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We welcome the Productivity Commission's review into the childcare sector in terms of it being flexible, affordable and accessible. Over recent years the issue of affordability has been significantly challenged. While overall the introduction of the National Quality Framework has had a positive impact in terms of placing a focus on quality of care, it has unfortunately had a number of unforeseen impacts on the cost of childcare. Regulations that are attempting to ensure quality of care are instead causing significant cost increases, particularly in terms of administration and directly in terms of staff costs. We support the Productivity Commission's inquiry and investigation into the various areas that challenge us the most as an industry and as individual businesses.

We would like to raise the following specific concerns that we feel contribute unnecessary cost to the broader industry –

1. Early Childhood Teachers (ECT) requirements in NSW – NSW specific
2. New Requirement for 'Responsible Person' position at the service at all times
3. General educator qualifications
4. Disproportionate funding of Community Based Child Care

We thank the Productivity Commission's review of these points.

1. Early Childhood Teacher (ECT) Requirements in NSW

Summary: In NSW state specific regulations override the national regulations causing a greater need for ECTs than any other state. It also creates onerous requirements in seeking replacement ECTs when staff are on leave & when staff are sick.

Recommendation: Bring NSW in line with all other states in regard to ECT requirements (National Regulation 129-135) by abolishing the NSW state regulation 272.

Details

The National Regulations are overridden in various states by individual state savings. This means that in NSW Regulation 272 overrides National Regulations 129-135 which cover the rest of Australia (Appendix 1). The everyday impact of this regulation means that a service in NSW with 71 children requires 3 ECT's on the premises AT ALL TIMES the service is caring for those 71 children, while a service elsewhere in Australia requires only one ECT for 6 hours and an additional ECT for three hours on each day. While we do not deny that the more ECT's caring for and educating children the better quality outcomes can be achieved, the logistics of hiring, retaining and rostering the required number of ECTS to be on the premises at all times is extremely difficult. If we are unable to comply with the regulation then we are at risk of breaching and face possible prosecution. This puts enormous pressure on many services. The only option to cover the possible breach (including if a teacher is sick) and no suitable replacement can be found for the day is applying for a temporary waiver at a cost of \$100. In NSW an ECT cannot be replaced by a Diploma trained educator.

This also places a huge financial burden on services in NSW to cover the costs of teacher's wages. The only possible way to cover this cost is by increasing fees as wages rise. This regulation has been held over from the previous regulations and continues to place pressure on services.

Recruitment for larger centres is problematic as most university trained teachers are trained to work only with 3 - 5 year olds and are only prepared to accept a position which guarantees them a position in the preschool room. Due to the skill shortage university trained teachers can be selective about the positions they accept. This adds to the difficulty of attracting university trained teachers to larger centres.

We believe as stated that quality educated teachers provide quality care and education for young children, however the inflexible nature of the NSW state regulation 272 is a significant cost driver.

2. New Requirement for 'Responsible Person' position at the service at all times

Summary: The NQF introduced the position of a 'responsible person' to Long Day Care Centres, which is required at all times. While this sounds like a reasonable request the details around the criteria and responsibilities create excessive administration & onerous pressure on staff involved. It also directly drives staffing costs though ensuring that most experienced staff are present at opens & closes.

Recommendation: Examine the administrative burden that the process of applying for 'Certified Supervisor' requires and if appropriate examine the criteria required for 'Certified Supervisors'.

Detail

Services are required to have a responsible person at the service at all times (Appendix 2). A Responsible Person is a Certified Supervisor, Nominated Supervisor or Approved Provider. A person wishing to apply for a certificate needs to have a proof of age (over 18), copy of evidence of change of name if relevant, resume, qualification or written reference to cover adequate knowledge, evidence of their ability to manage and supervise a service, evidence of qualification or proof of experience, WWCC, plus payment of fee. The application is outlined in CS01 Application for Supervisor Certificate. Services have then been asked to provide more information than what is outlined on the form, such as proof of work and provider number for the centre they work for. For applicants who work at multiple services this is confusing and extends the approval process. Certified Supervisors are then required to notify the Regulatory authority within 7 days of any changes to their certificate for example change of address. There is a personal penalty of \$4000 for non-compliance. The applicant must have three years' experience or hold a Diploma or teaching qualification. Many educators do not wish to hold the responsibility of being a Certified Supervisor and this can make rostering difficult, especially when factoring in the Educator's Qualification Requirements as of January 2014.

Many educators are reluctant to go through this process or delay the process by not completing their application promptly. The personal liability and risk of prosecution and fine in the event of non-compliance is a huge deterrent to many educators who do not wish to have the responsibility of being a Certified Supervisor. The lengthy application process then falls to the responsibility of the service in order to ensure there are enough Certified Supervisors available to cover the shifts required. It is time consuming to organise the applications and manage the number of applicants within the service, ensuring all paperwork is completed and sent appropriately. The new form which is available through the department has checklists however is ambiguous about other aspects of the application which were required previously, and which when not sent delayed applications. Chasing up which forms are needed and which are not now needed impacts on productivity.

3. General educator qualifications

Summary: The NQF introduced the requirement for 50% of educators at the service at all time to be Diploma or higher at all times. While we agree with the push for higher qualifications in the sector, the requirement of "...at all times" creates a significant cost driver. This requirement is particularly impactful at opens and closes.

Recommendation: That the requirement "...at all times" in National Regulation 126 be modified to something that encourages the increased presence of qualified staff without creating rostering complications at opens & closes. For example it could be changed to "...the greater part of the day" or "...6hrs of the day".

Details

The NQF introduced the requirement for 50% of Educators at the service at all times to hold at least a Diploma qualification or higher or be actively working toward one (Appendix 3 – National regulation 126). The other educators required for ratios require a Cert III or be actively working towards. This combined with the requirement for a certain number of ECTs at each service along with the requirement of a Certified Supervisor at all times makes rostering according to the Regulations difficult. With educators starting and finishing at different times and the number of children fluctuating daily dependent on their family's needs, covering all regulations whilst also providing quality care for the children becomes a difficult and challenging task.

This has caused much upheaval in the industry as staff with many years' experience but no formal qualifications have been forced to undertake the financial and time cost of studying for formal qualifications, with little governmental financial aid available. There have been many anecdotal incidences of experienced educators leaving the industry rather than undergo costly qualifications due to financial or family obligations.

The industry is widely accepted to be in shortage of qualified educators. The government NSW Child Care Worker Current Labour Market Rating was last updated in September 2012 and rates as 'Shortage'.

The real impact of this regulation in driving staffing costs results from the impact of needing qualified staff to be doing longer shifts to ensure the 50% is maintained at all times. At opens & closes staff numbers increase and decrease based on children estimated arrivals & departures. This regulation means that when 3 staff are required at least 2 of them need to be highly qualified. This is a direct driver of staffing costs.

4. Disproportionate funding of Community Based Child Care

Summary: Community Based Child Care currently receives significant funding through direct and indirect sources through local councils (and to a smaller level through State Governments in capital grants). This causes a distortion in the funding allocation in the sector.

Recommendation: Review the level of funding that is received by Community Based Child Care in terms of direct and indirect funding through local and state governments and how this impacts competition. Further, consider how this applies under the principles of competitive neutrality.

Details

Long Day Care centres represent the majority of formal child care for working parents in Australia. The Long Day Care Centres known as 'Community Based Child Care' are those centres that are run by a community committee and are typically operated in a building

owned by the Local Government. ‘Community Based Child Care’ accounts for 22% of Long Day Care Centres in Australia.¹

‘Community Based Child Care’ centres attract significant funding from the Local Government that is unavailable to other Long Day Care Centres including –

1. The Local Government subsidises the rent for the centres by providing the building & site free or at a ‘peppercorn rent’ agreement
2. The Local Government typically pays for capital works or upgrade costs required
3. The Local Government often assists with insurance costs & with workers compensation (depending on the Local Government)
4. Avoid payment of payroll tax through a ‘not for profit’ declaration

These funding arrangements have evolved overtime from when child care was significantly less formal and used by a much smaller proportion of the community.

I believe this is an important matter for consideration by the Productivity Commission as it has a number of deleterious outcomes for the community and the Child Care industry –

1. Results in inequitable funding arrangements across the industry, with parents having their care subsidised to a different level depending on which Long Day Care Centre they attend.
2. Breaches the principles of competitive neutrality
3. Local Governments are trapped in situations where Child Care centres are becoming an increasing drain on their finances. There have been a number of situations over recent years where Local Governments have sought to close or sell centres as costs have risen causing uncertainty for parents.
4. Rate payers money is funnelled inequitably to a relatively small few in the community that attend these centres
5. The Local Government subsidies artificially suppress the price of child care in some regions resulting in a lower amount of development of new centres where there may otherwise be a high need

In a consideration of the availability, funding and long term sustainability of child care in Australia the issue of Local Government subsidies going to a select proportion of parents through ‘Community Based Child Care’ is a significant issue with a real impact.

¹State of Child Care in Australia. (2010) (Office of early Childhood Education & Child Care). Available on the *MyChild* website.

Appendix 1 – Regulations relating to ECT requirements

Division 5—Requirements for educators who are early childhood teachers

129 Application of Division 5

(1) This Division prescribes requirements for access to or attendance of educators who are early childhood teachers at a centre-based service for the purposes of section 169 of the Law.

Note

Chapter 7 contains provisions that affect the operation of this Division in relation to particular jurisdictions.

(2) This Division does not apply to a centre-based service if the main purpose of that service is to provide education and care to children over preschool age.

130 Requirement for early childhood teacher—centre-based services—fewer than 25 approved places

(1) If the approved number of places for children preschool age or under at a centre-based service is fewer than 25, the service must have access to an early childhood teacher working with the service for at least 20 per cent of the time that the service provides education and care.

(2) To comply with subregulation (1), the early childhood teacher may be working with the service by means of information communication technology.

(3) For the purposes of this regulation the period that an early childhood teacher works with a centre-based service may be calculated on a quarterly basis.

131 Requirement for early childhood teacher—centre-based services—25 or more approved places but fewer than 25 children

(1) This regulation applies if the approved number of places for children preschool age or under at a centre-based service is 25 or more but the service is caring for fewer than 25 children.

(2) The service must comply with regulation 130 during any period that it educates and cares for fewer than 25 children.

Note

Regulation 132 applies if the centre-based service provides education and care to 25 or more but less than 60 children preschool age or under.

(3) Any period that an early childhood teacher is in attendance at the service in compliance with regulation 132 may be counted towards the period of access to an early childhood teacher required by subregulation (2).

132 Requirement for early childhood teacher—centre-based services—25 to 59 children

(1) If a centre-based service provides education and care to 25 or more but less than 60 children preschool age or under on a given day, an early childhood teacher must be in attendance at the service—

(a) for at least 6 hours on that day, if the service operates for 50 or more hours a week; or

(b) for 60 per cent of the operating hours of the service on that day, if the service operates for less than 50 hours a week.

(2) A centre-based service is not required to comply with subregulation (1) if—

(a) the approved number of places for children preschool age or under at the service is 25 or more but less than 60; and

(b) the service employs or engages a full-time or full-time equivalent early childhood teacher at the service.

133 Requirement for early childhood teacher—centre-based services—60 to 80 children

(1) If a centre-based service provides education and care to 60 or more but not more than 80 children preschool age or under on a given day—

(a) an early childhood teacher must be in attendance at the service—

(i) for at least 6 hours on that day, if the service operates for 50 or more hours a week; or

(ii) for 60 per cent of the operating hours of the service on that day, if the service operates for less than 50 hours a week; and

- (b) a second early childhood teacher or another suitably qualified person must be in attendance at the service—
- (i) for at least 3 hours on that day, if the service operates for 50 or more hours a week; or
 - (ii) for 30 per cent of the operating hours of the service on that day, if the service operates for less than 50 hours a week.
- (2) A centre-based service is not required to comply with subregulation (1) if—
- (a) the approved number of places for children preschool age or under at the service is 60 or more but not more than 80; and
 - (b) the service employs or engages—
- (i) a full-time or full-time equivalent early childhood teacher at the service; and
 - (ii) a second early childhood teacher or a suitably qualified person for half of the full-time or full-time equivalent hours at the service.

134 Requirement for early childhood teacher—centre-based services—more than 80 children

- (1) If a centre-based service provides education and care to more than 80 children preschool age or under on a given day—
- (a) an early childhood teacher must be in attendance at the service—
- (i) for at least 6 hours on that day, if the service operates for 50 or more hours a week; or
 - (ii) for 60 per cent of the operating hours of the service on that day, if the service operates for less than 50 hours a week; and
- (b) a second early childhood teacher or another suitably qualified person must be in attendance at the service—
- (i) for at least 6 hours on that day, if the service operates for 50 or more hours a week; or
 - (ii) for 60 per cent of the operating hours of the service on that day, if the service operates for less than 50 hours a week.
- (2) A centre-based service is not required to comply with subregulation (1) if—
- (a) the approved number of places for children preschool age or under at a centre-based service is more than 80; and
 - (b) the service employs or engages—
- (i) a full-time or full-time equivalent early childhood teacher at the service; and
 - (ii) a second full-time or full-time equivalent early childhood teacher or suitably qualified person.

135 Early childhood teacher illness or absence

- (1) If an early childhood teacher is absent from the education and care service because of short-term illness or leave, the following persons may be taken for the purposes of regulations 132(1), 133(1) and 134(1) to be an early childhood teacher during that absence—
- (a) a person who holds an approved diploma level education and care qualification;
 - (b) a person who holds a qualification in primary teaching.
- (2) To avoid doubt, subregulation (1) does not apply in case of a period of leave exceeding 12 weeks.

NSW state regulation – 272 Early childhood teachers—children preschool age or under

- (1) This regulation applies in place of regulations 131 to 135 in relation to a centre-based service that educates and cares for 30 or more children preschool age or under.
- (2) One early childhood teacher must be in attendance at all times that a centre-based service is educating and caring for 30 to 39 children preschool age or under.
- (3) Two early childhood teachers must be in attendance at all times that a centre-based service is educating and caring for 40 to 59 children preschool age or under.
- (4) Three early childhood teachers must be in attendance at all times that a centre-based service is educating and caring for 60 to 79 children preschool age or under.
- (5) Four early childhood teachers must be in attendance at all times that a centre-based service is educating and caring for 80 or more children preschool age or under.

Appendix 2 – Regulations & National Law relating to ‘Responsible Persons’

National Regulations - 46 Application for supervisor certificate

- (1) Subject to subregulation (2), an application under section 106 of the Law for a supervisor certificate must include the following information—
- (a) the applicant's full name, and any former name or other name the applicant may be known by;
 - (b) the applicant's residential address and contact details;
 - (c) proof of the applicant's identity;
 - (d) proof that the applicant is aged 18 years or over;
 - (e) details of the applicant's relevant skills, experience, training and qualifications, including—
 - (i) evidence of the applicant's training and qualifications; and
 - (ii) details of how the applicant meets the minimum requirements set out in regulation 47;
 - (f) the following—
 - (i) if the applicant holds a current working with children check, working with children card or working with vulnerable people check, a copy of the check or card; or
 - (ii) if the applicant is a teacher registered under an education law of a participating jurisdiction, proof of current registration under that law; or
 - (iii) in the case of an application to the New South Wales Regulatory Authority, a consent for the Regulatory Authority to obtain a working with children check in relation to the applicant; or
 - (iv) in any other case—
 - (A) a criminal history record check issued not more than 6 months before the date of the application; and
 - (B) a criminal history statement made by the applicant in relation to the period after the date on which the criminal history record check was issued to the date of the application; and
 - (C) if the individual lived and worked outside Australia at any time within the previous 3 years, an overseas criminal history statement about the applicant; and
 - (D) a disciplinary proceedings statement regarding the applicant.

(2) An application under section 106 of the Law for a supervisor certificate made by an individual who is an approved provider or a person with management and control of an education and care service must include the following information—

- (a) the applicant's full name;
- (b) the provider approval number;
- (c) the applicant's contact details;
- (d) proof that the applicant is aged 18 years or over;
- (e) details of the applicant's relevant skills, experience, training and qualifications, including—
 - (i) evidence of the applicant's training and qualifications; and
 - (ii) details of how the applicant meets the minimum requirements set out in regulation 47.

47 Minimum requirements for qualifications, experience and management capability

(1) The minimum requirements for qualifications, experience and management capability for the purposes of sections 108(1)(b) and 112(c) of the Law are—

- (a) the applicant must have—
 - (i) adequate knowledge and understanding of the provision of education and care to children; and
 - (ii) the ability to effectively supervise and manage an education and care service; and
 - (b) subject to subregulation (2), the applicant must have at least one of the following—
 - (i) at least 3 years' experience working as an educator in an education and care service or a children's service or a school or in a service regulated under a former education and care services law;
 - (ii) an approved diploma level education and care qualification;
 - (iii) an approved early childhood teaching qualification.
- (2) Subregulation (1)(b) does not apply in relation to a supervisor certificate that is subject to a condition that the holder may only be a nominated supervisor of, or placed in day to day charge of, an education and care service that primarily educates and cares for children over preschool age.

National Law - 161 Offence to operate education and care service without nominated Supervisor

The approved provider of an education and care service must not operate the service unless there is a nominated supervisor for that service.

Penalty: \$5000, in the case of an individual. \$25 000, in any other case.

162 Offence to operate education and care service unless responsible person is present

(1) The approved provider of an education and care service must ensure that one of the following persons is present at all times that the service is educating and caring for children—
(a) the approved provider, if the approved provider is an individual or, in any other case, a person with management or control of an education and care service operated by the approved provider;
(b) the nominated supervisor of the service;
(c) a certified supervisor who has been placed in day to day charge of the service in accordance with the national regulations.

Penalty: \$5000, in the case of an individual. \$25 000, in any other case.

165 Offence to inadequately supervise children

The approved provider of an education and care service must ensure that all children being educated and cared for by the service are adequately supervised at all times that the children are in the care of that service.

Penalty: \$10 000, in the case of an individual. \$50 000, in any other case.

(2) The nominated supervisor of an education and care service must ensure that all children being educated and cared for by the service are adequately supervised at all times that the children are in the care of that service.

Penalty: \$10 000.

169 Offence relating to staffing arrangements

An approved provider of an education and care service must ensure that, whenever children are being educated and cared for by the service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

Penalty: \$10 000, in the case of an individual. \$50 000, in any other case.

(2) An approved provider of an education and care service must ensure that each educator educating and caring for children for the service meets the qualification requirements relevant to the educator's role as prescribed by the national regulations.

Penalty: \$10 000, in the case of an individual. \$50 000, in any other case.

(3) A nominated supervisor of an education and care service must ensure that, whenever children are being educated and cared for by the service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

Penalty: \$10 000.

(4) A nominated supervisor of an education and care service must ensure that each educator educating and caring for children for the service meets the qualification requirements relevant to the educator's role as prescribed by the national regulations. Penalty: \$10 000.

Appendix 3 – Regulations relating to General Educator Qualifications

126 Centre-based services—general educator qualifications

- (1) The qualification requirements for educators at a centre-based service educating and caring for children preschool age or under are as follows—
- (a) at least 50 per cent of the educators who are required to meet the relevant educator to child ratios for the service must have, or be actively working towards, at least an approved diploma level education and care qualification; and
- (b) all other educators who are required to meet the relevant educator to child ratios for the service must have, or be actively working towards, at least an approved certificate III level education and care qualification.
- (2) The qualification requirements for educators at a centre-based service educating and caring for children over preschool age in a jurisdiction are the qualification requirements (if any) set out in Chapter 7 for that jurisdiction.
- (3) If Division 5 requires an early childhood teacher to be in attendance at a centre-based service, that teacher is to be counted as meeting the requirements of subregulation (1)(a).