



24th November, 2005

The Regulation Taskforce
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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'.

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 matters 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.

Vic Laurence
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