



**Response to :
The Victorian Children's Services
Regulations Review: A Discussion Paper**

April 2007

QUESTIONS FOR FEEDBACK

Chapter 5 Coverage of the Act and Regulations

Q.5.1 In determining which care arrangements should be regulated, what criteria do you believe should be used, and why?

Care arrangements to be regulated

The regulations provide for basic standards in the provision of care and education for children under the age of six. The legislation is designed to ensure the safety and development of all children, therefore all formal or registered fee for service care arrangements for children from birth to 13 years should be regulated. Special consideration should be given to children with a disability who are older than 13 years who may require an Out of School Hours or Family Day Care services. Special consideration also needs to be given to occasional care services in community settings where the care is provided in sessions of less than 4 hours.

Criteria

All children are entitled to quality early childhood opportunities. Where children less than 13 years are cared for on a registered fee for service basis, for three hours or more, in groups of 4 or more regulations must apply.

Regulations need to apply in the above circumstances to family day care, occasional care, in home care, in venue care, outside school hour's care, registered nanny services and, all children's services that are currently licensed.

Why

In conjunction with National Standards and Accreditation the Act and the Regulations can be adapted and applied across all service types. It is important that standards are adequate for all children.

The Act and the Regulations create a level playing field for all children's services. All services operating from the one site could be subject to the same regulations ensuring the same basic standards for all children attending a service on that site regardless of their age or the service they use.

Q.5.2 What, if any, issues do you have in relation to the current definition of a children's service, and why?

The definition of a children's service should include all services provided for children from birth to 13 years.

The words **care** for or **educate** children must be included in the definition of a children's service. This underpins the regulations and sets minimum standards in all areas of care including, buildings, staffing and children's programs. It ensures the regulations are not just focused on buildings and venues but rather on operations and the health and well being of children.

Section 3(1) of the act should be changed to define a children's service as a service providing registered care for four or more children under the age of thirteen.

Individual carers/private carers providing care as in 5.1 must be legally required to be licensed. However, family members should continue to be supported in their ability to continue to care for other family members and friends children on a non fee basis.

Q.5.3 What, if any, issues do you have about altering the definition of a children's service to accommodate outside school hours care and family day care, and why?

Yarra City Council supports extension of the definition of a children's service to include family day care and outside school hour's care. Minimum standards in care and education are fundamental to the well being and life chances of all children from birth to 13yrs.

There are substantial benefits in extending the Children's Services Regulations to family day care and outside school hour's care, however it is pertinent that the individual characteristics and standards of these services are maintained.

Special consideration should be given to children with a disability who are older than 13 years who may require access to an Out of School Hours or Family Day Care services;

Family Day Care

FDC is evolving; there is a drive for change in operating model from the sector. Family day care must be regulated in a way that allows these changes to occur.

The definition should be altered to include four or more children inline with National Family Day Care Standards.

The definition should be altered to include children from birth to thirteen years in concurrence with National Family Day Care Standards.

Out of School Hours Care

- a) The maximum age in the definition of children's services should be 13 years. Except in circumstances special where children with a disability who are older than 13 years require access to an Out of School Hours services;

Q.5.4 Which, if any, model of regulation do you favour: service type; locus of care or service size, and why?

Preferred model of regulation

The second option under section 5.4 of the review is the most appropriate model that allows family day care the opportunity to evolve and develop and incorporates outside school hour's care. This system is based on two types of licenses: home based care and centre based care appears to be an equitable system for all services regardless of their size.

Why?

This model will

- allow flexibility for new types of children's services to evolve.
- show clear distinction between home based care and centre based care
- recognise the unique nature of FDC as a home based service.
- allow an equal level of accountability between family day care support and resource staff and care providers.
- take into account the role of the support and resource staff and the role of the care provider
- recognise that care providers are independent contactors who share equal responsibility with the support and resource staff for compliance with the Act and Regulations.

Chapter 6 Regulatory powers

Q.6.1 What, if any, changes to regulatory and enforcement powers and offences do you support or oppose for licensed children's services, and why?

Licensed Children's Services

The recommended changes to regulatory enforcement powers and offences identified in sections 6.3.2, to 6.3.11 of the review document are applicable to currently Licensed Children's Services and would enhance the current provisions under the Act.

Q.6.2 What, if any, changes to regulatory and enforcement powers and offences in order to accommodate outside school hours care and family day care do you support or oppose, and why?

Family Day Care (FDC)

All FDC care providers eligible for Commonwealth Child Care Benefit (CCB) payments should be registered and part of or operate, under licensed Family Day Scheme. It should be illegal for a registered carer to operate without being part of a licensed FDC scheme.

As a registered business, with a duty of care to children, authorised officers should be enabled to enter and inspect individual FDC carer's homes and related documents during the times care is occurring, Entry and inspection may also be granted outside business hours as required.

Yarra City Council is concerned about the proposal that Council's would be responsible for compliance of their own schemes. There will be significant cost and management implications for Local Government if they are required to provide authorised compliance officers. Notwithstanding the need for accountability and quality, Yarra City Council does not support the notion of self regulation for this or any service type.

The family day care off site, single staff model prohibits support and resource staff to monitor compliance on a daily basis. The licence for a family day care scheme must reflect this model of care and ensure that carers are held responsible for their actions. This could be achieved by ensuring all carers are nominees.

The recommended changes to regulatory enforcement powers and offences identified in sections 6.3.3, to 6.3.11 are applicable to family day care and would enhance the current provisions under the Act.

Out of School Hours Care

Out of School Hours services share a number of delivery arrangements with Long Day Care services. The current regulatory and enforcement powers and offences could be extended to accommodate outside school hours care.

Q.6.3 What, if any, changes should be made to the current penalty structure” and why?

The aim of the compliance system should be to support compliance rather than to solely impose disciplinary sanctions. Penalties are however necessary where clear and serious breaches of regulations occur and in particular where duty of care responsibilities are breached placing children in unsafe environments. This includes when duty of care responsibilities are jeopardised by the care location. Penalties also need to apply when offences are repeated.

As with other legislation there may be instances of higher penalties being introduced for bodies corporate, especially in the case of multi licence holders. The aim of higher penalties should be to achieve a higher rate of compliance and therefore better outcomes for children and families

Council acknowledges community sector concerns about the impact on the not for profit sector of high penalties. Therefore, court jurisdiction must take into account setting penalty levels according to the nature of the body corporate (notwithstanding the need for services to ensure adherence to the legislation at all times).

Penalty levels should reflect the impact of breaching the legislation.

Chapter 7 Responsibility for compliance with the Act and Regulations

Q. 7.1 What, if any, issues do you have with how licensees, proprietors and staff are responsible for complying with the Act and Regulations for licensed children’s services, and why?

Licensed Children’s Services

Responsibility for complying with the act should be implemented cooperatively by both management and staff working in the service.

Where it is demonstrated that business policy directions, imposed directly by licensees/proprietors prevent staff working with children carrying out their duty of care, the licensees/proprietors would be liable for non compliance.

Q. 7.2 What, if any, suggestions for accommodating this framework for outside school hours care and family day care do you support or oppose, and why?

Family Day Care

The requirements of the family day care coordination and support role could be dealt with through licence conditions rather than as separate legislation.

Due to the shift work arrangements of family day carers (working after business hours, weekends and overnight) the ability of the proprietor or licensee to be present at all times is impossible. The licence for a family day care scheme must therefore reflect the outcomes of the FDC model.

Family Day Care is provided off site with a single staff model. In requiring compliance at all times, regulations need to operate to provide protection to field workers and scheme operators to ensure field staff employed in family day care schemes are not liable for the actions of an individual care provider.

Care providers are considered individual contractors who operate their own business. The role of family day care field staff is a support and resource role. A proprietor is considered to be any person who manages or controls the service. The regulations should determine that the family day care service is the proprietor.

It is appropriate and imperative that care providers are responsible for maintaining premises and equipment in a safe, clean and hygienic condition and in good repair. Carers should observe good health and hygiene practices, have written evacuation plan and make food and drink available to children in their care. Carers should have the same responsibilities under the act as a proprietor or licensee. These responsibilities should include the options put forward under 7.3.3 of the review document.

Out of School Hours Care

The current regulatory framework can encompass OSHC without any need for legislative change. The national standards need to be incorporated as minimum standards. The licensee /proprietor would be responsible for compliance supervising staff of out of school hours or vacation care should also be nominees.

Chapter 8 Staffing

Q.8.1 What, if any, minimum qualifications should all staff members in licensed children's services, outside school hours care and family day care hold, and why?

Applicable to all children's services

There is a strong evidence base of research showing clear links between qualifications of staff with quality outcomes for children. It is acknowledged that qualified staff in a children's service raises the quality of care and educational opportunities for children.

If a minimum qualification is required for all staff employed to work in children's services, a Certificate III in Children's Services should be the minimum requirement. This

qualification provides an introductory skill base focusing on child development knowledge, attitudes and practice skills required by a person working with children and their families. It also allows for a pathway to higher level qualifications.

Family Day Care

Council acknowledges there would be benefits for FDC carers, in obtaining minimum qualification. A minimum Certificate III qualification would provide opportunities for traineeships in family day care and clearly link training to a career path.

State Government support to assist current family day carers in obtaining a certificate III is desirable as current training fees are out of financial reach for many care providers, especially newly arrived migrants and refugees. Opportunities for traineeships could be facilitated by proprietor organisations as long as the State and Commonwealth government criteria allow eligibility for contractors.

Out of School Hours Care (OSHC)

The current national standards for OSHC require a diploma level qualification for program supervisors. Council supports implementation of this requirement in the regulations. If required a certificate III or equivalent for assistants could be the minimum qualification requirement for other outside school hour's care staff.

State Government supported opportunities for traineeships in this area are also supported for OSHC. A minimum Certificate III qualification would provide opportunities for traineeships and clearly link training to a career path.

Q.8.2 What, if any, qualification level should staff in qualified positions in licensed children's services, outside school hours care and family day care hold, and why?

A minimum, appropriate, two year diploma should be applicable to all qualified staff in children's services. It is desirable for qualified staff working in a children's service to hold a degree or advanced diploma however there are very few early childhood staff that hold this level of qualification. To improve access to further education opportunities for assisted study opportunities could be provided by the State Government.

Licensed Children's Services

Qualified staff should hold a minimum three year qualification. This qualification should be early years focused.

A primary school teacher should continue to be permitted to work as a qualified staff member in the case where no other qualified staff members are available.

Family Day Care

The qualified staff member in a FDC support and resource unit should hold a minimum three year qualification which should be early years focused. Additional training in the middle years is desirable.

Care providers should hold a minimum Certificate III with the option of a traineeship.

Outside School Hours Care

The coordinator or supervisor of an outside school hour's care should hold a minimum Diploma in OSHC or a relevant field degree such as a Bachelor of Primary Education. Assistants should be encouraged to hold a minimum Certificate III with the option of a traineeship.

Q.8.3 What, if any, impact would your organisation experience if staff qualification requirements were to change?

Yarra City Council supports the current qualifications requirements and the national standards for staff working in early childhood services and OSHC. If the qualifications levels are raised and/or if all staff are required to have a minimum of certificate III Council could be obliged to assist with the costs of training for staff currently employed in children's services.

With over 30 unqualified staff in OSHC and early childhood services (not including FDC contractors) the costs would impact in a major way on existing budgets. This additional cost should be borne by State Government funding. Increasing financial burden on parents or operators is not considered reasonable. It is difficult at this early stage to predict what the increase will be, however this could be up to or over 20%.

New staff joining the organisation could be required to hold a minimum qualification as prerequisite to taking up employment with the organisation.

Q.8.4 which staff-child ratios do you think are adequate in licensed children's services, outside school hours care and family day care, and why?

Adequate child staff ratios:

Licensed Children's Services.

Staff: child ratios for centre based services should be increased to the following levels to meet national standards subject to additional funding being provided by either State and/or Commonwealth Governments:

- i) 1:4 for under 2 year olds;
- ii) 1:5 for 2 year olds;
- iii) 1:11 for 3 - 6 year olds;
- iv) Ratios for occasional care to remain as is(1:5 under 3 year olds and 1:15 over threes);
- v) Family Day Care staff child ratios to remain at 1:4 for under school age children; and
- vi) Outside school hours ratios should be at 1:11
- vii) All centre based care should require 2 staff on duty at all times

The minimum age for staff working in children's services should be 18 years.

Family Day Care

Staff child ratios for FDC should be at 1:4 for under school age children. A further three or less school aged children would also be allowed for outside school hours care.

The current staff ratio for FDC is adequate; however some guidelines regarding the space or size of where the care is located may need to be defined.

The minimum age for staff working in family day care should be 18 years.

Outside School Hours Care

Staff Ratios for Outside School Hours Care should be at 1:11 for all age groups. Regulations should prohibit single staff models in LDC or OSHC. In special circumstances ministerial exemption may be granted.

The minimum age for staff working in outside school hours care should be 18 years.

Q.8.5 What, if any, impact would your organisation experience if staff-child ratios were to change?

Any immediate changes to the current staff-child ratios would result in a significant financial impact for most services. This does not mean operators should compromise quality because of cost; rather the State Government needs to find a way to meet these ratios over a period of time. This additional cost should be borne by the State Government. Increasing financial burden on parents or operators is not considered reasonable. It is difficult at this early stage to predict what the increase will be, however this could be up to or over 20%.

Council recommends the State Government facilitate discussions with the Commonwealth Government and key stakeholders to attempt to resolve this matter. Council supports the general direction promoted in the Victorian Governments recently released Council of Australian Governments (COAG) National Reform Agenda – Victoria's plan to improve outcomes in early childhood (April 2007) report to commence this process.

Chapter 9 Programming

Q.9.1 What, if any, improvements can be made to the requirements for educational or recreational programs for the purposes of licensed children's services, outside school hours care and family day care, and why?

All care of children should be based on **enhancing children's growth and development**. Regulation 28 ensures a basic program is provided for all children, this regulation underpins accreditation which aims to ensure that children have access to the highest quality programs.

It should be also noted that not all children services in the community attract Child care Benefit (CCB) and therefore are not required to register for Accreditation. The State government must ensure that these services also focus on quality outcomes for children.

Family Day Care

FDC carers are required to meet accreditation principles and national standards and are therefore already complying with the requirements under r.28.

Regulation 28 should not be modified for FDC, rather FDC support and resource staff should continue to work towards supporting carers in developing programming skills.

Outside School Hours Care

Outside School Hours care services are focussed on providing primarily a recreational program for school age children. This type of program is different from the early childhood educational program that should be provided in an early year's service.

Outside School Hours care should be a place where children can relax and complete home work or participate in a recreational program while being cared for and supervised.

Outside School Hours Care services are required to meet accreditation principles and national standards which encompass program planning. Regulations should be changed to reflect the program requirements for Outside School Hours.

Chapter 10 Facilities

Q.10.1 which, if any, of the options for performance-based approaches to facilities requirements do you support or oppose, and why?

A more performance based approach to current facilities requirements would allow increased flexibility and accommodate the different requirements of family day care, occasional care and outside school hour's care. However this approach may be open wider to interpretation than the current prescriptive approach. The resource and training guide that will accompany changes to the Act and the Regulations should be very specific about performance expectations.

Family Day Care

Some guidelines regarding the space or size of where care is located may need to be defined. Currently FDC services tend to limit numbers according to carers house/flat size, recognising that some rooms are too small for seven children to be present. Outdoors areas may also be included.

The regulations will need to address space and size issues as well as number of children present to ensure equity among FDC Services as this may directly effect a care providers or services available income levels.

Q.10.2 What, if any, issues do you have with facilities requirements relating to the outdoor environment and space?

Long Day Care

The new regulations should include provisions that encourage natural materials to be present in the outdoor space.

All outdoor space and associated equipment must meet Australian Standards.

Family Day Care

Children of all ages require access to safe and appropriate outdoor play spaces.

FDC through playgroups have access to safe and stimulating play spaces.

Regulations should require that care providers have reasonable access to an open play space outdoors. This definition needs to encompass the situation of public Housing tenants providing family day care in Office of housing apartments.

Outside School Hours Care

The outdoor space requirements for school age children should not be reduced because; school age children physically require more space than younger children. Regulation 43 (1) should include a separate requirement for outside school hours care and family day care.

Chapter 11 Health and Safety

Q.II.I What, if any, issues do you have with the health and safety provisions in the Act and Regulations and their application to outside school hours care and family day care?

The current health and safety provisions in the Act and Regulations provide the minimum requirement. These provisions can and should be applied to outside school hour's care and family day care regardless of the age of the children. These provisions are enhanced through national standards and accreditation across all service types.

Health and Safety provisions should be prescriptive to ensure that they are complied with. A performance based approach may place these provisions open to broad interpretation.

Sole operators such as family day care providers should be required to make a health declaration as part of the "fit and proper " assessment.

Chapter 12 Information collection: records and notifications

Q.12.1 What, if any, changes to records or parts of record do you support or oppose, and why?

The minimum standards for record keeping and information collection must be consistent across all service types with exceptions or additions appropriate to the service.

Licensed Children's Services

Background information for children and families should relate to duty of care requirements. National standards and accreditation also guide services about useful

information to collect. Parents should be required to provide personal information they wish to share with the service, without compromising the child's well being or safety.

Ideally one set of information for Commonwealth and State authorities is desirable.

In cases of emergency accessible copies of relevant documents must be at hand.

Q.12.2 What, if any, changes to the notification requirements do you support or oppose, and why?

Notification requirements should be changed to call for all children's services to provide a verbal report and written documentation to the department about incidents and accidents that occur while a child is in care. This documentation should be recorded in chronological order to enable the service and the department to identify factors that may be contributing to the incidents.

Parents of a child who has been injured have a right to be notified both verbally and in writing regardless of the level of severity. The notification requirements should be changed to sanction these rights.

Chapter 13 Information release: sharing information with parents and other governments

Q.13.1 What, if any, compliance information should be provided to parents, who should provide that information (the service or the regulator), and why?

The sound reputation of a service may be unnecessarily damaged if parents misinterpret non-compliance information or if that information is incorrect. Non compliance issues necessitate sensitivity while also ensuring that parent's rights to be informed are sanctioned. The compliance assessment provided in writing after an inspection could serve as the basis for informing parents about compliance and non compliance issues. The regulator should ensure that the service provides this information to parents in an appropriate manner.

Q.13.2 What, if any, effort is expended by your organisation in preparing information for parents required by regulation?

Yarra City Council is committed to ensuring parents are informed and aware of state government regulatory requirements relating to children's services. Council engages with parents from the point of enrolment and provides resources to communicate with parents about how the service operates. A quality liaison officer is employed by Yarra City Council to assist Council's Children's Services to resource and manage this process.

Communication methods consist of notice and information boards, newsletters, meetings, individual contact with parents, verbal communication, displays and special events.

Q.13.3 What, if any, information should be shared across government, with what limits and why?

There should be no limits in sharing statistical and planning information about children's services across governments. Individual information relating to children's health, safety, wellbeing and developmental needs should not be distributed without the permission of the child's parent/caregiver.

Legislative requirements regarding privacy must apply.

Chapter 14 Streamlining licensing processes

Q.14.1 What, if any, changes to licensing process (including removal or changes to the approval in principle processes, retention of a short term licence, removal of provision for licence transfer) do you support or oppose, and why?

It is evident that approval in principle is not serving the purpose for which it was established due the reasons stated in 14.3.3. of the review document.

The Office for Children should have input into the review of performance standards for children's services in the Building Code of Australia and input into the production of design resources and guidelines for children's services. This will ensure reflection of early childhood research and will encourage innovation and continuous improvement.

Short term services should be granted a short term licence which meets the premises standards of a restricted service. The department should monitor the applications for short term licences to ensure that services are not avoiding full licensing requirements.

It is evident from the information provided in 14.3.5 of the review document that the transfer of licence should be removed,

Q.14.2 What, if any, effort is expended by your organisation in complying with licensing processes under the Regulations?

Yarra City Council is committed to quality outcomes for all children, and is committed to compliance with all regulations. A significant amount of Council provided resources are allocated to ensuring compliance with the Act and the Regulations. An early year's resource unit supports children's services in the City of Yarra with compliance requirements under the Act and the Regulations.

Chapter 15 - Relationship between the criminal history check and the Working with Children Check

Q.15.1 Given the introduction of the Working with Children Check, do you think there are any circumstances when criminal history checks are also required in the new children's services legislation?

A Criminal History Check and a Working with Children Check should be required a part of the undertaking of fit and proper assessments of licensees and nominees. It is vital that dishonesty and fraud along with serious offences are considered as potentially impacting upon the safety of children.

A person under the age of 18 is not considered appropriate to be working in a children's service.

Q.15.12 If you think criminal history checks continue to be necessary for the licensed children's services, outside school hours care and family day care, why are they necessary and for whom are they necessary.

Criminal history checks should continue to be necessary for licensees, nominees and for all sole operated services.

The Working with Children Check is assessed broadly, assessment is based on serious offences. Assessment should be based on all related working with children offences regardless of the severity of the offence. Notification should be given to the applicant and the intended place of employment.

Chapter 17 - Next steps

Q.17.1 what, if any, other issues do you have with the Act or Regulations for licensed children's services?

Compliance spot checks should be introduced across all children's services. These should be carried out by authorised officers of the State Government, documented and reported to The Office for Children, Licensee, Primary Nominee and the Proprietor.

Any additional costs associated with compliance should be borne by the State Government.

The State Government need to remain the level of Government responsible for monitoring compliance.

Q.17.2 What, if any, other issues do you have with the extension of the Act and Regulations to include outside school hours care?

The Act and the Regulations must be extended to OSHC, any additional costs associated with compliance should be borne by the State Government.

The State Government need to remain the level of Government responsible for monitoring compliance.

Q.17.3 What, if any, other issues do you have with the extension of the Act and Regulations to include family day care?

The Act and the Regulations must be extended to FDC, any additional costs associated with compliance should be borne by the State Government.

The State Government need to remain the level of Government responsible for monitoring compliance.

