to:

- identify areas of regulatory duplication that can be immediately addressed
- identify options to enhance the efficiency of regulating the children's services sector, including consideration of a single national regulatory model and a single national regulator (p. 135).

The New South Wales Government (2007) responded in August 2007:

The NSW Government is working with other jurisdictions to develop by 2008 an intergovernmental agreement on a national approach to quality assurance and regulations for early childhood education and care. This agreement aims to address overlaps and duplication between State and Commonwealth regulations and reduce red tape for service providers. (p. 4)

The Australian Government referred this reform initiative to the COAG Productivity Agenda Working Group (PAWG) at the COAG meeting in December 2007 (COAG 2007a). At this meeting Australian governments committed to establishing a National Quality Agenda (NQA) for Early Childhood Education and Care (ECEC) that comprises four key elements:

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- strong quality standards
 - a quality ratings system
 - streamlined regulatory (licensing and accreditation) arrangements
 - an Early Years Learning Framework.

The objectives of the National Quality Agenda are to:

- enhance learning and development outcomes for children in different care settings
- build a high quality, integrated national quality system for early learning and care that takes account of setting, diversity of service delivery and the age and stage of development of the children.

This Working Group released a discussion paper for consultation in August 2008 (COAG 2008a). According to the discussion paper, feedback from this consultation process will be taken into account in developing the National Quality Agenda. The National Quality Agenda commenced in July 2009 and will be implemented progressively over the coming years.

The Early Years Learning Framework was endorsed for implementation by COAG at its July 2009 meeting (COAG 2009b). It describes the principles, practice and outcomes essential to support and enhance young children's learning from birth to five years of age, as well as the transition to school. The release of the Early Years Learning Framework is the first phase in the implementation of the Australian Government's National Quality Agenda for early childhood education and care.

A consultation Regulation Impact Statement (RIS) was released for public comment by the Early Childhood Development Steering Committee (ECDSC) in July 2009 to facilitate consultation. Prior to the release of this consultation RIS, Child Care New South Wales expressed a number of concerns about future regulation based on inadequate prior regulation impact assessment:

Child Care New South Wales is concerned that well-meaning regulatory proposals to lift service-quality standards might end up hurting the very children and families that all parties are trying to help, as well as damaging jobs, parent workforce-participation, Australian productivity, and centres themselves.

The risk is that the cost of (already good-quality childcare centre services) will become unaffordable for ordinary families ... costs will (needlessly) rise to a point where many ordinary families will not be able to afford the higher standards, and thus be forced to make use of lower quality but lower cost backyard alternatives.

At the very least, the government which is going to be expected to pay for increased parent subsidies in order to overcome the affordability issues needs to be properly engaged in understanding what those costs are likely to be, and whether increased costs

are likely to be matched by commensurate increases in quality (benefits). (sub.20, p. 12)

Child Care New South Wales went on to highlight the importance of having good quality regulatory impact analysis:

The success of this whole childcare regulation reform exercise hinges on the quality of that Regulation Impact Statement (sub. 20, p. 9)

The analysis in the consultation RIS focuses on three of the elements of the NQA outlined above (i.e. a National Quality Standard, enhanced regulatory arrangements, and a quality rating system).

The cost–benefit analysis on the proposed ECEC National Quality Agenda undertaken by Access Economics (2009), on behalf of the ECDSC, and whose results were incorporated in the consultation RIS, says:

The greatest impacts lie in the effects of the new National Quality Standard, where improved staff to child ratios and staff qualifications generate enhanced outcomes for children in ECEC, but at significantly increased labour costs. (Access Economics 2009, p. i)

While all children are expected to benefit from implementing the National Quality Standard, most of the benefits are expected to be acquired by disadvantaged children. According to the COAG consultation RIS:

... the literature suggests that improvements in quality resulting from improving staff-to-child ratios and staff qualifications is likely to increase the long-term, positive impacts on children, primarily disadvantaged children, provided they participate in learning and care. (ECDSC 2009, p. 40)

A qualitative summary of the main costs and benefits potentially arising from the NQA is presented in table 3.3.

The cost–benefit analysis could only quantify the costs of the proposed National Quality Standard. For example, the additional costs (relative to the baseline option) in the long day care sector range from \$1.18 billion to \$2.16 billion over the ten years to 2020, depending on assumptions about the levels of staff to child ratios and the timing of their implementation. The benefits were not able to be quantified due to data limitations and a lack of comprehensive research. According to Access Economics:

While the new standards will unequivocally confer benefits on children in ECEC — and these impacts will be higher where the increase in the level of quality is greater — there is an insufficient evidence base on which to reliably quantify these benefits or compare them between scenarios. (Access Economics 2009, p. v)

Table 3.3 Potential impacts of the proposed National Quality Agenda for Early Childhood Education and Care

	<i>Costs</i>	<i>Benefits</i>
National Quality Standard	<ul style="list-style-type: none"> • Additional staff required to meet new staff to child ratios • Higher staff wages resulting from qualified staff requirements • Costs of increasing the qualified ECEC workforce 	<ul style="list-style-type: none"> • Benefits resulting from children receiving incrementally higher quality care
Enhanced regulatory arrangements	<ul style="list-style-type: none"> • Costs of transitioning to the new framework • Costs of sharing information where the regulatory effort was previously duplicated 	<ul style="list-style-type: none"> • More efficient administration of industry regulation • Reduced regulatory burden on industry
Quality rating system	<ul style="list-style-type: none"> • Administration costs, including collection and collation of data and the dissemination of service rating information 	<ul style="list-style-type: none"> • Better informed decision making by parents • Potential augmentation of quality improvements over time

Source: Access Economics (2009).

In addition, quantification of costs and benefits was also not possible for the ‘quality rating system’ since the impacts on decision making and resulting improvement in quality levels could not be accurately isolated. However, the costs were expected to be negligible as the functions required to deliver the system have been accounted for in the development of a single integrated national quality standard and ratings framework. The benefits were expected to be more significant as the system is likely to increase the sensitivity of parents to the quality of care, leading to more informed decision making by parents and generating greater incentives for service providers to increase quality (Access Economics 2009).

Finally, the impacts of the third core element of the NQA, the enhanced regulatory framework, could also not be quantified with any certainty. This was not because of any technical difficulty with obtaining data or measuring these impacts in dollars, but because the details of the new regulatory system are yet to be finalised (ECDSC 2009).

From a regulatory burdens perspective, the consultation RIS would have been a more useful consultation document if it had included quantified estimates of the impacts of the enhanced regulatory framework on service providers. It is difficult for providers to meaningfully comment on the enhanced regulatory framework when they are not provided with any estimates of the magnitude of the impacts on individual providers.

COAG notes that the depth of analysis required for consultation is lower than that at the decision-making stage:

It is expected that the level of analysis in a draft [consultation] RIS would be lower than the level of analysis in the final RIS. This is because the impacts of options are sometimes unclear. The community consultation process is designed to allow interested parties and stakeholders to help identify such impacts. In such cases the OBPR may focus its assessment primarily on the first three parts of the draft RIS, the problem, objectives and options section of the RIS.

As a general rule, the level of analysis included in the final RIS provided to the decision maker should be higher than that included in the draft RIS which is prepared for the purpose of consultation. (COAG 2007b, p. 8)

The Commission recognises that for some consultation RISs, there will often be considerable uncertainty surrounding the likely design and final implementation details of options being considered, making the collection of data and estimation of likely impacts problematic. It is therefore not reasonable to expect as complete an analysis as is required for the final RIS for the decision maker.

However, it is at this early stage of the process that well informed feedback from stakeholders has the greatest potential to improve the efficiency and effectiveness of the final proposal. In this particular case, useful information could have been sourced from service providers to finetune estimates of compliance cost savings if preliminary estimates had been provided for the enhanced regulatory arrangements in the consultation RIS — which was the only alternative (other than ‘no policy change’) being assessed.

According to Access Economics (2009), the new regulatory framework will be a genuinely national framework with reforms based upon the following key features:

- a single national standard to replace current licensing and quality assurance processes, and which apply to all relevant services regardless of location
- joint governance of the national quality system, to allow the perspectives of all jurisdictions to be taken into account in the setting of and changes to the standard and assessment processes
- no duplication of regulation across levels of government, or sectors
- individual services dealing with only one organisation for regulation and assessment
- parents and service providers receiving information from only one source
- a national body with joint governance arrangements to oversight the administration of the National Quality Standards and Ratings Framework, and assure national consistency against the framework.

The consultation RIS says the enhanced regulatory arrangements will create a more efficient and less burdensome regulatory environment for child care and pre-school providers:

The new system will be designed with best contemporary practice in mind, and thus is expected to be cost effective and reduce the regulatory burden on industry.

There are expected cost savings for service providers flowing from the reduced administrative burden as the result of a fully integrated approach to licensing, regulation and quality assurance. It is anticipated that savings generated within services would be re-invested into improved services for children and their families using that service. (ECDSC 2009, p. 40)

Consistent with COAG's *Best Practice Regulation Guide* (2007b), it is imperative that the forthcoming final RIS on the National Quality Agenda contains a transparent assessment of the costs and benefits of the enhanced regulatory framework, particularly the magnitude of the purported compliance cost savings to service providers (and also to regulators). As the consultation RIS makes explicit:

... some of the key benefits [of the enhanced regulatory framework] can be estimated with a satisfactory degree of confidence ... (ECDSC 2009, p. 31)

According to the Department, the final RIS will quantify some of the impacts arising from the enhanced regulatory framework:

Based on feedback from stakeholders, COAG will undertake further cost-benefit modelling to inform development of the new regulatory arrangements, including quantifying savings and costs to, and the impacts on, services, parents and governments, in moving from the existing regulatory arrangements to a new set of arrangements. (DEEWR, sub. DR90, p. 1)

However, without another round of consultation, it is not clear how this final RIS will demonstrate that COAG's RIS Guidelines have been followed, given the consultation requirements in the Guidelines say:

Consultation should occur as widely as possible but, at the least, should include those most likely to be affected by regulatory action (for example, consumer and business organisations) which might provide valuable feedback on the cost and benefits of regulation and on the impact assessment analysis generally. (COAG 2007b, p. 13)

Child care services have not been provided with any estimates of the costs and benefits of the enhanced regulatory framework via the consultation RIS. Without further consultation, before the final RIS is provided to decision-makers, it is difficult to see how this final RIS will meet the requirements outlined in COAG's RIS Guidelines (COAG 2007b). The Department should engage in further consultation with child care services before the final RIS is provided to decision-makers.

Burdensome or redundant regulation

Lack of credible sanctions

The current Child Care Benefit (CCB) framework requires long day care centres, outside school hours care services and family day care schemes to satisfactorily participate in Child Care Quality Assurance (CCQA) in order to pass on CCB (in the form of fee reductions) to families.

The Office of Early Childhood Education and Child Care (OECECC) within the Department of Education, Employment and Workplace Relations (the Department) has legislative responsibility for managing the compliance of child care services with the CCQA.

A number of child care associations raised the issue that meaningful sanctions are not being applied when child care services are found ‘non-compliant’ with CCQA systems.

CCC is especially concerned that even though a number of services are continually marked ‘non-compliant’ in the Quality Assurance system, the ultimate sanction of removal of approval for Child Care Benefit (CCB) fee subsidy for non-compliance has never been applied. (Community Child Care, sub. 27, p. 3)

DEEWR is notified by the NCAC of any children’s services that has an unsatisfactory result. The ultimate penalties that DEEWR can impose are the removal of Child Care Benefit ... What political will is there to really take action? (Australian Community Children’s Services, sub. 7, p. 3)

Assessment

Depending on the seriousness of the issue identified at the child care service, the consequences of non-compliance can range from targeted education campaigns for minor issues through to prosecution for criminal offences. Services that are not complying with the requirements of the CCQA systems may be sanctioned by the Australian Government. Sanctions could include requiring services to meet additional conditions, or suspensions or cancellation of a service’s CCB approval. Services that have their approval suspended or cancelled can no longer receive advances or make fee reductions.

However, according to the Department no service has had their approval for CCB removed, due to non-compliance with CCQA, since inception in May 2007 (table 3.4). The NCAC reported providers as non-compliant to the Department, but all services rectified the non-compliance before the date of effect for the sanction to commence, and in each case the sanction was revoked.

Table 3.4 Consequences of non-compliant behaviour

Notice of sanction issued from May 2007 to February 2009^a

<i>Type of sanction</i>	<i>Number of notices issued</i>
Additional conditions	5 (115)
Suspension of CCB approval	6 ^b (517)
Cancellation of CCB approval	1 ^b (21)
Total	12 (653)

^a Notice of intention to sanction is in parentheses. ^b While these sanctions were imposed, all services rectified the non-compliance before the date of effect for the sanction to commence and in each case the sanction was revoked.

Source: DEEWR, pers. comm., 9 April 2009.

Even if the services did not rectify the non-compliance before the date of effect it appears that the regulation is so loosely worded that it would be difficult for the Minister to remove CCB approval for a service that fails accreditation a number of times. For example, section 23 of the Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000 states that an approved centre-based long day care service must:

- participate in the Quality and Improvement Accreditation System (QIAS) in accordance with any quality improvement and accreditation requirements published by the National Childcare and Accreditation Council (NCAC)
- maintain quality child care or make satisfactory progress to improve the quality of child care in accordance with the QIAS as assessed by the NCAC.

As a consequence, being accredited is strictly not a requirement of CCB conditions of approval or continued approval. If a child care service appealed the cancellation of its CCB approval to a tribunal hearing, the Minister would have to prove that the service was not maintaining quality or was not improving quality. This burden of proof would be difficult to meet, particularly if the service fails accreditation in different quality areas each time.

For the same reasons, it would also be problematic for the Minister to pursue civil penalties or infringements for services that fail accreditation. Indeed, the Commission is not aware that such penalties have ever been used for breaches of CCB legislation concerning quality accreditation. However, if they were imposed, the one advantage such penalties would have over sanctions is that they are less likely to affect families — assuming services do not pass on the cost of fines by raising fees.

The NCAC (2009a) has suggested that the government has been unwilling to cancel a providers CCB approval because of the disruptive financial consequences on families (that arise from the tying of provider funding with participation in CCQA):

In the past, the Government has been reluctant to withdraw Child Care Benefit funding, as this adversely affects families, leaving limited options available to sanction services. (p. 4)

It is important that the sanctions outlined in the regulations are credible. If sanctions are not utilised in an appropriate manner poor performers have less incentive to improve the quality of their services and at the same time the authority and credibility of NCAC accreditation decisions are undermined. It also imposes costs on complying providers without meeting the policy objectives of the regulation.

It is also vital for good performers that departmental sanctions are credible. If a service's approval for CCB purposes is unlikely ever to be cancelled, poor performers are likely to maintain a presence in the industry longer than they otherwise would, and good performers' growth prospects are artificially constrained by the lack of compliance action. In effect, failing to utilise sanctions in the appropriate circumstances can be seen as a restriction on competition within the child care sector, which discriminates against child care services that are meeting the accreditation standards — it is not a level playing field.

Most importantly, a failure to trigger sanctions in appropriate circumstances will be to the detriment of the welfare and development of the children attending that sub-standard service. Ongoing government funding of chronic poor performers in the child care industry is also inconsistent with the objective of child care quality assurance 'to ensure that children in care have stimulating, positive experiences and interactions that will foster all aspects of their development' (DEEWR 2008a, p. 76).

Moreover, recent changes to the administration of CCB further strengthens the need for credible sanctions. Up until recently, under the family assistance law, the Department was able to write directly to families who were using a child care service about the non-compliance of their provider and to inform them of the effect on their CCB entitlement if the approval is suspended or cancelled. However, with the recent replacement of the Centrelink Child Care Operator System (COS) with the Child Care Management System (CCMS) this apparently will no longer be possible. Thus, parents may not be aware of the non-compliant status of their provider and are unable to apply pressure for the provider to comply or risk the departure of children to an alternative provider.

Following the release of the Commission's draft report, it appears that the Department is mindful that greater clarity is required in the legislation, but that the Minister should retain discretion not to remove CCB approval in every case where a child care service is non-compliant with the accreditation process:

Legislation should make it clear that a possible consequence of failing to become accredited may lead to the removal of CCB approval. However, the Australian Government would not want to remove CCB approval in every case. (DEEWR, sub. DR90, p. 1)

It is also important, given the magnitude of the impact of this sanction on child care services, that any clarification of the wording of the regulation should ensure that the conditions that would lead to the removal of CCB approval are clearly defined so that services are aware of the full consequences of non-compliance (Family Day Care Australia, sub. DR72).

RECOMMENDATION 3.1

The Australian Government should amend the Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000 so that it is clear that a service can have its Child Care Benefit approval removed if it is not accredited by the National Childcare Accreditation Council.

It would also be worthwhile for the government to explore other non-regulatory options to encourage child care operators to provide quality services. The NCAC (2009a) suggested removing the link between accreditation and child care funding to address the shortcomings of the current system:

... it is recommended that the Government replaces fee subsidies with greater operational and capital assistance to child care providers. It is envisaged that the objective of containing child care fees for families would be achieved by lowering operational costs for services. This would also improve the ease of applying sanctions to non-compliant services, as families would not be affected ... Tying additional funding to quality improvements would offer services an incentive to enhance the quality of care they provide, in contrast to the current system of merely applying ineffective sanctions for non compliance (NCAC 2009a, p. 4)

This proposal would lead to a funding model similar to that of the aged care industry (funding 'places' rather than 'users of the service'). Such an approach would need to be supported by a national planning framework to ensure that new services were developed in areas where shortages were most pronounced. And, as discussed in chapter 2, this type of funding model is likely to have serious shortcomings since it can:

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- impose constraints on the supply of child care by making it difficult for new providers to enter the market even where the number of existing providers are deficient or not meeting the needs of families in the types of service they offer
 - stifle innovation in service design and delivery
 - restrict enterprise mix and investment in the sector.

Nonetheless, assuming the link between participation in CCQA systems and CCB funding is maintained, other options could be considered to create the right incentives to ensure the provision of quality care beyond the triggering of sanctions. For example, the Department could improve both the quality of the information it provides to parents and the way it is delivered to parents, to support more informed consumer choice.

Currently, parents can find out if a particular child care centre is accredited by searching on the NCAC website (which also provides an accreditation history). But if parents want to check its 'quality rating' they must physically go to the individual child care centre and request to view the service's 'Quality Profile Certificate' which provides a rating of the service's achievement against each of the Child Care Quality Assurance Quality Areas.

In addition to the above information provided by the NCAC and individual child care services, the Australian Government's 'mychild.gov.au' website provides a listing of CCB approved child care services (that have voluntarily registered with the website). However, a full listing of CCB approved child care services is currently only available on the Child Care Access Hotline (1800 670 305) funded by the Department.

Finally, the Department itself has the discretion to publicise information relating to the sanctioning or suspension of a service for non-compliance with the conditions for continued approval. Details of the sanction or suspension, and the service they apply to, may be published on the Department's website.

Parents require transparent, easily understood information about child care providers. It would appear that parents would benefit from having better quality information provided in a more consolidated format by:

- making it mandatory for the NCAC to publish on its website information on the accreditation status (and the reasons for any 'not accredited' decision – box 3.1) and the Quality Profile Certificate (or quality rating) of specific child care services
- making it mandatory for the Department to publish on its website information on those service providers that are non-compliant with CCQA, including the

reasons for their non-compliance, and the consequences/outcomes that resulted from their non-compliance

- providing direct links to the relevant information on the NCAC and Department websites on the mychild.gov.au website.

Box 3.1 Key to accreditation status

The NCAC provides the following brief descriptions of the various categories of accreditation status for child care services participating in the Child Care Quality Assurance (CCQA) systems.

- ‘New registration’ – is the status applied to a child care service registered to participate in CCQA and is working towards accreditation for the first time.
- ‘Accredited’ – is the status applied to a child care service with a Quality Profile that meets the standard required for accreditation under the relevant CCQA system.
- ‘Not accredited’ – is the status applied to a child care service with a Quality Profile that does not meet the standard required for accreditation under the relevant CCQA system. If a child care service is given the status of ‘not accredited’ it is required to improve practice and submit a self-study report to NCAC within 3-6 months after the most recent accreditation decision.
- ‘Non-compliant’ – is the status applied to a ‘not accredited’ child care service that has been reported to the Department for failure to make satisfactory progress in the relevant CCQA system because it:
 - did not meet the standard required for accreditation on two or more consecutive occasions and/or
 - the service has not met the standards required for the majority of quality areas.
- ‘Compliant’ – is the status applied to a child care service now meeting the requirements of the relevant CCQA system following a period of non-compliance or having had accreditation withdrawn.
- ‘Accreditation withdrawn’ — is the status applied to a child care service whose accreditation status has been rescinded by the NCAC because:
 - the service has serious licensing and/or child protection matters confirmed by relevant authorities
 - the NCAC has received a written complaint about the service and the service has not adequately responded within the required timeframe
 - the accreditation decision has been delayed due to licensing, child protection or complaint issues, which resulted in a delay in the accreditation decision for more than six months after the date of the service’s validation visit.

Source: NCAC (2009b).

The NCAC, in responding to the Commission's draft report, says that it has the ability to publish a service's Quality Profile on its website, but requires the Department's approval:

NCAC has investigated the legalities and technical (IT) requirements to action the recommendation to publish a service's 'Quality Profile' on the NCAC website. As the Quality Profile is indicative of quality in a child care service at a point in time only, the legal advice is to provide additional information to help parents understand and interpret the Profile, and a disclaimer regarding its use.

NCAC needs DEEWR approval before actioning this and has made DEEWR aware of the result of its investigations. Should DEEWR agree to NCAC publishing quality profiles, it may take several months to build this facility into the NCAC website. (NCAC, sub. DR69, p. 5)

Improving direct communication with parents in relation to the level of quality provided by specific services and assisting consumers to more readily compare services will provide stronger incentives for child care providers to become more competitive in providing quality services.

However, Family Day Care Australia, whilst agreeing with the need for parents to have access to clear and consistent information, cautioned against a 'name and shame' approach in isolation, suggesting that 'part of the information provided to parents should be informing them about what 'quality' is and what it means for their child in a care setting' (sub. DR72, p. 3):

Simply providing a rating level on a website does not adequately inform parents of what role the quality assurance system plays, how it impacts on their child care and how it may impact cost. A comprehensive consumer education program provided by Government on the whole National Quality Agenda would provide a better understanding of the context to parents. (Family Day Care Australia, sub. DR72, p. 3)

Family Day Care Australia also suggested 'that any decision to publish quality ratings should only be done after appropriate opportunities to address issues have occurred and any appeals processes have been completed'. It suggested that another category of accreditation status, 'decision pending', was required:

One suggestion is that until services have been given the opportunity to rectify any unsatisfactory areas, there should be another category of accreditation status such as 'decision pending' for services participating in the Child Care Quality Assurance systems. Otherwise it can be very destructive when services are labelled as 'not accredited' on the website and the accreditation process has not yet been finalised. (Family Day Care Australia, sub. DR72, p. 3)

Another category of accreditation status does not appear to be warranted. So long as parents are provided with sufficient information explaining why a service is in the existing 'not accredited' category, and they are aware that the service must improve

practice over the following three to six months to meet the standards required for accreditation, they can make an informed decision as to whether their children should enrol or remain enrolled at the service.

RECOMMENDATION 3.2

The Department of Education, Employment and Workplace Relations should improve both the quality of child care service information provided to parents, and the way it is delivered by:

- ***making it mandatory for the National Childcare Accreditation Council to publish on its website information on child care services' accreditation status (and the reasons for any 'not accredited' decision) and the Quality Profile Certificate (or quality rating) of specific child care services***
- ***publishing on its website information on those child care services that are non-compliant with Child Care Quality Assurance, including the reasons for their non-compliance, and the consequences/outcomes that have resulted from their non-compliance***
- ***providing direct links to this information on the mychild.gov.au website.***

Reporting of vacancies

Since June 2006 child care providers have been required, under section 21 of the Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000, to report anticipated vacancy information to the Department.

Currently services are required to provide vacancy information on a weekly basis, before 8pm each Friday, for the following week. The information provided must be based on the number of vacant CCB-approved places identified each day in line with the service's business practices. Services are required to report for each week that they operate, regardless of whether they have any vacancies or not.

If services do not report vacancy and usage data, or do not report vacancy and usage data on time, a sanction or penalty may be imposed. Sanctions include suspension and cancellation of approval. In addition to sanctions, this vacancy and usage requirement is also subject to an infringement notice scheme involving financial penalties. A service that does not report on time may receive an infringement notice and has the option of paying the lesser penalty set out in the notice or having the liability determined in court.

According to the Department, some child care providers have questioned the regulatory requirement to report vacancies of child care places:

Some child care services have complained about the burden that reporting vacancy information places upon them — often this is linked to a concern that the information provided is of limited value to parents and to the service itself (in terms of attracting clientele). (sub. 42, p. 7)

Family Day Care Australia says the current system offers little value to parents and is excessively burdensome to services:

This requirement is very problematic for the family day care sector as vacancies can be for a few hours in a day, not necessarily a whole day, or consecutive day vacancies may not necessarily be with one carer. Therefore the information is not very useful for parents. Also given the high demand for family day care services, as soon as the data is submitted, it becomes out of date as the vacancies get filled immediately from waiting lists.

The administrative burden of collecting and reporting the data is time consuming and expensive for services ... Some carers have noted that no requests for care have come from this process. For parents wishing to access family day care services, contacting their local coordination unit is the best way to ascertain the most up to date vacancy information. (sub. DR72, p. 4)

Moreover, some child care organisations suggested that certain child care providers would report vacancies even when they were at capacity so that parents seeking vacancies would be directed to those providers in the first instance — ensuring they always had pent-up demand for their service.

Assessment

When vacancy reporting was initially introduced in mid-2006, providers had a number of channels to lodge this information:

- electronically (directly into the Child Care Availability System which collected vacancy information, by e-mail, or via the services of a third party software provider)
- telephone (to the Child Care Access Hotline, which had a dedicated number for services).

With the transition of all Child Care Benefit approved services onto the Child Care Management System (CCMS), this is now the only mechanism for services to submit their vacancy information (box 3.2).

According to the Department, the objectives of reporting vacancy information are to:

- improve the ability of parents to find suitable child care by:
 - being able to find out information about all the services in their area

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- obtaining information on whether or not a service has a vacancy
 - finding out about the age groups the service caters for
 - obtaining information on whether the service has a vacancy in the specific age group that parents are seeking.
- help services fill any vacancies and reduce the number of enquiries to services during times when they have no vacancies or if they do not offer care to a specific age group
 - provide information to Centrelink and employment service providers to allow them to help job seekers who are parents with participation requirements under the ‘Welfare to Work’ reforms.

Box 3.2 Child Care Management System

Under family assistance legislation, all Child Care Benefit approved services were required to operate under the Child Care Management System (CCMS) by 1 July 2009.

The CCMS introduces a new process for transferring information between child care services and the government over the internet. This information will include details of the children enrolled in the service and information about their attendance at the service. The CCMS brings all approved child care providers online to standardise and simplify Child Care Benefit administration, including the capability to lodge CCB electronically.

According to the former Parliamentary Secretary for Early Childhood Education and Child Care:

The CCMS provides an opportunity for child care service providers to review and streamline their business processes, giving them more time to concentrate on offering quality early childhood education and care programs to children and their families.

The new system will reduce the amount of paperwork for child care professionals, allowing them to provide all the required data at once, in a streamlined electronic format. (2009, p.1)

Source: McKew (2009).

According to the Department, no Regulation Impact Statement (RIS) was developed prior to vacancy reporting being implemented in 2006. Advice provided by the Office of Regulation Review (now the Office of Best Practice Regulation) indicated that a RIS was not necessary as the proposed amendments were minor or machinery in nature and did not substantially alter existing arrangements.

Now that vacancy reporting has migrated to the CCMS, it is likely that the regulatory burden on services has reduced or at least stayed the same. This has been corroborated by feedback provided to the Department which indicates that:

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- services that reviewed their fee charging practices to align with their obligations introduced by the CCMS have significantly streamlined their administration
 - some services that have continued to use business practices that were in place prior to the introduction of the CCMS have similar administration overheads as in the previous system
 - one of the key factors in streamlining administration is the third party software used by services and the level of support provided by their software provider:
 - in some instances services report significant administrative improvements due to the CCMS software changes
 - others report only marginal improvement over the previous software product.
 - if a service utilises the CCMS for a period of 4–6 weeks the administrative overhead is reduced and significant streamlining can be achieved. (DEEWR, pers. comm., 30 April 2009)

Despite these recent reductions in compliance costs it is questionable whether the benefits of vacancy reporting to parents or providers outweigh the costs. The level of usage by parents is low. In terms of calls received by the Child Care Access Hotline, the call volume for the last three financial years is:

- 2005-06 – 35 800
- 2006-07 – 41 128
- 2007-08 – 36 004

According to the current provider of the Hotline, around 60 per cent of callers request information on reported vacancies (21 600 calls in 2007-08). Given the Australian Government supported 668 124 child care places per day in 2007-08, the (vacancy) calls made per year relative to the number of child care places per year is very small.¹

It is not possible to determine the number of parents using the service as many of the callers may have engaged the service on more than one occasion if initial inquiries did not result in a successful placement. But what is clear is that the number of parents using the service will be less than the number of calls.

It would appear that either CCB recipients are not aware of the service or they do not find it very useful as it does not appear to play a significant role in informing parents regarding their choice of child care service.

¹ 36 004 x 60% = 21 602 calls per year.

It is also not possible to determine the extent to which parents are using the service for short-term or long-term placements. Parents seeking additional, alternative, or new child care arrangements are likely to be seeking stable longer term options for their children. The information they require would be for longer term placement availability rather than information on vacancies for the following week, although this weekly information could perhaps be of some use as a predictor of longer term vacancies.

On the other hand, if some parents were seeking a short term or casual vacancy it would appear that more accurate information could be gleaned from contacting a child care service directly, rather than via the Hotline which has information that could be up to a week out of date. Moreover, even if the Hotline information was accurate parents would still have to contact the child care service directly to book the place. So the vacancy reporting arrangements are only reducing the search costs to the extent that it deters parents contacting services with no vacancies — which might be less than expected if services are declaring vacancies when they do not exist, as has been claimed.

The Department, in its response to the Commission's draft report, recognised vacancy reporting could be improved and highlighted some very recent changes to the standard definition of a vacancy:

The Government is aware that there are shortcomings with the current vacancy reporting system ... On 6 August 2009, the Government announced the introduction of a new standard definition of a vacancy and instructed child care services to begin reporting against this definition on a weekly basis from 14 August 2009. Vacancy availability information using this definition is expected to be made available on the mychild.gov.au website in the coming months. (DEEWR, sub. DR90, p. 4)

Under the recently announced changes all child care services will be required to report the number of vacant places for each day of the week, based on a new standard definition (Ellis 2009).

The mychild website is likely to be much more useful to parents with the adoption of recommendation 3.2 above, so putting better-defined vacancy reporting information on this website is likely to increase usage by parents and therefore foster benefits to child care services as well.

From the evidence provided, the costs of vacancy reporting to child care providers are small, but it also appears likely that the benefits to child care providers and the community are even smaller. The Department should continue to improve the way child care services report anticipated vacancy information so that industry compliance costs are constrained and the information provided to parents is more useful.

The Department of Education, Employment and Workplace Relations should continue to improve the way child care services report anticipated vacancy information so that industry compliance costs are constrained and the information provided to parents is more useful.

Unannounced validation visits and spot checks by the NCAC

Unannounced validation visits by the National Childcare Accreditation Council (NCAC) were raised in consultations as being unnecessary and duplicative given the existence of ‘spot checks’ by the same organisation. It was suggested by some child care services that spot checks are sufficient to ensure validators can observe genuine typical practice and the quality of child care services are maintained throughout the year.

On the other hand, Community Child Care (CCC) hold the view that both unannounced validation visits and spot checks are necessary:

CCC believes it is essential that both unannounced validation visits and unannounced spot checks are an ongoing requirement of the NCAC to minimise the risk of unscrupulous operators bringing in a ‘quality kit’ for the pre-determined day of validation to mask poor practice in order to gain accreditation. (sub. DR80, pp. 1-2)

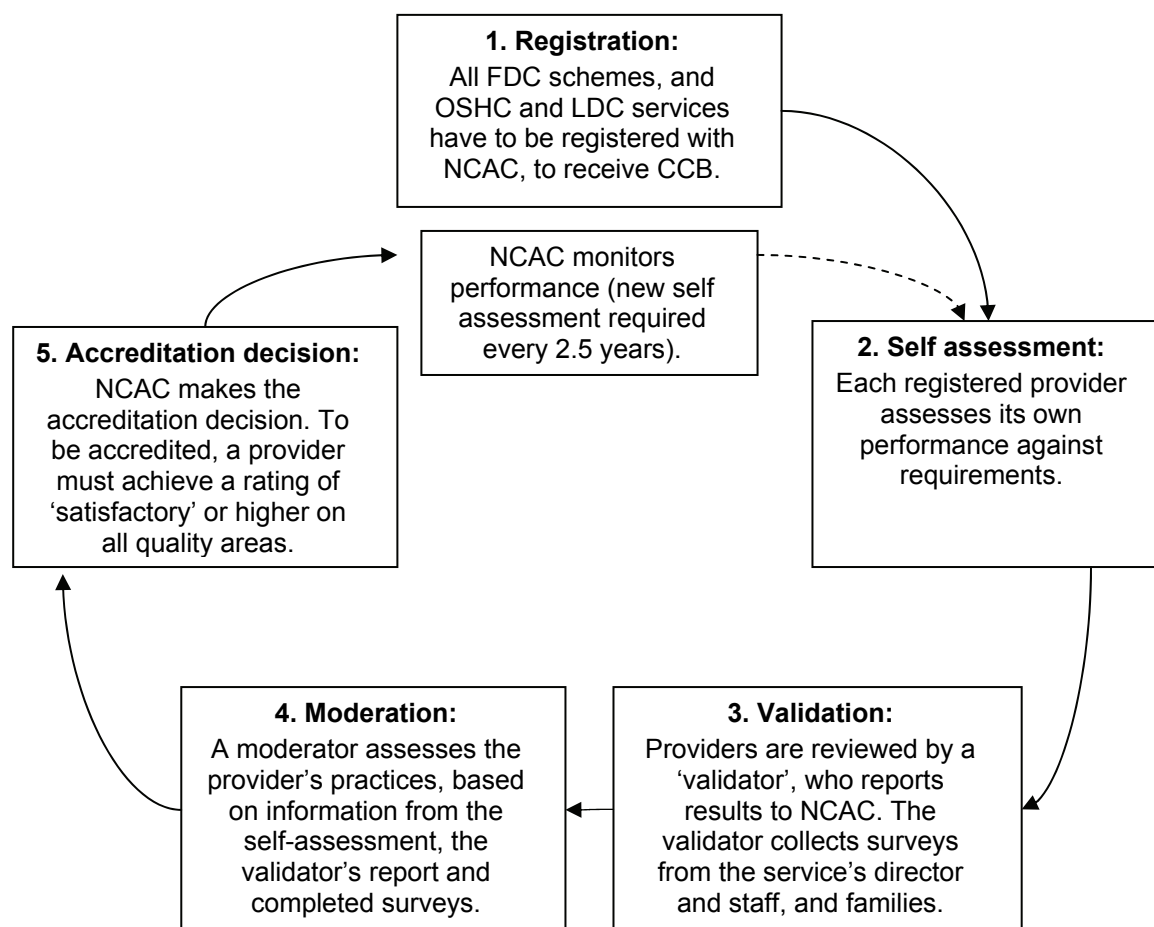
As part of the accreditation process under the NCAC quality assurance systems (figure 3.1), after a child care provider’s self-assessment report has been received, NCAC selects a validator to conduct the validation visit of the service. A letter is sent to the provider advising a timeframe of six weeks within which the visit will occur. The validator does not provide the service with a specific date that they will attend the service. (NCAC 2007)

In addition, providers that have been through the CCQA process and are accredited are randomly selected to receive a spot check. The NCAC may also schedule a spot check as part of an investigation of a written complaint about a child care service.

During a spot check, a NCAC validator attends a child care facility without notice to observe:

- progress made by the service to self-assess and improve on a continuing basis
- any practices not meeting the standard required for accreditation and immediate action taken by the provider to address these
- provider practice in relation to issues raised in a written complaint (where applicable). (NCAC 2007)

Figure 3.1 **Accreditation process under National Childcare Accreditation Council quality assurance systems** ^{a, b, c, d}



^a FDC refers to Family Day Care schemes. ^b OSHC refers to Outside School Hours Care. ^c LDC refers to Long Day Care services. ^d CCB refers to Child Care Benefit payments.

Source: SCRGSP (2009).

Assessment

When child care providers are going through the accreditation process for the first time, or subsequent to a period of being 'not accredited', or after having their accreditation withdrawn, the NCAC should be focused on fostering continuous improvement as part of its support function. It is difficult reconciling unannounced validation visits with the NCAC's objective, 'to assist child care professionals to deliver quality child care by providing advice, support and resources' (NCAC 2007, p. 4). A pre-appointed validation visit may also yield better outcomes for the validator as the service director and staff can structure their days to better accommodate the validator for the duration of the visit.

While validation visits should be about supporting child care services, spot checks are an important part of the NCAC's inspectorial function. Spot checks are a valuable mechanism for creating the right incentives for services to provide consistent quality care every day once they are accredited or seeking re-accreditation.

The Department should ensure a clear separation of the NCAC's support and inspection functions by removing unannounced validation visits and reintroducing pre-appointed validation visits for those providers seeking accreditation. Spot checks should be retained for those providers already accredited or seeking re-accreditation.

The Department, subsequent to the release of the Commission's draft report, indicated that the former Parliamentary Secretary for the Office of Early Childhood, Education and Child Care, requested a review of the current policy for unannounced validation visits prior to her changing portfolio responsibilities. The review proposed that, 'services will receive notification in writing of the date of the scheduled validation visit. Spot checks will continue to be unannounced.' (DEEWR, sub. DR90, p. 5)

The NCAC suggested the recommendation to provide services with the date of their validation visit could be implemented easily and that spot checks are sufficient to identify any services that 'put on a show' for their validation visit:

This change could be implemented immediately and would allow services to ensure that staff are prepared for the validator and would significantly reduce stress on the services. While services could potentially 'put on a show' for the validator, NCAC could spot check the service if a complaint was received about this. (NCAC, sub. DR69, p. 6)

RECOMMENDATION 3.4

The Department of Education, Employment and Workplace Relations should remove the requirement on the National Childcare Accreditation Council to conduct 'unannounced' validation visits of child care services, but continue with (unannounced) spot checks.

NCAC validation surveys

As part of the accreditation process under NCAC, quality assurance systems (figure 3.1) providers are reviewed by a 'validator' who reports results to the NCAC. At the time of the validation visit the validator collects (paper) validation surveys that have been sent to the provider prior to the visit for completion by the service director, staff and families. There is a separate set of surveys for each child

care quality assurance system, each set is varied to relate to the relevant quality areas and principles.

Child care providers are required to send validation surveys to the parents of children attending their respective services and then collect them for the validator prior to the validation visit. The onus is on individual providers to meet the NCAC's minimum benchmark return rate of forty per cent of children attending the service. During consultations, child care providers questioned the need for their involvement in administering NCAC validation surveys.

According to Family Day Care Australia (sub. DR72), the format of the surveys is not meaningful to parents and can be easily misinterpreted. It also suggests the time and resources devoted to chasing up surveys could be utilised more effectively in delivering services.

Assessment

The surveys can be time consuming for services to administer given that they may be copying, distributing and collecting, on average, approximately 100 surveys and accompanying cover letters. However, it could also be anywhere between 15 – 600 surveys, depending on the size of the service (NCAC, pers. comm., 1 May 2009).

Child care providers could be spared the administrative cost of this process if the NCAC conducted telephone surveys of a sample of parents from each individual child care centre. There is no justification for the NCAC shifting some of the current administrative burden of validation surveys onto providers.

According to the NCAC, a number of options are available that could assess families' satisfaction with the quality of care provided (at less cost to child care services):

- an annual telephone survey could be conducted to gain qualitative feedback from families. The survey could be conducted externally and formulated to gain information about specific issues
- a website poll for families using an online survey that could be completed at any time, rather than when services reach Validation in the CCQA process
- build on current strategies used by the NCAC to communicate with families to increase an awareness of opportunities to be involved with services and encourage participation. (sub. DR69, p. 8)

The Department, subsequent to the release of the Commission's draft report, indicated that validation surveys will be replaced by a Family Satisfaction Survey with the design and mechanics of the delivery to be developed by the NCAC in

consultation with DEEWR as part of the transition to the National Quality Agenda (DEEWR, sub. DR90)

RECOMMENDATION 3.5

The National Childcare Accreditation Council should replace paper validation surveys given to parents with an alternative delivery mechanism, such as a telephone validation survey, so that child care services are no longer required to act as a survey dispensing/collection service.

Consolidation of child care accreditation systems

During public consultations some providers questioned the on-going need for three different Australian Government child care quality assurance systems for Family Day Care schemes, Outside School Hours Care services and Long Day Care centres. Views were expressed that complying with more than one set of standards is a burden on those individual services which provide more than one type of service.

Assessment

In 2006, the NCAC commenced working towards the development of an integrated child care quality assurance system to be known as the Child Care Accreditation System (CCAS) which was going to apply to the three types of service currently accredited by the NCAC. Draft CCAS standards were developed in 2006-07 and released for public consultation from January to April 2007 together with a draft framework for the CCAS.

The CCAS identified common, core elements of quality care in family day care, long day care and outside school hours care environments. At the same time, it recognised those elements of difference and retained those components of quality care specific to each service type. The CCAS was aimed at streamlining the existing CCQA systems to reduce the burden on individual services and enable other child care service types to participate in CCQA (NCAC 2007).

The work undertaken on the CCAS appears to have been subsumed by COAG's National Quality Agenda for Early Childhood Education and Care. According to the Department this work will feed into the COAG reform process:

Preliminary work was undertaken in relation to streamlining of the Child Care Quality Assurance systems for Long Day Care, Family Day Care and Outside School Hours Care and many people across the child care sector contributed to that process. While the agenda for reform now is much broader, the contribution that was provided during

the previous process was extremely valuable and will feed into the work now underway. (DEEWR 2009d)

It is not clear why such work could not have continued in parallel with the broader COAG process and have been implemented, given both processes have the same objectives — to streamline regulatory (licensing and accreditation) arrangements.

It is important that the Australian Government maintains efforts to unilaterally reduce regulatory burdens in areas where it has responsibility even though other reform processes, involving other jurisdictions, are on-going. In this case, rather than delay an existing Commonwealth process until the outcomes of a wider process become clear, it would have been more fruitful to undertake both simultaneously and then merge the outcomes of both processes when they are finalised.

RECOMMENDATION 3.6

The Department of Education, Employment and Workplace Relations should complete the integration of the three existing Child Care Quality Assurance systems as soon as possible.

Other concerns raised

Coordination of visits of NCAC and state regulators

In consultations, providers raised the issue of the lack of coordination of visits between the National Childcare Accreditation Council (NCAC) and state/territory regulators. This lack of coordination can result in services receiving visits from both tiers of government at the same time or within a very short space of time.

Assessment

Both the NCAC and state/territory regulators conduct visits to child care services as part of the accreditation and licensing processes. Due to the independent nature of both processes, child care providers can receive multiple visits in a short space of time.

It would relieve the burden on child care providers having to deal with the administrative burden of both tiers of government in a short space of time if the visits from Commonwealth and state agencies were more evenly spaced throughout the year. In this way child care providers' compliance workload would be more uniform and there would be less risk of providers being taken away from core

business activities for lengthy periods (to address compliance issues) within a specific timeframe during the year.

Obviously coordination of visits by Commonwealth and state/territory officials would not be possible in all circumstances (e.g. spot checks, inspections triggered by complaints). However some coordination should be feasible in relation to the respective accreditation/licence renewal cycles.

Subsequent to the release of the Commission's draft report, the Department indicated that this issue will be addressed through the implementation of the National Quality Agenda:

Specifically, COAG has agreed to a jointly governed unified national system to replace current licensing and quality assurance processes under which:

- individual services will need to deal with one organisation for quality assessment. (DEEWR, sub. DR90 p. 6)

Until the National Quality Agenda is fully implemented the NCAC should work with respective state governments to ensure visits from the NCAC and state regulators occur in a coordinated manner to minimise the inconvenience to child care services responding to both tiers of government within a short space of time. As Family Day Care Australia suggests:

Until there is a single, integrated national system for regulation, a better coordinated approach that includes a forward timetable with clearly scheduled visits can alleviate some of the stress experienced by services. (sub. DR72, p. 60)

Moreover, if recommendation 3.4 (i.e. replacing unannounced validation visits with announced validation visits), is implemented, state/territory licensing departments could be advised of the date of the NCAC's validation visit, 'ensuring that, where possible services' licensing and validation visits do not occur within the same timeframe' (NCAC, sub. DR69, p. 6)

RECOMMENDATION 3.7

The National Childcare Accreditation Council and state/territory regulators should coordinate their visits to child care services as far as possible, to reduce the risk of compliance activity spiking within a specific timeframe during the year.

CCB compliance reporting

Child care services must keep an assortment of records to maintain their CCB approval (box 3.3). Records must be kept for 36 months from the end of the calendar year in which the care or event recorded occurred.

Box 3.3 Records to be kept by approved child care services

All approved child care services must keep the following records:

- if applicable, the licence to operate a child care service issued by the state or territory where the service operates
- records of attendance for every child provided with care, including records of absences which, in the opinion of the service, took place in permitted circumstances ('approved absences') or on a permitted absence day ('allowable absences')
- records of any instances in which the service certified something under the family assistance law (for example, for eligible hours or a CCB rate for a child at risk or an individual in hardship, or for the need for a period of 24-hour care)
- copies of reports given by the child care service to the Secretary of the Department concerning details of child care usage and Child Care Benefit payment summary
- copies of notices of any determinations (CCB percentage, eligible hours limits, and so on) given to the service by the Secretary under the family assistance law for CCB purposes
- copies of receipts issued to people who have paid child care fees
- enrolment forms
- statements or documents for the purposes of documenting an approved absence
- insurance policies and any other documentation relating to insurance
- accounting records, including cash books and journals
- copies of any in-home care agreements

And in the case of family day care only:

- current records of the full name, residential address and contact number of each carer employed or contracted by the service
- if care is provided at a place other than the carer's residence, the address and telephone number of those other premises.

Source: DEEWR (2008a)

Some child care providers, like Monash University Family And Child Care, raise concerns about the length of time records must be stored to be compliant with CCB record-keeping requirements:

Meeting reporting requirements for CCB can be difficult, as information is required to be stored for various amounts of time, which can again be different from the state based regulations. This provides storage issues for centres. (sub. 28, p. 1)

Assessment

According to the Department, the objective of the compliance framework is to preserve the integrity of child care payments made by the Australian Government in the child care sector:

Compliance monitoring is considered necessary to underpin more than \$1.9b outlays in payments for Child Care Benefit purposes, \$860m in Child Care Tax Rebate plus substantial funding programs. The obligation to keep records and to produce them for inspection are fundamental to compliance. (sub. 42, p. 5)

The key child care compliance activities undertaken by the Department include:

- educating services about their obligations under family assistance law
- conducting unannounced visits to approved child care services to monitor compliance with their obligations
- investigating possible child care benefit fraud.

According to DEEWR (2009a), the most common non-compliance issues identified in reviews of child care services include:

- services claiming CCB for absences before a child commenced care or after the child has ceased care
- problems with attendance records, such as failing to note the times in and out of children in care and parents not signing/verifying children's attendance where appropriate
- allowable and approved absences not being clearly recorded on attendance sheets and services failing to report allowable absences to the Family Assistance Office
- receipts not meeting the legal requirements, for example, not including information such as the names of the children covered by the receipt, the period to which the fee payment relates and the amount of CCB fee reductions for the period covered by the receipt.

The CCB compliance framework does not cover compliance with the quality assurance programs administered by the NCAC or state and territory licensing requirements for child care services.

The graduated responses to non-compliant activity are listed in the Department's *Child Care Payment Compliance Framework* and include:

- targeted education campaigns
- warnings
- sanctions, including meeting additional conditions, or suspension or cancellation of a service's CCB approval
- civil penalties and infringement notices
- prosecution where criminal offences are involved
- recovery of fraudulently received payments through legal proceedings. (2009b)

In most cases, according to DEEWR (2009a), services will simply require further education and guidance because most services work hard to provide quality child care and follow the rules to ensure that families receive their correct entitlement to CCB. However, there are a small number of services who engage in unfair and/or illegal practices which can result in the wrong entitlements being paid. When these non-compliant services are identified further investigation and follow up action is undertaken.

Since 2006, the Department has conducted over 3000 compliance visits and some of the services have had follow up visits. The annual target for compliance visits is around 10 per cent of all services. In recent times the Department has secured successful prosecutions for CCB fraud amounts of between \$70 000 and \$150 000. The court judgements resulted in the monies being repaid to the Australian Government.

There is obviously a strong public policy rationale for having procedures in place to minimise the risk of incorrect payment and fraud, to ensure the integrity of child care payments made to families and services. These compliance processes, where possible, should be weighted towards those services that have a history of participating in inappropriate practices using a risk management approach. This will help to minimise the regulatory burden on the majority of services that 'follow the rules'. An example of where this could occur is in conducting unannounced visits to approved child care services to monitor compliance with their obligations.

According to the Department, virtually all compliance visits are unannounced and the targeting of services for compliance visits is predominantly based on a service's 'risk profile'. The risk profile is built up from a series of edit checks applied to child care data. Some services are also subject to compliance visits based on complaints and tip-offs received via the Child Care Compliance Tip-off Line (1800 664 231).

From the information provided by the Department to the Commission it appears that such a risk management approach is currently undertaken.

Inconsistent application of child care quality assurance systems and regulations

Some child care associations and service providers raised the issue of different interpretations of national standards by individual validators and also state regulations by state compliance officers:

... regulation and QA (Quality Assurance) are blunt instruments which inevitably rely on human interpretation and implementation. CCC is aware of persistent problems with inconsistent interpretation and enforcement. For example state Children's Services Advisors issuing formal breaches for practices previously identified as points for discussion such as a minor tear in a mattress. At the national level QA validators sometimes require specific wording in policy documents while others accept local wording that captures the intent of the national standards. (Community Child Care, sub. 27, p. 2)

Monash University Family and Child Care had similar concerns with individual interpretations of Victorian regulations pertaining to sleep supervision:

... supervision in sleep rooms is an ongoing battle between DEECD (Department of Education and Early Childhood Development) and children's services. (State) regulations require adequate supervision of children sleeping. Some DEECD representatives interpret this as requiring a staff member to sit with sleeping children at all times. This is not necessarily how children are supervised in the home environment and creates impractical (staff-child) ratios for centres to maintain, as that staff member is effectively "off the floor." (sub. 28, p. 1)

Assessment

It is important that individual state regulators aim to achieve a high level of consistency in their enforcement of state regulations, but it is beyond the scope of this report to discuss the extent of inconsistency in enforcement within any individual state or territory.

National quality assessors should also focus on achieving a high standard of consistency in their assessments of individual child care centres against the national Child Care Quality Assurance systems.

In respect of Commonwealth quality assurance, the NCAC administers the following three Child Care Quality Assurance (CCQA) systems:

- Quality Improvement and Accreditation System (QIAS) for long day care centres

- Outside School Hours Care Quality Assurance (OSHCQA) for outside school hours care services
- Family Day Care Quality Assurance (FDCQA) for family day care schemes.

The number of child care providers using each quality assurance system is outlined in table 3.5.

Table 3.5 Services registered to participate in CCQA systems

As at 30 June 2008

<i>Service</i>	<i>Number</i>
Long day care centres using QIAS	5 597
Outside school hours care using OSHCQA	3 324
Family day care schemes using FDCQA	316
Total	9 237

Source: NCAC (2008).

According to the NCAC (2008) all three Commonwealth quality assurance systems follow the same five-step accreditation process with a focus on quality improvement (figure 3.1).

Recent efforts have been made by the NCAC to ensure greater national consistency of accreditation decisions:

From 1 July 2006 NCAC began directly employing Validators ... to undertake all Validation Visits ... As employees of NCAC, Staff Validators are able to conduct a greater number of Validation Visits and Spot Checks. They receive extensive training and a higher level of feedback and support from NCAC ... NCAC records have shown increased satisfaction with Validator consistency since the introduction of Staff Validators. (2007, p. 12)

From 1 September 2007, significant changes to the Moderation staffing model were introduced. Consolidating the number of Moderators employed by the NCAC has already generated significant improvements to timeframes between Validation Visits and Accreditation Decisions, and will ensure greater national consistency of Accreditation Decisions. (2008, p. 5)

It seems that most service providers are satisfied with the validation visits conducted by the NCAC. In its most recent annual analysis of validation evaluation forms, over 90 per cent of services were satisfied with their validation visit (NCAC 2008).

More importantly, it would appear that most service providers are content with the accreditation decisions made by the NCAC because the number of requests for

review received by the Accreditation Decisions Review Committee (ADRC) from services were not large relative to the total number of registered services.

A service may apply to the ADRC for a review of its accreditation decision. This includes services that have been accredited but want to appeal their ratings. The ADRC is comprised of members appointed by the Australian Government Minister responsible for children's services and is independent of the NCAC. Reviews undertaken by the ADRC result in recommendations for consideration and determination by the NCAC. However, the ADRC cannot overturn an NCAC accreditation decision, it can only provide advice.

According to the NCAC, in 2007-08 the ADRC provided the NCAC with 84 recommendations in response to requests for review received from services. The ADRC recommended changes in 47 instances, while no changes were recommended in 37 instances. As a result of changes recommended by the ADRC, NCAC changed 13 decisions from Not Accredited to Accredited. It should be noted that a change to a single CCQA Principle may not alter an overall accreditation decision.

Given the low level of requests for review by the ADRC of accreditation decisions (made by the NCAC) it would appear that in general service providers are reasonably satisfied with the application of the child care quality assurance systems by the NCAC.

Inconsistent licensing arrangements across jurisdictions

Community Child Care (sub. 27, p. 2) raised concerns, prior to the release of the draft report, about the lack of licensing in Victoria for outside school hours care and family day care. Since the release of the Commission's draft report, new children's services legislation has commenced in Victoria, which includes regulating outside school hours care and family day care.

Notwithstanding these recent changes in Victoria, some states do not license some child care types that are licensed in other states. State and territory governments maintain responsibility for the licensing and regulation of child care services. However, some child care sectors are not licensed in some jurisdictions and preschools are generally subject to different regulations and standards than child care services within jurisdictions (table 3.2).

In general, state and territory regulations are focused on structural quality factors regarding factors like safety standards, staff qualifications, staff-child ratios, child development and health and safety requirements. There are differences across

jurisdictions in some of these areas. For example, there are differences in minimum staff-child ratios for centre-based long day care across jurisdictions (table 3.6). Only the Northern Territory and the Australian Capital Territory have the same standards as those endorsed in the national standard that were agreed by the Council of Social Welfare Ministers in 1993.

Any lack of uniformity in licensing and regulatory standards between states will be addressed as part of COAG's National Quality Agenda for Early Childhood Education and Care. According to the Department's website:

The National Quality Agenda aims to reduce the administrative red tape on services, reduce the overlap and duplication, and work towards better child care services for all Australian children. (DEEWR 2009c)

The outcome of this COAG initiative will not be known until an exposure draft of the national quality standards is publicly released later this year.

Table 3.6 Minimum staff to child ratios in centre-based long day care
States and Territories

	<i>0-2 years</i>	<i>2-3 years</i>	<i>3-5 years</i>
National standards	1:5	1:5	1:11
New South Wales	1:5	1:8	1:10
Victoria	1:4	1:4	1:15
Queensland	1:4	1:6	1:12
South Australia	1:5	1:10	1:10
Western Australia	1:4	1:5	1:10
Tasmania	1:5	1:5	1:10
Northern Territory	1:5	1:5	1:11
Australian Capital Territory	1:5	1:5	1:11

Source: ECDSC (2009).