

**Submission to the Department of Community Services'
Review of the Children's Services Regulation 2004**

December 2008

**NSW Commission for Children and Young People
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1. The Commission for Children and Young People

The NSW Commission for Children and Young People ('the Commission') promotes the safety, welfare and well-being of children and young people in NSW.

The Commission was established by the *Commission for Children and Young People Act 1998* (NSW) ('the Act'). Section 10 of the Act lays down three statutory principles which govern the work of the Commission:

- (a) the safety, welfare and well-being of children are the paramount considerations;
- (b) the views of children are to be given serious consideration and taken into account; and
- (c) a co-operative relationship between children and their families and community is important to the safety, welfare and well-being of children.

Section 12 of the Act requires the Commission to give priority to the interests and needs of vulnerable children. Children are defined in the Act as all people under the age of 18 years.

Section 11(d) of the Act provides that one of the principal functions of the Commission is to make recommendations to government and non-government agencies on legislation, policies, practices and services affecting children.

2. Introduction

The Commission is pleased to make a submission to the review of the Children's Services Regulation 2004 ("the Regulation").

We support the approach taken in the discussion paper that places children's well-being at the core of children's services. It is pleasing to see the reform of the Regulation being approached in an evidence-based and child-focused way. The Commission considers that many of the suggested reforms will improve the quality of children's services. Improving quality in early childhood settings is of course an essential part of providing services that promote children's well-being.

The quality of children's early experiences, including in children's services, has a significant impact on children's lives. As children's brains are developing at a fast rate in their first few years of life, it is critical that children receive the care and stimulation they need to promote positive learning and healthy brain development. For vulnerable children in particular, high quality children's services can have a significant positive impact on their experiences and development.

3. Which children's services should be regulated?

The Commission recommends the definition of children's services remain as it is in the current Regulation. The types of services that we believe should be subject to the Regulation are those intended to support children's care and development over the long term in the years prior to school, such as pre schools and family day care services. We do not consider it necessary to expand the definition of children's services to short-term recreational classes and activities for children or one-off care arrangements in locations such as gyms.

The Commission welcomes the introduction of regulations for Out of school hours care (OOSH) services in NSW. We agree that this should occur through a phased approach to assist such services adapt to a new regulatory environment. We recommend that the regulations for OOSH services should feature objects, outcomes and monitoring and compliance clauses that are consistent with the Children's Services Regulation.

4. Ratios, group size and maximum child numbers

Staff to child ratios

The foundation for many aspects of quality in children's services is staff to child ratios and group size. Staff to child ratios and group size are important for health, reducing risks to children and enhancing a caregiver's capacity to develop positive relationships with children. Small ratios and group sizes are particularly beneficial for children under two years.

We welcome the NSW Government's announcement to increase the staff to child ratios for children under two years of age to 1:4. However, we consider that a staff to child ratio of 1:4 does not go far enough to provide the best start for children's healthy brain development. Neuroscientific research shows that consistent, positive and one to one interactions are critical for infants' healthy brain development, particularly in their first 18 months (Mustard, McCain & Shanker, 2007). It is unreasonable, and potentially detrimental to children, to expect that one caregiver would be able to commit the time and attention to interact with up to four infants in this way, in addition to providing for their basic care. Given the evidence we consider that efforts should be concentrated on improving staff to child ratios in these formative early years for children attending all types of children's services. Therefore, we recommend that the Regulation should require a staff to child ratio of 1:2 for

children under two years of age, or as a minimum should a phase in period be required, of at least 1:3.

The staff to child ratio should apply all day across all NSW children's services, including family day care and home-based carers. We recognise, however, that shortages in the current workforce mean that this ratio is not possible for many services and therefore will need to be implemented incrementally.

Group sizes

We also recommend that the Regulation stipulates small group sizes to promote better quality interactions and relationships between caregivers and children. The US National Association for the Education of Young Children (NAEYC) recommends a maximum of six in a group for up to two year olds with group size increasing progressively as children get older, to a maximum of 16-20 for five year olds (Press, 2006).

The Commission does not support removing the limits on total group size. When there are too many children there can be a loss of intimacy, meaningful shared experiences and the ability to engage in discovery through play (Lally et al., 1994). Tremblay's work on the developmental origins of aggression lends further weight to the importance of small groups for toddlers. As aggressive tendencies tend to peak between ages two and three, small groups are needed so that caregivers can attend to the task of teaching children acceptable behaviours (Hay, 2003). There is strong evidence that the preschool years are a critical time to teach children the fundamentals of social interaction (Tremblay et al., 2008). In particular, children from disadvantaged backgrounds can greatly benefit from positive interventions and direction from caregivers in formal childcare (Tremblay et al., 2008). Caregivers need time to be able to teach all children in their care language to help them to express anger and frustration, social skills that give children alternatives to aggression and discipline so that children learn the negative consequences of their aggression on others.

Where group sizes are too large caregivers cannot dedicate the time and attention to teach children the valuable skills they need to deal with their aggression. Children who do not learn from an early age to replace their physical aggression with more socially appropriate behaviours are at a considerably increased risk for leaving school early, criminal behaviours, substance abuse problems and unemployment (Tremblay et al., 2008).

5. Qualifications and roles of staff

Qualifications

Given the importance of caregiver relationships to children, supporting a stable and suitably qualified early childhood education and care workforce is fundamental to the provision of quality children's services.

We consider that the current requirement under the Regulation for university qualified early childhood teachers to be employed in all early childhood services is positive. This approach is consistent with our knowledge that

children learn from birth. Children's services should support this learning, not just be places where children are left when their parents are at work.

However, the Commission is concerned that a substantial number of children in early childhood services do not have access to a qualified early childhood teacher in their service. We recommend increasing children's access to qualified teachers by lowering the threshold number of places at which a service must employ a qualified teacher to 20 children as a first stage, with the long term goal being to provide qualified teachers in every service.

To provide the best quality services to children and maintain consistency with the NSW Institute for Teachers and the National Quality Framework, the Commission supports amending the Regulation to require teachers to have a four-year qualification. However, we consider that teachers who currently have a three-year qualification should not be disadvantaged by this amendment. We suggest a mechanism be introduced to formally recognise the skills and knowledge of existing teachers.

The Commission recommends introducing a minimum qualification for all primary contact staff in children's services, including family day care. Studies show that the strongest indicator of quality services is the level of staff qualifications (Sylva et al., 2004, NICHD 1999). This is just as relevant for home-based care. Higher level staff qualifications are linked to positive adult to child interactions and have the greatest impact on quality outcomes for children (Sylva et al., 2004). Staff training and qualifications count more than experience. Research has shown that qualified caregivers provide higher quality care and less detached care to children (Clarke-Stewart et al., 2002). However, we agree that formal recognition of the skills and knowledge of experienced carers may need to be a part of this so that existing staff do not leave the childcare sector.

In particular, the Commission supports the requirement for staff with specialist qualifications to be provided for children under two years. To provide the most appropriate care for babies, services need to provide a caregiver with child and maternal nursing qualifications.

Staff roles

We recommend the Regulation clarifies the role of teaching staff and staff for children under two years. Not only will this help services understand what the role of such staff are, therefore providing better education and care to children, it may also help to improve the status of such staff.

The Commission recommends amending the Regulation to require all staff caring for children, including family day care staff, to complete approved child protection training. Children's services are a key part of early intervention strategies where children are at risk. As mandatory reporters it is essential that all staff working with children understand their obligations under the child protection system.

6. Safety, health and development of children

We support an outcomes based approach to the Regulations that encourages flexibility and innovation. However, it should also reduce the administrative burden on early childhood services.

Staff interactions with children

Positive relationships with caregivers and other children are essential to children receiving high quality care in early childhood settings (Sammons et al., 2004). Staff-to-child ratios and group sizes are two of the most significant quality indicators that impact on the relationships children have with caregivers and other children in child care. Addressing high staff turnover is also a critical issue when considering the ability of children to develop positive relationships with their caregivers. We recommend that the criteria under this outcome include requirements regarding staff-to-child ratios and group sizes.

One important part of supporting positive relationships between caregivers and children is managing risks that can arise from the individuals employed to work with children, the way a role is managed or how a service is managed. We recommend that the criteria under this outcome require children's services to have policies and practices on matters such as recruitment, children's participation and managing complaints that show they are child-safe and child-friendly.

Developmental and education programs for children

The Commission supports the inclusion of developmental and educational programs in the outcomes. This is positive as it is an approach to early childhood services that does not separate care and learning. A move to a system which focuses on children's holistic well-being is consistent with our knowledge that from birth children have a desire for learning and that their development happens in the context of their relationships with caregivers and others.

We support the inclusion of children's emotional development under this heading. How services develop children's sense of community and responsibility for others is another important measure of quality. As the EPPE study shows, the emphasis of learning in the early years need not only be on literacy or numeracy to achieve good performance in these areas in later years. Settings in the study that also emphasised children's learning about diversity promoted better academic outcomes for children in their future schooling (Sylva et al., 2004).

A learning approach that promotes a sense of agency amongst children is a valuable strategy in making services safer for children. Where children feel respected and listened to they are more likely to speak up about their concerns. Actively encouraging parents to participate in the care of their children and be kept informed of their child's progress in early childhood

settings can also contribute significantly to creating safe environments for children.

Working in partnership with parents and carers

Including and supporting parents in children's services is essential to helping families raise healthy children. Involving parents can be an effective way of supporting children to learn at home. As the UK Effective Provision of Pre-School Education Project (EPPE) shows, a positive home learning environment has a positive impact on children's developmental outcomes well into primary school (Sammons et al., 2004). While the protective potential of children's services is supported by United States research by Magnuson and Waldfogel (2005) which found that parents with children who attended centre based early childhood services, particularly high quality programs such as *Headstart*, were less likely to physically punish their children.

0-2 year olds

We also support the development of a separate outcome area for 0-2 year olds given the importance of the first few years of life for children's healthy brain development. The criteria under this outcome area should be based on evidence about what young children need for their well-being, including children's needs for attentive and consistent caregivers and a recognition that children learn from birth.

7. Compliance, enforcement and penalties

We consider that failure to comply with staff to child ratios and presence of qualified staff, as well as environmental hazards, failure to comply with record keeping requirements and breaches about the quality of programs pose the greatest risk to children.

To support quality early childhood education and care services for children, we recommend that settings are monitored and enforced with a clear hierarchy of sanctions in response to non compliance. This monitoring power should include the ability for a regulator to conduct site visits without notice. However, if sanctions are to be used to penalise poor performance they should be implemented without adversely affecting children and families using the service.

We recommend the involvement of children in the regulatory processes of children's services. When given the opportunity, children can share their ideas on what makes a good service, what is most important to them and give feedback on their experiences. As part of regulation we need to further consider appropriate ways to assess the quality of the experiences that infants and babies have in early childhood settings. Opportunities should also be developed for parents to be involved in regulation and be notified on how services are complying with the Regulation.

Providing high quality children's services requires more than just complying with, and enforcement of, the minimum regulatory standards. To have the best outcomes for children, strategies need to be put in place to help parents

understand children's services' obligations, to provide guidance on best practice and encourage continuous improvement amongst services. The development of the National Quality Framework on Early Childhood Education and Care is an ideal opportunity for DoCs to work in partnership with the Australian Government to improve quality in early childhood services.

8. Probity and related checks for licence applicants

The Commission supports making the checks for licence applicants more appropriate to the role of a licensee.

In particular, we are concerned that the Regulation specifies that probity checks for licensees are to be carried out in accordance with the guidelines in force under the *Commission for Children and Young People Act 1998*. However, the *Commission for Children and Young People Act 1998* provides that the Working With Children background check can only be conducted on applicants for primary child-related employment. A licensee is not in primary child-related employment as defined in the *Commission for Children and Young People Act 1998* because they are not "employed" and are not required, as an essential part of their role, to have direct unsupervised contact with children. Therefore, we cannot check them under the *Commission for Children and Young People Act 1998*. Licensees who are also authorised supervisors will be subject to the Working With Children background check by virtue of being in child-related employment.

We consider that the risks relating to licensees may be more about inappropriate direction of staff in relation to risks to children. The Working With Children background check is focused on risks to children in direct conduct and is not framed for these indirect or broader risks. A general criminal records check, along with references from previous employers, may provide a better guide to how a licensee manages service. In particular, references from previous employers are likely to be more important for sole trader or partner-type licensees than for community group licensees given the Board of Management type governance structures for community organisations.

Current research suggests that in making organisations safe for children we need to not only assess the past records of individuals but manage any risks that arise in their employment circumstances (Smallbone, Marshall & Wortley, 2008). To keep children safe employers need to identify risk and put processes in place to manage this risk. We recommend that the Regulation encourage organisations to actively manage the risks to children in their workplaces so that they can become more child safe and child friendly.

9. Licensing model

The Commission recommends reducing the regulatory burden on services through streamlining the licensing system. We support the suggestion of a 'master licence' so that licensees can be more flexible in their provision of

early children's services. Regardless of the model proposed, the workload around compliance should be reduced so early childhood staff can focus more on caring for children and supporting their learning.

10. Conclusion

Placing children's well-being at the core of children's services is essential for children's healthy development. By investing now in a regulatory system for children's services that places children at the centre, we are making an important contribution to having the best outcomes possible for children in NSW.

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