ATTACHMENT "A"

Child Care
New South Wales

24th November, 2005

The Regulation Taskforce
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By email – info@regulationtaskforce.gov.au

Dear Taskforce Members

Child Care New South Wales, on behalf of private childcare centre owners, appreciates this opportunity to help the Taskforce identify practical options for alleviating the regulatory compliance burden on childcare businesses, and on the children in our member's care.

Our members welcome the chance to get some of their time back. There is a strong perception that more time is spent on regulatory compliance matters than needs to be.

Our submission, structured as suggested in your Issues Paper:

- identifies specific areas of Commonwealth Government regulation which duplicates New South Wales childcare regulation;
- suggests options for significantly reducing the practical effect of the duplication, and for increasing the harmonisation within existing regulatory frameworks;
- explains previous attempts to have this duplication addressed;
- canvasses ideas on possible solutions;
- opens a dialogue with you on existing regulation-making mechanisms, and on possible ways to improve the quality of new regulation, and of enforcement.

Before turning to those matters, Child Care New South Wales would first like to put our views in perspective.

Australia's child-development and parenting-support systems (known as 'childcare') are acknowledged as being among the best in the world. An example of such acknowledgement is the recent evidence to the House of Representatives Standing Committee on Family and Human Services by the Director of the Australian Institute of Family Studies as part of the Committee's current Inquiry into 'Balancing Work and Family'.

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Child Care New South Wales believes that, while Australia's childcare regulatory and funding systems are good, they could readily be improved. Our submission is an attempt to share ideas on how the private childcare sector can work with the Commonwealth (and, hopefully, the States) to make a good regulatory system better.

In summary form, our view is that:

1. The Commonwealth QIAS system and, in particular, the interaction of that Commonwealth regulation with NSW regulation is "avoidably burdensome", as defined at page 4 of the Taskforce Issues Paper.

2. The Commonwealth regulation, although valuable, could be significantly improved in two ways:

> (a) by reducing the duplication between it and State-level childcare regulation,
>
> and,
>
> (b) by improving the coordination and harmonisation of rule-makers and rule-making, primarily through improving decision-making process, especially, proper prior impact analysis, and proper consultation.

We turn to your questions in the Issues Paper.

1. What is the regulation, and which government agency administers it?

The Commonwealth regulation is the suite of rules known as the Quality Improvement and Accreditation System (QIAS), administered on behalf of the Commonwealth Minister of Family and Community services, by the National Childcare Accreditation Council Inc, (NCAC)

NCAC is funded by the Australian Government through the Department of Family and Community Services. The chair and board members are appointed by the Minister responsible for childcare.

QIAS rules are effectively mandatory because any parent who qualifies for Australian government assistance to help meet the costs of childcare is able to spend such parent subsidies only in childcare centres which obtain and maintain "approved status" under *A New Tax System (Family Assistance) (Administration) Act 1999* ("the Act").

A condition of maintaining such approved status is that a centre must participate in the QIAS in accordance with the accreditation requirements published by the NCAC (see s.23, *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000,* made under subsection 205 (1) of the Act.

Another important element is that a childcare centre is also required (by s.11 of the above Determination), to comply with all applicable legal requirements of Commonwealth, State and local government, including licensing requirements.

Child Care New South Wales believes there is nothing inherently defective with that legislative arrangement. In our view, the duplication arises primarily because of content and of administration, and, in particular, the manner in which state licensing systems interact with the Commonwealth regulatory system. There are instances where extremely minor compliance issues are eventually creating major disruptions of the accreditation system. This aspect needs to be more fully investigated.

We are also aware of instances where a state licensing official has misapplied a New South Wales *policy* (concerning how to apply for interim approval for teaching staff) but that *policy matter* has been conveyed to the QIAS system as a compliance issue.

The Commonwealth system does not appear to have any mechanism for filtering the validity of the state-level position. This is another matter that needs to be explored. It may be that the Commonwealth system should be communicating, not with lower-level state regulatory staff, but through a central mechanism such as the New South Wales Office of Childcare, a division of New South Wales' Department of Community Services.

2. What is the underlying objective of the regulation?

NCAC's QIAS Handbook, 3rd ed, 2005, at p.16, summarises the position thus:

> "NCAC aims to support and improve the quality of childcare provided in Australian children's services and assist child care providers and families with the advice they need to help ensure that all Australian children receive high-quality care.
>
> The functions of NCAC include setting the standards required for accreditation of ... long day care services; administering the Quality Assurance (QA) systems for Australian child care services; and advising the Australian government on the participation and progress of all services participating in the QA systems."

3. Which other government regulation does it duplicate, and how?

QIAS duplicates New South Wales' *Children's Services Regulation, 2004*, made under the NSW *Children and Young Persons (Care and Protection) Act 1998.*

Before looking at the 'how' of such duplication, we consider the 'why', starting with a quick history.

In 1972, the Australian Government introduced Australia's first parent-subsidy for childcare, primarily, it seems, to facilitate the workplace entry or re-entry of mothers.

A noteworthy feature of that subsidy scheme was that parents who qualified for such childcare assistance were able to spend such assistance *only* in government-funded centres and not in privately-funded centres.

In 1991, the Australian Government introduced micro-economic reforms, allowing parents who qualified for assistance to make their own choice about what childcare service best met their and their child's particular needs.

That policy shift was designed in part to help speed up the expansion of supply, which at that time was well behind meeting demand. It worked. At that time, the private long day care sector supplied approximately 20% of the market. The private sector responded quickly and now supplies nearly three quarters of the long day care services. Long day care is also the most significant component of formal childcare services, comprising approximately 60% of such services.

There has thus been both a rapid and profound transformation in the structure and conduct of the long day care market. We believe it is important to be aware of the significant differences in the legal structure and operational differences of commercial centres compared with community operated centres. Those macro-level and micro-level structural and operational dynamics are of course significant in their own right.

There is an additional overlay. Not everyone was pleased with the notion of parent subsidies potentially being able to be used by parents to pay for services provided by operators who seek to operate profitably. Those people who saw that parental choice and funding system as a 'problem' looked for a 'solution'.

One 'safeguard' was to introduce a new mechanism designed to somehow ensure the delivery of what the proponents regarded as 'high-quality'. That new mechanism was the QIAS, made mandatory through the link to parent subsidies.

Various state governments, not surprisingly, saw that Commonwealth regulatory move as an encroachment into their ground. Various states, New South Wales included, adjusted their childcare regulation to mirror the QIAS, presumably because such state licensing officials were trying to protect themselves against being excluded from what was, and is, one of the more challenging and more rewarding components of their role.

That Commonwealth-State regulatory dynamic has not gone unnoticed. In 1999, the Commonwealth Minister commissioned his Child Care Advisory Council to review the regulatory environment for children services. That review, never made public, is likely to help the Taskforce understand this childcare regulation history, and perhaps to understand the extent of negative feelings that that regulatory history has generated in the sector.

There is other analysis available to the Taskforce. The OECD analysed Australia's Early Childhood Education and Care in 2001 *("Starting Strong").* It identified five "issues for policy attention", among them: --

> *"System coherence and coordination*: currently, real limitations on system coherence are imposed in Australia by the complexities of government in a federal state and the multi-layering of administration and regulation. Other difficulties arise from the vastness of the territory and the dispersion of populations".

We return to the duplication between the QIAS and the New South Wales Children's Services Regulations.

There are the numerous instances of duplication we can refer to the Taskforce:

- privacy
- child protection

- release of child to authorised persons
- storage
- safety checks and maintenance
- occupational health and safety
- first aid
- display of emergency procedures
- complaints-handling
- nutrition
- immunisation
- relationship with children
- respect for children
- partnerships with families
- staff interactions
- planning and evaluation
- learning and development
- protective care
- managing to support quality

Indeed, there are virtually no areas where there is no overlap.

We will use complaints-handling to illustrate our fundamental point.

QIAS Principle 7.1, as an indicator of "Satisfactory Care" requires:

> "The centre has documented grievance and complaints handling procedures available to families"

Regulation 85(2)(f) requires the licensee to develop policies dealing with procedures for handling complaints and must ensure that such policies are available to the children's parents.

In New South Wales, The Ombudsman's Office is also responsible for satisfying itself that childcare centres have appropriate procedures for handling complaints. In this instance therefore, child care centres are measured three times not twice.

The practical effects of such duplication become clearer when we look at inspection duration and methods.

It generally takes two days for the QIAS inspection of a medium-size centre, that is, a centre with between 30 to 60 licensed places.

The State regulator will typically spend one day on a licensing inspection for such a centre.

The Commonwealth regulator spends approximately 75% of its two days looking at the centre's written policies and procedures.

The State regulator spends approximately 75% of its time looking at the same policies and procedures.

(In this particular instance, the New South Wales Ombudsman also takes a full day to inspect the same paperwork already checked by the Commonwealth and State.)

Whatever else might be said about the nature and purpose of these various regulatory inspections, it seems beyond argument that *the inspections* do not need to be duplicated.

We have not been able to get what we regard as a general estimate of the duplication in what we will call the preparation times. However, such duplication is likely to be in the hundreds of hours. Bear in mind here that a reasonable estimate of the time it takes a medium size centre to prepare the accreditation self-study document, to prepare evidence such as photos and photocopies, and to prepare the centre for the inspection, that is, to have all of the various documents available and 'on the desk', is in the order of 650 hours. That amount of time of course suggests that there is an inherent difficulty with QIAS, quite separate from the duplication between it and state licensing.

The childcare sector made the point about duplicated inspections as part of a review of regulations in Queensland about two years ago. The Queensland regulator agreed that, where it could be satisfied that the Commonwealth regulator had already inspected qualitative measures, then the Queensland regulator would rely on the Commonwealth inspection.

Child Care New South Wales is not aware how that system is working in practice. We are making inquiries. That Queensland arrangement establishes what, in our view, is the correct principle that the Taskforce should suggest be applied everywhere.

4. Have there been past attempts to address this duplication? If so, why have the attempts being unsuccessful?

The 1996 Report of the Small Business Deregulation Task Force, "*Time for Business*", recommended that the duplication between the QIAS and state licensing regulation should be removed by the Commonwealth leaving the field to the states (see Recommendation 36). We invite this Taskforce to consider their analysis at page 87 and 88 of their Report.

In his response of 24 March, 1997 "*More Time for Business*", the Prime Minister did not agree to the Small-Business Deregulation Taskforce recommendation. His response noted that the Commonwealth Minister for Family Services was conducting a review of the QIAS and that the "reduction in the compliance and paperwork burden will be taken into account in that review".

In 1995, the Economic Planning Advisory Commission was commissioned "to consider the nature of the childcare system required to meet the needs of children, their families and society into the 21st century".

EPAC considered the duplication between the QIAS and state regulations and recommended that quality-measurement "should be ensured by a licensing system run by the States (focused on health and safety) and a quality accreditation process run by the Commonwealth (focused on broader quality issues)". See EPAC, "*Future Childcare Provision in Australia*", November, 1996, p.85.

EPAC made that recommendation on the clear understanding that the QIAS Review would address the relevant details.

Child Care New South Wales believes that the QIAS Review did *not* address the duplication, certainly not in any systematic way. And neither did that QIAS review look at the other important regulation decision-making maters it was expected to consider.

The significance of these events, at least to the private childcare sector, is recorded in the attached letter of 8 June 2000 from our National Association, the Australian Confederation of Child Care, to the body notionally conducting the review, the Commonwealth Child Care Advisory Council.

That letter describes other instances of duplication between the QIAS and New South Wales childcare regulation. Although the QIAS and the New South Wales regulation have been repackaged since then, the nature of the duplication described in the letter remains generally the same in our opinion. As the Taskforce will see, the letter addresses several issues of concern to the Taskforce. We ask that the letter be treated as part of this submission.

Two previous independent expert reviews have thus specifically concluded that there is duplication between QIAS and state regulation, that it should be removed, and that the QIAS should be required to comply with the "principles for regulatory development and review" (see p.86 EPAC), recommending as they did the "Principles and Guidelines for National Standard Setting and Regulatory Action". (EPAC, p.86).

5. What solutions might there be?

In our opinion, the solution can be summarised in two words -- 'proper process'.

Other ideas:

1. The private LDC sector wants to arrange for the Commonwealth, the states, and the private sector to be in the same place at the same time, to share ideas on risk-management strategies designed to deliver sensible public protection at sensible cost.

2. It is not a matter of unscrambling the egg. It is a matter of setting up proper coordination mechanisms. It really isn't a question of who owns the regulations; it should be a question of optimising their design and implementation.

3. EPAC got it right in 1996. There should be:

- transparent procedure
- clear separation of roles as regulator and provider
- avoidance of duplication
- all proposals should be rigorously examined for potential costs and benefits
- some form of regulatory impact statement is required
- importantly, there needs to be contestability in the monitoring of quality

We offer further 'big picture' ideas.

- This Taskforce is 'whole of government', and yet is able at the same time to think in terms of specific industry sectors. We see that as an important design parameter. To be effective, regulation reform necessarily has to adopt a system-wide perspective. On the other hand, regulation reform typically bites off more than it can chew. It makes good sense to combine both a general and a specific strategy. We believe the Taskforce can and should seek to use both a forward-mapping, top-down approach together with a backward-mapping, bottom-up approach. The long day care sector, we believe, is amenable to that double-barrelled strategy.

  In our view, there can be no more important place to get regulation right than with the collection of early child development, health, welfare, parenting-support, workforce participation, job-creation threads that together are "childcare".

  A useful guide to such strategies is "Strategies for regulatory reform: forward compared to backward mapping", D. J. Fiorino, *Policy Studies Journal*, Summer, 1997, page 249.

- The OECD 2005, *Economic Survey of Australia*, argues that Australia's new national reform initiative must focus on *productivity* and *participation.*

  Productivity and participation are what good-quality long day care deliver.

- The Victorian Premier, in "*A Third Wave of National Reform*", at p.20, argues that a long-term national reform agenda should build on the existing focus on competition and also recognise the importance of developing our human-capital to lift productivity and participation.

  That is especially what regulated childcare centres do.

Conclusion

Ongoing quality-improvement is unavoidable for childcare businesses that want to remain profitable.

Government regulation has a role to play. But, like childcare services, it has to be good-quality for it to be effective, and for it not to be counter-productive.

So good-quality regulation is important.

Surely that is a reason why unnecessary levels of compliance burden need to be identified and minimised.

Minimising regulatory duplication will not weaken quality -- it will strengthen it.

In 2003, Professor Alan Hayes, Professor of Early Childhood Studies at Macquarie University wrote an article, "*The Next Step for Our Children*" (currently available on the Australian Parliament House website), describing the importance of the investigation by the then House

of Representatives Family and Community Affairs Committee into the "Health and Well-being of Australia's Children".

After explaining why effective early-intervention is the best foundation for preventing many of the problems that flow from disadvantage and childhood vulnerability, Professor Hayes observes that:

> "an approach to prevention of childhood risk factors that is gaining increasing attention involves the provision of high-quality education and care, as well as appropriate community supports. The evidence suggests that modifying social contexts is the most cost-effective means of increasing resilience and enhancing the development of our children, families and communities. Interventions that focus on children, families and communities, with emphasis on enhancing parenting skills and strengthening family-to-community links can have significant and enduring benefits."

He continued:

> "The solution to the current problems will require a commitment to prevention and a willingness to invest in services such as child care, education and community development. Such services have been found to be the most cost-effective ways of reducing social and developmental risk and preventing their negative consequences, such as crime, educational under-achievement and problems of health and well-being".

He then makes what Child Care New South Wales regards as a vital observation for the purposes of this Taskforce:

> "The problem is not so much one of lack of resources but some failure to sustain and coordinate them effectively. Australia has a strong and well-developed infrastructure for addressing the health, educational and developmental needs of young children. This infrastructure also does much to support families. What is needed, however, is a coordinated, nationally driven framework for maintaining, renewing and deploying these resources. The House of Representatives inquiry, along with other Commonwealth initiatives, provides a timely opportunity to advance a national framework for sustaining the health and well-being of Australia's children".

This Taskforce will, we hope, recognize and then take advantage of an important opportunity.

Arising out of the regulatory complexity that has so far prevented the proper coordination Australia needs to overcome the duplication between QIAS and state childcare regulation, there now emerges an opportunity to engage stakeholders in a bigger, more important task: -- coordinating a total framework for sustaining the well-being of Australia's youngest children and their parents.

There is work underway at the Commonwealth level which addresses this issue; for example, the development of the National Agenda for Early Childhood.

What that design-thinking needs, however, is more effective cooperation and coordination between different levels of government, supported by, and including, the people who supply the bulk of the services, not only because of that service-delivery involvement, but also because of their greater understanding (compared to government) of the needs of child and parent customers.

Thank you once again for this chance to contribute our ideas. We would be pleased to elaborate if required.

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8th June, 2000

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Dear Ms Marriott,

Review of QIAS

Thank you for your letter (received on 9th May) inviting comment on what you describe as a "final draft of the revised Quality Areas and Practices". Your letter seeks comments on five areas, including any overlap between the revised Quality Areas and State regulations, and asks for responses by 1st June, giving us 3 weeks to do a job which we reckon needs at least 8 weeks to do half properly!

There are some preliminary matters we need to 'get off our chest'. The ACCC is frustrated with this consultation. Our extensive submissions have not been responded to. All of the specific questions in our first and second submissions remain unanswered. We attended the initial briefing but, since then, we *have not once been involved in any discussions*, even though we are far and away the largest national peak body for the private sector, a sector now supplying approximately 80% of the relevant services! As a result of that process, we don't have a proper understanding of what is being proposed, or why, or what the consequences will be for our members. On the other hand we believe there are systemic faults with QIAS which needed to be fixed, but have not been. Our frustrations will no doubt be dismissed as extremist or mistaken, or both. No doubt the Minister will be told that consultation has been extensive and anyone who complains does so only because they didn't get what they wanted.

We reject any such claim and so that the Advisory Council can understand the frustration, we want to look briefly at some history in connection with what was supposed to be one of the key tasks for the Review, i.e. streamlining the QIAS by identifying duplication with State regulations covering the same areas, and dealing with that duplication.

1. The Small Business Deregulation Task Force, November 1996

Our concerns about the extent of duplication between State regulations and the QIAS were presented to this 1996 Task Force which had been set up to identify how government could give service providers some of their time back by making regulatory systems work smarter. Its recommendation on how to deal with that duplication was to leave the States as the single source of authority to set and monitor quality standards. That recommendation was not agreed to by the Commonwealth partly because that issue of compliance burden was about to be considered by this QIAS Review. In his response 'More Time for Business' the Prime Minister said:

> "Heads of Government note that the Commonwealth Minister for Family Services is currently conducting a review of the QIAS procedures and processes. Consultations on the review will be held with private and community-based service providers... *The reduction in the compliance and paperwork burden imposed on small business will be taken into account in the review...* " p. 52, 24 March 1997

So that was the expectation, but we are yet to see evidence of how that compliance issue has been taken into account in any meaningful way.

2. Future Child Care Provision in Australia – EPAC Task Force, Nov. 1996

The same issue of regulatory duplication was considered in the most comprehensive analysis ever undertaken of Australia's childcare system. In August 1995, the then Commonwealth Government commissioned an Economic Planning Advisory Commission Task Force to report on, future demand for childcare, best practice in the provision of that care, and the links between childcare and other services, the objective being to help governments plan for Australia's medium to longer term childcare needs, and make changes to policies. (see EPAC Final Report, Nov, 1996, p. 1)

Obviously, the Task Force dealt with how to ensure quality. EPAC's recommendations about how to deal with the duplication between QIAS and State regulatory systems were different to the previous Small Business Deregulation Task Force suggestion. EPAC suggested that quality "should be ensured by a licensing system run by the States (focused on health and safety) and a quality accreditation process run by the Commonwealth (focused on broader quality issues)" (EPAC p. 85).

EPAC thought that the matter of Commonwealth and State overlap would be (and should be) a focus of the QIAS Review. See, for instance, EPAC Final Report at p. 84. After listing some of the well known concerns and criticisms of the QIAS, EPAC say:

> "These criticisms are not surprising, as the processes for developing regulations at either the State or Commonwealth level do not appear to be highly transparent or, to the Task Force's knowledge, based on any rigorous cost benefit and regulation impact analysis."

> "An added source of difficulty is that current State regulations (and the national standards currently being developed) overlap somewhat with the Commonwealth's quality assurance requirements. *Future development of both the regulations and quality accreditation processes should seek to remove duplication between the regulations and the quality accreditation process".* (Our emphasis)

Astoundingly, this QIAS Review did not do so. So far as we are aware, this Review has said nothing of that regulatory duplication issue.

At p. 86, under the heading 'A further review has been announced', the Task Force notes:

> "The Commonwealth has announced that there will be a review of the QIAS system. This could provide the basis for further developing the proposed new quality standards for Child Care Benefit, and for addressing criticisms of current requirements"

> "The review could also play an important role in establishing principles for future regulatory development and review"

> "In relation to such principles, ... there needs to be avoidance of duplication, and all regulatory proposals should undergo rigorous examination of their costs and benefits (the difficulty of measuring many of the relevant benefits and costs – including compliance costs – need not unduly reduce the value of this analysis). Some form of regulatory impact approach should be required".

In short, not only has the QIAS Review failed to address duplication with State regulations, neither has it established the relevant principles to guide future development. We think the EPAC Task Force would be surprised at the apparent absence of these things in the QIAS Review. We think the Minister will be surprised. We think the Prime Minister will be surprised, not only because of the EPAC and Small Business Reports, but also because the Review's Terms of Reference were deliberately crafted to ensure that the very problems we are now complaining of did not arise!

3. QIAS Review Terms of Reference

In addition to the Small Business and EPAC reports, there is the matter of the QIAS' own Terms of Reference, which make it clear that, in order to ensure the effectiveness of the QIAS:

- The Review should "examine areas of particular concern".

- The Review should "examine current processes and practices".

- Most importantly, the Review is to identify and explain any regulatory impact of proposed changes including an analysis of costs and benefits explaining the impact on small business and on the Commonwealth.

Regulatory overlap is obviously an area of particular concern. We are confident we were not the only ones to raise it. So why is it so difficult to get it addressed? Where is the identification? Where is the explanation? Where is the examination?

From that quick historical overview, two main questions emerge. First, what, if anything, has been done so far to address the duplication between Commonwealth QIAS rules and State Regulations? Second, where are the regulation impact analyses which identify and explain the impact on providers and on the Commonwealth of the numerous changes we understand are being proposed?

Duplication – What Has the Review Done So Far?

In our major submission, (dated 26th August, 1998) we identified numerous instances of duplication between QIAS and New South Wales, South Australian and Queensland Regulations. We called for a thorough analysis to be undertaken. (Was this ever done? What are the results?)

We then heard nothing until an Issues for Consultation Paper was distributed a year later, in September 1999. Our response (in November 1999) was that we were staggered that the regulatory duplication issue appeared to have been overlooked. We expressed disappointment that no written report had been produced, that no one had talked with us about our extensive submissions, and we asked for written advice on what the Council proposed to do about that duplication issue. We have heard nothing since. We attended public information sessions in February 2000; but the issue was not discussed. These briefings were basically to tell people what had been decided.

Then we received your letter of 9th May in which, amongst other things, you ask *us* to identify overlaps between the new Quality proposals and State regulations. The answer is easy. As we understand things, virtually all the overlap we previously identified will still be there. Although the Review process calls for a repackaging the existing 52 Principles, the same number of requirements are still there, perhaps more so. So far as we can tell, the proposals are effectively a rearranging of the same deck chairs. The Review has concluded that the original 52 Principles were really only concerned with 10 areas of quality, so the Review proposes repackaging the 52 on that basis. We acknowledge that, in the limited time available, we've not been able to test our understandings properly. Even so, it does seem that the new 'streamlined' version of QIAS *adds* new requirements rather than take any away. In short, no-one has done anything to reduce the much reported on and much complained about level of time wasting caused by the Commonwealth/State duplication! Maybe this reflects the Commonwealth bureaucracy 'staking out its ground' in preparation for the inevitable 'discussion' with State regulators.

Maybe that is an unavoidable (even sensible) course. Our problem is – we just don't know what's going on because no one has talked to us. We can't believe the Review is to do nothing about the duplication. But we don't see any evidence that anyone wants to do anything, or has done anything.

Our view therefore remains as we put in our November Submission – the much needed attempt to make the QIAS better will not succeed. Indeed, until proper analysis, and proper consultation with the private sector, the proposed changes will probably make things worse rather than better, so we don't support their introduction.

Lastly in this context, we note that three of the proposed 'Quality Areas' still cover 'Protective Care', 'Health', and 'Safety'. These are the very areas which EPAC thought should be left to State regulations. We thought this would be explored in this Review. Why has it not been? Will it be?

We now turn to what the Review is supposed to do in terms of identifying and explaining regulatory impact on service operators and on government. As we turn to consider the effect of the proposed changes, it is worth remembering that, over the last three years or so, public and private centres are being accredited at rates slightly greater than 90%. Both sectors are operating at 'high distinction' level!

Regulatory Impact Analysis – Where Is It?

- It seems that QIAS standards on quality are to be raised – if so, what will the costs and benefits be? Where is the analysis? What will happen to affordability? Who asked for them to be raised? Why?

- It seems there will be more QIAS inspections, even for the top performing centres! What is the cost/benefit impact? Where is the analysis?

- Appeal systems are, we think, going to be changed. What will the impacts be? Where is the analysis?

- It seems a fundamental safeguard is to be removed. The proposal (we think) is that Parliament be removed from the decision-making to be replaced by public sector officials. This fundamental change will have cost impacts, but what are they? Where is the analysis? What is the rationale? How can it be fair that *parents* be 'punished' because an official believes that a *centre* was somehow getting some quality component 'wrong'.

- There is talk of new assessment models to deal with some sort of perceived conflict between accreditation on the one hand and quality improvement on the other. This may be designed to address the inherent schizophrenia of QIAS which arises when we try to make a quality assurance system compulsory. If so, good. But even so, we'd like to see some analysis of objectives, options, and costs and benefits of those options.

- It is proposed that the existing 52 Principles be completely rewritten and reorganised. Will there be any new requirements? It so, why? and what is the impact? It seems that the very

large investment in QIAS management systems and documentation made over the last few years will effectively now need to be completely re-done. Is that change worthwhile? Has this been costed? Has any analysis been undertaken? What are the current costs of complying with QIAS? What will the new cost be?

- It is proposed (we think) that the legal framework for QIAS be fundamentally changed. Why? What are the objectives? What are the impacts? Where is the analysis? What will the new rules be?

- It seems that any new QIAS rules will still only apply to long day centres. It so, what are the competition neutrality consequences? Where is the analysis?

There are probably many other questions we need to be posing here. However, because we do not properly understand what is being proposed, or why, we do not know what these questions are yet.

We therefore turn to address other parts of your recent letter.

Overlaps of the New Quality Areas with State Regulations

Your letter asks us to identify overlaps with regulations in all States. We agree this is a vitally important task but once again point out we are not resourced to undertake or commission a proper analysis, certainly not in the time you have given us.

But even a rough and ready comparison reveals major overlap. We can offer some preliminary observations of the New South Wales situation which we hope will help the Review to see the importance of doing as much as possible as soon as possible to identify and then deal with regulatory overlap.

Quality Area 1 – Warmth towards children

Practice 1.1 Staff create a happy involved atmosphere and interact with children in a warm and friendly fashion (designed to promote self-esteem)

Compare with:

NSW Centre Based Child Care Regulations

Clause 12(1) An application for a licence for a service is to be accompanied by a written statement and an implementation plan setting out the policies practices and procedures to be implemented... including
(d) the way staff interact with children
(f) the ways in which self-reliance and self-esteem of children are fostered

(Implementation plans are then monitored by the State, and are subject to ('anonymous') comment or complaint by parents to either the State or to the Commonwealth regulators.)

Practice 1.2 Staff guide children's behaviour in positive ways.

Compare with:

NSW Reg Cl 12(1) An application for a licence for a service is to be accompanied by a written statement and an implementation plan setting out the policies practices and procedures to be implemented... including **(m)** the way in which children will be given positive guidance towards socially acceptable behaviour.

Practice 1.2 – Indicators of unsatisfactory quality

"Parents and staff do not have ready access to a written policy on positive guidance of child behaviour"

Compare with:

NSW Reg Cl 24(1)(a) The licensee must provide parents with access to copies of all written policies required by this Regulation or other policies and procedures relating to the conduct of the service developed by the service.

Quality Area 2 – Respect for Children

Practice 2.1 Staff initiate and maintain communication with children, and their communication conveys respect.

Practice 2.1 seems to at least partly overlap Practice 1.1. It follows that Practice 2.1 must also overlap NSW Regulation Cl. 12(2)(d), 12(2)(f), and 12(2)(m). Practice 2.1 also overlaps other sub-clauses of Regulation 12, for example 12(2)(c), 12(2)(e) and 12(2)(h).

Practice 2.2 Staff respect diversity in the abilities and the social and cultural backgrounds of all children and accommodate the individual needs of each child.

Compare with:

NSW Reg 12 which requires policies and implementation plans in respect of:

- the way of ensuring that children are treated without bias regardless of ability, gender, religion, culture, family structure or economic status, (12(2((h))
- the ways in which the service ensures that the individual developmental needs of children are taken into account. (12(2)(c))

Apart from the above described overlaps between the proposed Practices and Regulation 12, there is also significant overlap with Regulation, Schedule 2 Clause 9. This overlap is obvious simply from their respective headings. Part A of the proposed "Quality Areas" is about "interactions and communications". Schedule 2 Cl. 9 is about "interactions with children". Not surprisingly Schedule 2 Cl. 9 covers the same ground as Part A of the proposed "Quality Areas". For instance, Schedule 2 Cl. 9 of the Regulations require interaction in a way which promotes positive and responsible behaviour, with children having the opportunity to freely choose activities, problem solve, have access to learning opportunity. Staff must ensure the dignity and rights of each child is maintained at all times, the values of the child's family respected, children are to have access to emotional support and not isolated for any reason other than illness or accident.

To top it all off, NSW Regulation Cl. 9, compels an applicant to demonstrate that the "primary contact staff" are sympathetic to the welfare of children, have adequate training, knowledge, understanding and experience of children and families so as to be capable of meeting their needs, and are able to adequately care for and supervise children, and are of suitable age, maturity, health, and personality.

Quality Area 3 – Partnerships with Families

Practice 3.2 Parents and other family members are encouraged to participate in the centre.

Compare with:

NSW Reg 12(2)(b) which requires compliance with policies and implementation plans which describe the level of participation of parents, and other persons responsible for children, and staff in the development of the curriculum.

NSW Reg 24 compels parent access to all the policies, staffing details, staff training, and their child's developmental records. One of those policies must be on the philosophy and aim of the service (Reg. 12(2)(a))

Quality Area 5 – Planning and Evaluation

Practice 5.1 Children's programs reflect a clear statement of centre philosophy and a related set of broad centre goals.

Practice 5.3 Program planning caters for the needs, interests and abilities of all children in balanced ways.

Compare with:

NSW Reg 12 An Applicant must supply policy and implementation plans setting out practices and procedures, including
12(2)(a) the philosophy and aim of the service,

12(2)(c) the ways in which the service ensures that the individual developmental needs of children are taken into account.

and with:

Sched 2 Cl. 8 The Authorised Supervisor must ensure ... a program of activities designed to stimulate and develop each child's social, physical, emotional, cognitive, language and creative potential and that is appropriate to the individual needs and development level of each child. The activities that are provided must be capable of engaging the interest of children and be appropriate to the development of children.

Practice 5.2 Progress records of children's learning and well being are maintained by the centre and are used to plan programs that include experiences appropriate for each child.

Compare with:

NSW Reg 27 Licensee must ensure records are maintained and kept up to date, including:
27(q) a program of development for each child enrolled for the service (which developmental records must be accessible to parents) (Reg 24).

Quality Area 6 – Learning and Development

Practice 6.1 The program is to foster physical development.

Compare with:

Sched 2 Cl. 8 requires the program to foster physical development.

Practice 6.2 The program fosters language and literacy development and interpersonal competence.

Compare with:

Sched 2 Cl. 8 requires the program to foster cognitive, language and creative potential, all in a context of fostering self reliance and self esteem (Reg 12(2)(f) and Sched 2 Cl. 9(c)).

Practice 6.3 The program fosters curiosity, logical inquiry and mathematical thinking.

Compare with:

Sched 2 Cl. 8 requires a program to foster cognitive and creative potential.

Quality Area 7 – Child Protection, Health and Safety

Practice 7.1 The Centre has written policies and procedures on child protection, health and safety.

Compare with:
NSW Reg 12(n) Requires written policies and implementation plans on procedures to be followed to ensure health (including nutritional needs) and safety of children.

Practice 7.2 Staff supervise children at all times.
Compare with:
NSW Reg 33(2) requires that primary contact staff adequately supervise children at all times, having regard to their ages and physical and intellectual development.

Practice 7.3 Toileting and nappy changing procedures are positive experiences and meet each child's individual needs.
Compare with:
Sched 1 Cl. 5 and Sched 1 Cl. 6 deal with the safety and adequacy aspects of toilet and nappy change facilities.

Sched 2 Cl. 9(1) ensures that the interactions are designed to encourage positive self-esteem and are designed to have regard to each child as an individual (see Sched 2 Cl. 9(1)(d))

Practice 7.4 replicates Sched 2, Cl. 9(2)(a) – (g)

Quality Area 8 – Health replicates the various regulations dealing with food handling, nutrition, hygiene, and immunisation.

Quality Area 9 – Safety replicate the various regulations dealing with building and equipment safety and inaccessibility of dangerous substances.

Quality Area 10 – Managing to support quality has largely been covered in the other 9 Areas. Suffice to say there is an obvious, and extensive, overlap with NSW Regulations dealing with communicating information about staff and about policies and about staff development.

To summarise this part, we say the nature and extent of that easily demonstrated overlap is nothing short of embarrassing. We expect the Queensland situation to be at least as bad. It is, we believe, vitally important that we start to share ideas on what might be the best ways to *manage* that duplication. Our great fear is that if practitioners don't work together to deal with it, others will see that overlap and then overreact in a legalistic or unduly analytical way.

The risk is that people outside early child development and parenting support won't understand the enormous importance of having a good way to promote and advance the quality of Australia's already very good quality (mostly) long day centres. The risk of things going off the rails has, we believe, been increased by the reluctance of this Review to face up to the challenge. We just hope it is not too late to get some meaningful dialogue started. We *do* have concerns about the way QIAS does things, we do *not* have concerns about what QIAS is trying to do. As we said in an early submission – we want what QIAS wants. We know the *intention* is that the QIAS system is supposed to compliment State regulations. We also know that is not what is happening in practice. What is good in theory just isn't working properly on the ground.

Other Basic-Level Faults

This submission has said a lot about the failure of this QIAS Review to address the particular concern about regulatory duplication. Although we don't have the time or resources to explore many other important concerns, there are two basic issues we do want to raise; the inherent instability of QIAS, and the need for its review to be conducted by somebody other than the people who 'own' QIAS.

QIAS is Unstable

One of the major practical problems with QIAS is that, because of its structure, and because of the level and nature of subjective judgment needed, just a small variance in only one of the items being measured can upset the whole result. Just *one* element of a reviewer's highly subjective assessment can turn the whole review on its head. In engineering parlance, the system is unstable – just a small incident can completely unbalance the whole process.

Based on the little we know about the proposed new arrangements, it seems that this instability problem has *not* been fixed – the systemic issues have *not* been addressed – a subjective judgment in just one area can still skew the whole result. And that brings us to ask – why has that not been addressed?

The Need for Independent Review

So far as we can tell, the answer is mostly about who has conducted this review. In essence, the QIAS has been 'reviewed' by the QIAS. Not surprisingly, therefore, basic-level flaws have not been properly addressed. For that reason, we now call for a properly independent analysis of QIAS.

Conclusion

The ACCC is troubled about process and about outcomes of the QIAS Review:

- The process has sidelined us, we've been effectively excluded from this so-called Review.

- A major concern – the duplication between the Commonwealth QIAS and State regulation – appears to have fallen through the cracks, or is being kept out of sight. What the Government (and ourselves) thought was going to be done in this Review seems not to have happened. The Prime Minister rejected solutions to deal with the existing regulatory duplication on the basis that *this* Review would address that issue. But where is the analysis? EPAC's Childcare Task Force clearly envisaged that this Review would tackle such problems and, in particular would "put a premium of good regulatory processes" – which means proper consultation, and proper analysis. EPAC made its own suggestions about the best way to deal with the duplication between Commonwealth and State. But those suggestions have simply not been explored in the Review. If this Review is not going to tackle that basic issue, when is it going to be tackled? Various State level regulation reviews are already confronting this question. Does the Commonwealth want to contribute? We are confused. We have supplied ample evidence of the duplication. No one denies it exists. No one denies it causes wasted time and money and reduces service quality. And yet no one has acknowledged it is even a valid concern, or that something is going to be done about it. EPAC has supplied the conceptual framework, we and others have supplied the reasons for doing it. So let's get on with fixing it!

- Good regulatory process is not optional. Whether because of its own Terms of Reference, or because the Council is operating as a standards setting body for the purposes of the *'Principles and Guidelines for National Standard Setting and Regulatory Action'*, or because of the EPAC Report, or because of the statement by the Prime Minister in March 1997, at the end of the day, there has to be proper consultation and a proper analysis of positive and negative impacts if we want to design the best regulatory framework for quality. This Review can duck and weave all it likes, but the fact remains – good regulatory systems *are* fundamental to good social and economic outcomes, and good regulatory systems don't happen when only one side of the argument gets a proper hearing. We fear this Review has been a smokescreen. It looks to us like the people who originally designed QIAS, and who still own QIAS, wanted to make what *they* thought were improvements. No amount of input from our perspective seems to have had any impact on their original objectives. They are entitled to their view, but Australia cannot afford to let them exclude different viewpoints, while at the same time pretending to take such evidence properly into account. They can only get away with that if proper regulatory analysis is not required, and not used.

- Private service delivery is different from community-based Long Day Care. It is structured, differently; it operates differently; it relates to parents differently. People without extensive experience in that private commercial system are not well placed to make value-laden judgments about it. That is why it seems to us very unwise to change the existing QIAS to make it *harder* for the private sector to get reviewers with appropriate qualifications and experience. It is unfair to expect the private sector to be judged by people who are philosophically opposed to delivery of services through the private sector. Any proposals which may make it *more* difficult to attract appropriately experienced reviewers are bound

to increase perceptions of unfairness, are bound to lead to futile, wasteful conflicts – distracting us all from the main game – making Australia a better place to live and work, making Australian early child development better, making Australian families stronger.

The ACCC invested much time and resources in our two major submissions. We thought that, as the major national peak body for private providers, we would be extensively involved in dialogue with the QIAS Review to share ideas and explore options. Instead we have not been involved in *any* such dialogue or decision-making. We are not sure why we have been treated this way. We believe that there is a place for Commonwealth quality improvement systems, and that there is a need for Australia to encourage quality-improvement in *all* types of early child development and parenting services, including long day centres. Because quality improvement is important, any quality improvement systems themselves need to be high-quality. Yet QIAS regulations will remain sub-optimal for as long as the system engages in pretend consultation and pretend analysis. Australia's early child development, our parenting skills, our education systems, our crime-prevention, our welfare dependence reduction, our family-child relationships – all these are too important to allow different perspectives and different philosophies get in the way of proper collaboration and coordination between the public and private sectors. This surely must be even more apparent when trying to "streamline" something like a quality improvement scheme. As we said in our November submission, the success of quality improvement and evaluation depends on partnership, collaboration and teamwork. The key issue is to adopt an approach which is participative and collaborative and to avoid an approach which is based on compulsion and hierarchies.

Rather than use the Review as a chance to discuss these ideas with us, this Review has largely ignored us. We have been effectively sidelined by this so-called consultation, to the point where we now believe that we don't know about the key aspects of the proposed QIAS system. We glean that certain quality benchmarks are to be raised. We don't understand why; we are very fearful of cost and affordability issues; we are yet to see any justifications, or any cost impact analysis, or any explanation.

We understand that other fundamental changes are being proposed to the number of inspections, (there are to be more); to who does them (our concerns about bias and conflict don't seem to have been addressed); and to the appeal system (our specific questions remain unanswered). In particular we remain greatly troubled with the proposal that the existing sanction process is to be fundamentally redesigned, without any proper discussion or any apparent analysis of impact of such changes on providers or on government. Our specific legal concerns in this context remain unanswered. Apart from that, there is a deeper level concern. Parliament was originally involved in the sanction process for a very good reason – judgments about quality are inevitably highly subjective, and highly value-laden. As EPAC said, "getting agreement as to what is quality childcare is not an easy task, ... its characteristics are hard to measure and quantify. Views vary amongst parents and amongst providers and between both parties and governments" (EPAC, p. 73).

Because 'quality' is a value-laden, subjective and dynamic concept, it was (and is) critical to have an objective umpire included in the process. Removing that Parliamentary safety valve removes the objective umpire. Replacing that umpire with a Department of Family and Community Services official would be Caesar appealing to Caesar. A nameless bureaucrat should not be able to conclude that any given centre was not complying with these highly subjective value-laden decisions. It would be unfair to expect any official to bear that

responsibility. It could be unfair to the centre, unfair to the centre's families. It is hard to see how anyone will be better off if the existing umpire was taken out of the game and his role handed over to one of the players.

We keep saying that quality improvement *is* important and that its importance is precisely why unnecessary levels of compliance burden need to be eliminated. Getting rid of the regulatory duplication doesn't *weaken* quality improvement, it *strengthens* it! We don't know whether it's best to leave quality measurement to the Commonwealth, or to the States, or to a model which coordinates both. But we do want to sit down and share ideas about that issue and about how to improve the obvious waste and inefficiencies which the present system is causing!

Yours faithfully,
AUSTRALIAN CONFEDERATION OF CHILD CARE

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