

Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services

Australian Community Children's Services welcomes the opportunity to comment on the Productivity Commissions' *Annual Review of Regulatory Burdens on Business*.

Who is making this submission?

Australian Community Children's Services (ACCS – formerly NACBCS) is the national peak body representing not-for-profit community-owned children's services and those who support the right of children to access these services. ACCS is an unincorporated, non-profit federation of branches in each State and Territory. Each branch brings together individuals and organisations in a State or Territory to appoint two delegates to the National Council, which in turn appoints Office Bearers of the National Secretariat.

What are community-owned children's services?

Community-owned children's services are operated as social enterprises, delivering high quality, financially viable services that are an important part of public infrastructure. They are operated by a range of not-for-profit providers including local government, churches, educational institutions, parent associations/co-operatives and other non-government organisations. Community-owned children's services have been supporting Australian children and their parents for many years.

Community-owned children's services include centre based early childhood services, occasional care, outside school hours care, and home based care such as family day care and in-home care. Community children's services include emerging models of integrated child and family centres, and flexible innovative models for rural communities and for children and families with additional needs.

These services foster children's development, support their families and build important community capacity and social capital.

Children's services regulations

Most formal children's services (with the exception of outside school hours care and family day care in some states) are licensed to operate under state/territory regulations. These regulations usually require compliance in matters relating to:

- licensing procedures;
- facilities and equipment;
- staffing qualifications and police checks;
- child numbers including group sizes and staff:child ratios;
- operational requirements such as operating policies and procedures; and
- administration such as records keeping, archiving of records and managing privacy.

If a formal children's service wants to receive any financial assistance from the Federal Government through the provision of Child Care Benefit to families to help them better afford child care, these services must comply with a variety of legislation. The Department of Education, Employment and Workplace Relations (DEERW) provides the following information regarding the current list of Federal legislative requirements.

"Key legislation relating to approved child care services and CCB includes:

- *A New Tax System (Family Assistance) Act 1999* ("the Family Assistance Act");
- *A New Tax System (Family Assistance) (Administration) Act 1999* ("the Family Assistance Administration Act");
- A New Tax System (Family Assistance) (Administration) (Child Care Benefit-Receipts) Rules 2008;
- A New Tax System (Family Assistance) (Administration) (Child Care Benefit – Record Keeping) Rules 2006;
- A New Tax System (Family Assistance) (Administration) (Child care benefit-when enrolment ceases (number of weeks)) Specification 2007;
- Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000 ("the Eligibility Rules");
- Child Care Benefit (Absence From Care – Permitted Circumstances) Determination 2000;
- Child Care Benefit (Session of Care) Determination 2000; and
- Applicable Commonwealth State or Territory child care laws and local government laws.¹

Non-compliance with these legislative requirements can result in infringements notices, civil penalty orders, prosecutions, fines, removal of government financial assistance and naming in Parliament. Fines can be up to \$22,000 for an individual and \$44,000 for a body corporate.

Eligibility for Child Care Benefit also requires all formal children's services to "be registered with the Council [National Childcare Accreditation Council] as a participant in the [relevant service type quality assurance program]².

Participation requires children's services to review their operating practices and submit a self study report to the National Childcare Accreditation Council (NCAC) within six months of opening a new service and thereafter every 2.5 years.

Why are some regulations a concern?

ACCS has two key areas of concerns regarding the current regulatory framework.

First there are significant areas of duplication between state/territory licensing and the quality assurance process.

Some of the quality areas and underpinning principles sit on top of or duplicate existing state/territory children's services licensing requirements. For example, principle 5.4 for long day care centres requires that "The centre ensures that buildings and equipment are safe"³. The *Children's Services Regulation 2004* (NSW) requires that the "licensee of a

¹ <http://www.dest.gov.au/NR/rdonlyres/6F0CF39A-8AB8-4CDC-8A1D-5D83184D37A5/25492/LegislativeextractsforCCMSservicescleared4.pdf>, accessed 27 February 2009.

² *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000*, Clauses 14, 14A and 14B.

³ http://ncac.gov.au/child_care_professionals/qias_quality_areas.asp, accessed 27 February 2009.

centre based or mobile service must comply with the requirements of the *Occupational Health and Safety Act 2000*⁴. There are many similar areas of cross over in NSW and other states/territories 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.

Secondly if a children's services does not comply with the NCAC quality assurance program, that is it is unsatisfactory in reaching the accreditation standard children can be attending this service, with their parents paying fees and the Federal Government providing Child Care Benefit for an extensive period of time before there may be any change in the education and care practices of that particular children's service.

The following outlines a possible timeframe of unsatisfactory quality provision.

- 0-6 months – a new service opens.
- 6 months – the service submits its self study report.
- 6-10.5 months – an NCAC validator will visit the service sometime during this period to assess the self-study and the children's service's compliance to the quality standards.
- 10.5 to 12 months - the children's service will be advised of its unsatisfactory status.
- 18 months – the children's service submits a second self-study report.
- 18-22.5 months - an NCAC validator will visit the service sometime during this period to assess the self-study and the children's service's compliance to the quality standards.
- 22.5-24 months - the children's service will be advised of its unsatisfactory status.
- 27 months – the children's service submits its third self-study report.
- 27-31.5 months - an NCAC validator will visit the service sometime during this period to assess the self-study and the children's service's compliance to the quality standards.
- And so on.

If a child started at this children's service as a young baby, it will have spent all of its life in a child care facility providing sub-standard education and care! The length of time a service can continue to provide potentially unsatisfactory education and care is untenable and the impact on a child's development is such a service is unthinkable.

DEERW is notified by NCAC of any children's services that has an unsatisfactory result. The ultimate penalties that DEEW can impose are removal of Child Care Benefit and naming the failed children's services publicly in Parliament. What political will is there to really take this action?

⁴ *Children's Services Regulation 2004* (NSW), clause 48.

What do we want?

ACCS believes it is vital to have a strong regulatory framework for all children's services. Wherever children are cared for outside their family they must be able to access high quality education and care that ensures their safety and protection, with staff that have appropriate qualifications and experience to do this. Strong regulations assist in providing this protection:

- to the children attending these services;
- to the families paying a fee for using these services;
- ensuring that tax payers money, that is the Government financial assistance provided to services, is accountable and used in the manner it was intended; and
- with timely, appropriate interventions and meaningful penalties that can be implemented (and Government has the willingness to do so) where service providers are non-compliant.

1. All formal children's services should be regulated through the Federal Government thus removing the duplication and cross over of the current state/territory licensing requirements and Federal Government quality assurance. This would be achieved through two bodies.

- A national body that sets the national regulations (service input) and quality improvement standards (output)
- A separate independent government/statutory body that measures the continuous improvement program; that is that services are implementing, improving and complying with the program.

The national body would oversight a consistent regulatory framework for childrens' service throughout Australia, setting high standards and implementing them in a rigorous manner with clear sanctions for failing to perform at the required standard.

2. The length of time a children's services can remain unsatisfactory must be shortened.

3. There must be real sanctions that are actually implemented when needed for services that are not delivering quality services.