



CHILD CARE CENTRES ASSOCIATION OF VICTORIA INC.

Submission To

**Council of Australian Governments
Early Childhood Development
Steering Committee**

**Regulatory Impact Statement for
Early Childhood Education and Care
Quality Reforms**

Doc/Date: 31 August 2009
By Email: ECECQuality@deewr.gov.au

CHILD CARE CENTRES ASSOCIATION OF VICTORIA INC.
Suite 6, 539 Highett Rd, Highett VIC 3190 – Ph: 9532 2017 – Fx: 9532 3336
E: info@cccav.org.au - W: www.cccav.org.au

Introduction

Child Care Centres Association Victoria (CCCAV) is pleased to offer this ‘Victorian’ enlargement to the Submission of our national body, the Australian Childcare Alliance.

We offer that Victorian perspective specifically on behalf of members and generally on behalf of private centres which provide nearly three quarters of Victoria’s 73,500 places and employ approximately 10,000 staff.

Structure of Submission

We set the scene with general comments, but with a Victorian flavour. We discuss the Best–Practice Principles which are supposed to guide COAG regulatory decision-making, and explore why evidenced-based decision-making is fundamental, and how it is supposed to be done. Next, we consider the policy implications of the research evidence.

Our summary of that research was set out in our March, 2009 Submission to the Victorian Children’s Services Regulation Review, 2009. We attach a copy of the document and ask that it be treated as part of this submission. The relevant research summary is at pages 24 – 41 inclusive.

General Comment

1. CCCAV welcomes increased spending on early childhood and on parent workforce participation support. However, the search for higher-quality needs to be careful not to produce lower-quality or lower supply because of problems with affordability or accessibility.
2. CCCAV also welcomes the opportunity to explore how to remove duplication between State and Commonwealth childcare regulation; the opportunity to explore better coordination between Commonwealth and State regulators through improved national governance arrangements; and the opportunity to design improved information for parents as a way of improving competitive pressures and thus service-quality. We support the idea of a more efficient quality ratings mechanism, but are not able to respond to the proposed ratings framework because there are no details on the content of the standards or how they might be operated. Forcing costs up a lot but quality not much is likely to generate enormous affordability problems for parents. The risk is that attempts to increase quality could result in parents using much lesser quality options with the result that quality goes down instead of up.
3. We agree that the challenge for the review is to decide how to balance the benefits of improved quality to children and families with the associated costs. CCCAV fears unintended consequences if decision-making doesn’t take the time to get it right. Clumsy attempts at fixing duplication may make the cure worse than the disease. Likewise, attempts to improve parent information

must understand the way in which good-quality parent information is already provided.

4. Decision-making must be based on COAG Best-Practice Regulation Principles, and should consider:

- The barriers to quality improvement.
- The range of possible solutions.
- The most cost-effective solutions for overcoming the barriers.

5 We say:

- the search for improved quality must begin with a correct understanding of service-quality, namely that existing service-quality is good, certainly in Victoria's regulated and accredited centres,
- the core issue, therefore, is how to improve already good standards without reducing existing quality or existing levels of supply, especially to under-threes.

6. Core tasks are:

- identifying barriers to improvement, and,
- analysing the options to overcome those barriers to select the best option.

7. Within those core tasks, core issues include:

- The higher costs of higher standards will potentially exclude many families unless the Commonwealth increases parent childcare subsidies and finds ways to manage workforce issues, especially for existing staff. Accordingly, it should be a precondition of increasing costs that the Commonwealth agree to meet them. The reform process depends fundamentally on whether the Commonwealth is willing to bear the major responsibility for doing what is needed to overcome problems with parent affordability, with protecting the existing workforce, and with taking steps to avoid potential loss of places for under-threes—primarily by working with State and local governments to remove local government regulatory restrictions which would otherwise prevent increases in staffing.
- Many centres in Victoria will not be able to accommodate higher staffing without reducing their existing number of licensed child places. This is because of both economic reasons and space restrictions. Where that reduced supply cannot be avoided, even with amendments to Local Government Regulation, then those centres will need protection. That protection needs to include 'existing-use rights' protection attaching to premises, and remaining in place for as long as centres remain in those circumstances. Transitional protection, by itself, will not be enough in such circumstances.

Operating Environment – Childcare Centres

Victorian childcare centres are rightly acknowledged as high-quality. That success reflects Australia's successful partnership of 'government' and 'market', a partnership which blends government strengths with market-based customer service-delivery.

Government delivers three strengths:

- *Regulation* - aimed at high-quality and safety,
- *Targeted parent subsidies* - assisting *all* families afford the higher cost of that higher quality,
- *Information* - so that parents (who are best placed to make judgments about their needs and their child's needs) can make properly-informed choices about why proper-quality matters, what it costs, and where to find it.

In the early 1990's, the Australian Government recognised that the optimal way to allocate scarce childcare centre resources was to blend 'public' and 'private' by maximising customised service-delivery through *many* providers operating in a competitive and regulated market, where well-informed, well-subsidised customers could *voluntarily* choose their preferred centre, based on *their* assessments of their and their child's needs, as well as remaining free to drive quality and price by 'voting with their feet'.

To ensure ongoing, system-level quality-improvement, in centres, the Commonwealth did something no other country has yet matched - it made 'quality-improvement' effectively compulsory, but without relying on 'black-letter-law', which is too blunt an instrument for that purpose. Any parent who qualifies for the subsidy can spend it *only* in centres participating in the Commonwealth's Quality Improvement and Accreditation scheme (QIAS).

A centre can benefit from the parent-subsidy system only if the centre can attract, and keep, parent customers. And, to play in that game, centres must participate in the Commonwealth's QIAS. An essential part of meeting the process-quality requirements of the QIAS is to comply with state regulations dealing with the 'structural' elements of quality.

This blend of 'government' and 'market' is not perfect at setting efficient levels of 'supply', 'price', and 'quality' -- just better than any other method yet devised.

The Right Design Principles

Improving Australia's and Victoria's complex regulation framework is a complex job.

Managing that complexity must be guided by correct principles, and the process must be based on sound evidence.

The Commonwealth Treasurer recently explained the relevant design principles¹:

“...markets are a powerful and valuable tool to harness human ingenuity, creativity and innovation. But we must think clearly and carefully about how they are designed to ensure that markets achieve outcomes that are beneficial to Australians.” (p. 2)

“And in responding to public policy problems, we ought not to be guided by extremes – heavy-handed regulation on the one hand, and unfettered, unbridled markets on the other.”

“There has rarely been a time of greater need to harness the motivation and energy, the innovation and creativity, of clever people, who are committed to the public good. And markets – properly designed and well regulated – are the best means of harnessing these forces.”

“In developing those markets, in applying them to the challenges we face, we should be guided by evidence – evidence which points to the best way to design key markets which will shape our collective future.”

“I believe that if we are guided by the evidence, and design markets well, then our citizens, governments, organisations and businesses will use their resourcefulness, their ingenuity and their creativity, to rise to the challenge of solving the biggest problems facing Australia.” (p.7)

CCCAV agrees with the Treasurer – first, childcare centre markets cannot do their job if they are not well-designed and well-regulated; and second, that design and regulation must be guided by evidence.

We turn to consider where good evidence comes from

Evidence-based decision-making – how to do it

Australia’s leading work on regulation design says:

“... Achieving regulatory effectiveness...is about understanding each other’s needs and then sharing ideas in the pursuit of risk management strategies that deliver acceptable protection at acceptable cost.”²

CCCAV says that the RIS does not sufficiently understand the needs of childcare centres or of families. The RIS has not yet sufficiently shared ideas in the pursuit of appropriate risk-management strategies. This design defect will (unless the Commonwealth is prepared to use its resources to make all of the problems ‘go away’, or - if that does not happen - unless the necessary analysis is completed) lead to needless regulatory burden and needless costs for parents already struggling to afford

¹ The Hon Wayne Swan MP, Address to Policy Conference – 30 October, 2008 – speech number 042

² Ayres Ian, and Braithwaite John, (1992) *Responsive Regulation – Transcending the Deregulation Debate*, Oxford University Press, p.59.

the entry price to highly regulated services. The proposals will increase risk for many families, not reduce it. Space constraints at many centres mean that the only way such centres will be able to meet the new staffing requirements is by not increasing staff numbers or by reducing the number of places for under-threes currently offered. This would reduce safety and quality.

The new Victorian regulations in place since 25th May, 2009 have lead many operators to seek clarification on a previous practice adopted by then DHS, and seemingly back in place, although not confirmed in writing, of assessing the correct numbers of staff for a centre by counting them “under the roofline”.

What is being promulgated by senior DEECD staff is that centres can meet their higher staffing requirements for the under 3 rooms by counting any “excess” staff they may have in an over 3 room EVEN IF these extras do not actually deliver any service in the under 3 rooms.

Senior DEECD staff have advised that it will be “our members choice “to add the extra staff numbers to the under threes rooms as we would technically already comply with the new regulations because of the extra staff in the over 3 rooms.

So, the Government’s ongoing argument for increasing staff ratios in the under threes to achieve higher quality can in fact be overcome on the technicality of having excess staff elsewhere in the service.

The altruism of the new regulations is therefore completely compromised and open to each service to manipulate as required.

In reality services will be required to add the staff numbers to the appropriate under threes room so as not to compromise their “service quality“, as parents choosing the centre for their child will take the simplistic path and go the service which meets the new under threes ratios rather than be party to an explanation by service operators of how the “under the roofline “system works and why they still operate on a 1:5 ratio.

The Government’s costing mischievously presume that centres will apply the “under the roofline “principle to keep costs down something that in reality will not eventuate in a competitive market.

So what does ‘evidence-based’ decision-making look like?

Evidence-based decision-making will satisfy the criteria summarised by the Chairman of the Productivity Commission in his February, 2009 paper, “*Evidence-based policy-making: What is it? How do we get it?*”

The Chairman’s observations are highly relevant. He captures design-principles that we believe have not yet been adequately followed:

“In an address to senior public servants in April last year, the Prime Minister observed that, “evidence-based policy making *is at the heart of being a reformist government*”. Tonight I want to explore why that is profoundly true;

what it means in practice and some implications for those of us in public administration”. (p. 3)

“It is as important that we have a rigorous, evidence-based approach to public policy in Australia today as at any time in our history”.

“COAG’s National Reform Agenda embraces much of what is needed – not just the completion of the old competition agenda, but getting further into good regulatory design and the reduction of red tape, efficient infrastructure provision, and the human capital issues which will be so important to this country’s innovation and productivity performance over time”.(p. 2)

“Even in the competition area, rather than further deregulation, we are confronting the need for regulatory refinements which are quite subtle and complex to assess. In the new agenda to do with enhancing human capital, complexities abound”.

The Chairman summarised the “essential ingredients”:

“For evidence to discharge these various functions ... it needs to be the right evidence; it needs to occur at the right time and be seen by the right people. That may sound obvious, but it is actually very demanding”.

CCCAV says the right evidence has not been collected or shared with the right people in the right way, and, to demonstrate why, we now explore the principles underpinning the 2007 COAG Best-Practice Regulation Guide.

The Nature and Extent of the Problem to be addressed Needs to Be Clearly Identified

It is a good idea to know what we are trying to fix.

Current regulations are being reviewed for three key purposes -- to address duplication between Commonwealth and State regulation; to consider ways to improve the sector governance, especially through possible national mechanisms; and the staffing and qualification proposals, based on the claim that increasing staff or qualifications will necessarily improve quality.

In relation to the staffing and qualification proposals, the RIS does not address the question – what is the problem to be solved?

The RIS *assumes* problems with service-quality, and then suggests that such ‘problems’ are caused by existing staffing and qualification standards, and then vaguely claims that the research evidence somehow justifies increasing staff numbers or qualification. In doing so, incredibly, the RIS contradicts the evidence contained even in the COAG cost benefit analysis. (See Access Economics, p. 21-24.)

Available evidence confirms that service-quality is good. That evidence should have been included in the RIS.

Even when existing quality is good, it makes sense to explore whether that good-quality might be improved, and how. But that must acknowledge existing levels of quality, and where ‘quality’ comes from.

The RIS should have proceeded on the basis that theoretically desirable increases in standards need to be analysed in light of existing problems, including with affordability, space constraints, and existing staff shortages. Those are the root causes the analysis needs to investigate, to see whether there are ways to overcome them, and overcome them in ways that create improvements and avoid harm.

Furthermore, the RIS fails to explore what the research evidence clearly demonstrates is the most appropriate option for improving the key quality driver – that is – improving in-service training and professional development for all staff, instead of assuming that higher qualifications means higher quality.

To help us demonstrate how best-practice regulation principles are supposed to be *applied*, we refer to be essential ingredients from the Productivity Commission Chairman’s speech.

‘Half the battle is understanding the problem. Failure to do this properly is one of the most common causes of policy failure and poor regulation.’

Applying that sentiment to this RIS, what we find is that, instead of carefully assessing genuine options, the RIS is designed to confirm somebody’s pre-existing position.

CCCAV agrees that it is appropriate for governments to be concerned with improving service-quality. The issue is not *whether* to pursue quality-improvements – it is *how*?

That analysis of the best way to achieve the desired outcomes, when it happens, needs to be based on a *proper* understanding of risk, a *proper* understanding of the existing regulatory framework, a *proper* understanding of likely cost and other impacts on children, families, jobs and centres.

CCCAV believes that, unless the Commonwealth can use its resources to manage these potential problems, the proposals on staffing and qualifications cannot safely proceed until that analysis has been properly undertaken. That is the particular message that we ask the Steering Committee to take to COAG.

Good Data Is a Pre-Requisite

The RIS analysis of potential impacts on affordability for parents is incomplete. We explore this aspect more fully below.

The RIS does not address a more important issue – the possible reduction number of places offered to children aged under three. We explore this aspect more fully later in the submission.

Even if the Commonwealth is willing to increase parent subsidies, it will want soundly based estimates of what the cost impacts are likely to be; in short, proposals based on proper evidence and proper analysis.

Real evidence is open to scrutiny.

The Productivity Commission Chairman observes:

“Transparency is absolutely vital. No evidence is immutable. If it hasn’t been tested, or contested, it can’t really be called evidence. Transparency means opening the books in terms of data, assumptions and methodologies”.

Much of the so-called evidence in the RIS has not been contested. The proposals should not proceed until this contest has been conducted.

The various matters that should be contested are explored throughout this submission.

A Receptive Policy-Making Environment Is Fundamental -“An evidence-based approach requires a policy-making process that is receptive to evidence; a process that begins with a question rather than an answer, and is willing to properly investigate”.

This RIS did not satisfy this ‘essential ingredient’. It started with answers not questions.

As the Productivity Commission Chairman notes:

“The ongoing struggle to achieve effective use of regulation assessment processes within governments...tells us how challenging that can be to implement. These arrangements require that significant regulatory proposals undergo a sequence of analytical steps designed firstly to clarify the nature of the policy problem and why government action is called for, and then to assess the relative merits of different options to demonstrate that the proposed regulation is likely to yield the highest (net) benefits to the community....That their documentation in a regulation impact statement has proven so difficult to achieve, at least to a satisfactory standard, is best explained by a reluctance or inability to follow good process in the first place”.

The Chairman’s comments describe this COAG process. There is no clarity about the nature of the policy problem in relation to quality, or why further government action is called for, and no proper assessment of relative merits of appropriate options.

Consideration of all options, with the impacts (costs and benefits) of a regulatory proposal carefully assessed (and quantified where possible) for different groups within the community, as well as for society as a whole.

The impact of government action should be properly understood by considering the costs and benefits of a range of options.

The key components of determining the impact of government action include:

- developing viable options,
- assessing the impact of options,
- developing a plan for implementation.

Everyone is agreed – appropriate regulation is undoubtedly required. But that is not the point. The point is - ‘what is the most effective and efficient option?’

The RIS does demonstrate that the cost impact of the staffing and qualification proposals will be significant.

But the RIS has not come close to understanding the full magnitude of the costs and the impact on parent affordability.

CCCAV is not equipped to do that analysis by itself, especially in the limited time available. Two months was totally inadequate. Arbitrary time limits can’t be more important, taking the time and trouble to get the regulatory decision-making right.

What follows will give decision-makers a sense of what the issues are, and why the analysis of staffing and qualification impacts is incomplete.

Wrong Assumptions, Wrong Predictions, Wrong Proposals

CCCAV is very concerned that the design of the baseline data proceeds on a mistaken understanding of how Victorian centres work because:

- CCCAV is very concerned that the Victorian RIS was incorrectly costed. We estimate additional costs of \$13-15 per child per day above theirs of \$4.16. The Access Economics Table 5.1 looks wrong. We know it has seriously overstated the existing number of operators operating at 1:4 in the 0 – 24 months and under threes age-groups;
- the Victorian RIS incorrectly assumed there will be no increases in wages for currently so-called ‘unqualified staff’. The Children’s Services (Victoria) Award 2005 Wages and Classification Structure establishes different pay rates between ‘Certificate III’ and ‘Unqualified’. For example, the pay rate for ‘unqualified’ staff in their second year is \$15.24. The hourly rate for someone with a Certificate III is \$2.14 more - \$17.38;
- the Victorian RIS did not account for the imminent Award Modernisation impact on wages; Local Government legislation regulating staff and children’s numbers independently of the State’s Children’s Services regulations.
- Victorian families are yet to face significant childcare fees rises to meet the new Victorian regulations, therefore not transitioned to the required level (equal to Option 1 baseline) yet.

It is incorrect to assume that Option 4 would only cost families an additional \$7.68 (above Option 1) per child per day. Independent costing based on an average 60 place centre predicts that Option 4 would in fact increase families' fees by approximately \$16.45 per child per day.

The COAG review process has not given us enough time to do proper assessment of likely supply impacts. Based on the work we did as part of the Victoria Regulation Review process, CCCAV predicts a 20% reduction for places for under-threes. That equates to a loss of approximately 20% of 36,000 places, namely 7000 places.

We think this is an example of a larger problem. We suspect that the Access Economics analysis proceeded on the same mistaken basis used as part of the Victorian regulation review. The RIS costings are obviously too low. No final decisions can be made until proper evidence has been properly considered in relation to cost impact on parents at a centre level, not at the National level used by the consultants, and not using aggregated, average data.

Other costs not properly accounted for in the baseline data are price rises associated with the recent changes in Victorian regulation. We explore some of these matters in further detail below.

Wrong Assumptions about Industry Practice

The COAG cost/benefit analysis makes an invalid assumption about industry practice in Victoria. It proceeds on an assumption that that current practice significantly exceeds the minimum standards set out in the current regulations in a number of areas, notably including staffing ratios.

This is a seriously overstated position. Certainly some operators exceed current regulatory requirements, but to label it as 'industry practice' is wrong; this has led the RIS modelling into grave error, seriously underestimating the cost impact, and thus the price impacts for parents, not to mention job impacts for staff, or workforce participation impacts for parents.

The incremental costs identified are significantly smaller than would be the case if the analysis had been based on a comparison of the costs of compliance with the existing regulatory requirements and the cost of compliance with the proposed regulations.

The cost estimates are *substantially lower* than would be the case if the impact of the proposed regulations were compared with the current regulatory minima.

Wrong assumptions about impact on demand for or availability of childcare places

The model also seems to assume that the expected increases in fees due to the cost increases imposed by the regulatory changes do not lead to any reduction in demand for children's services.

CCCAV seriously doubts the validity of that assumption, but even if the RIS assumption about demand is justifiable, it totally ignores the reality that there are other practical reasons why the supply of places for under-threes is at serious risk.

That reduction in supply is a serious problem in its own right. It is also a serious problem for the parents lucky enough to retain a place for their under-three. Higher costs will now have to be paid by a lower number of parents. The cost and price implications for that lower number of parents have not been modelled. To implement the proposals before understanding those impacts (and designing appropriate protective strategies) would be unwise, unfair, and in breach of democratic and legal principles laid down by the Victorian Parliament in the Subordinate Legislation Act. Those parliamentary principles are inherent in the COAG best-practice regulation principles.

Many centres will be forced to reduce the number of under three places, especially those centres subject to the ‘space constraints’ described elsewhere in this submission.

The nature and extent of the reductions; appropriate options for managing that obviously unintended consequence; analysis to determine the best option – all need to happen *before* the proposed staffing ratio is implemented.

The modelling misunderstands the capacity of centres to transfer children between age-groups. It seems to assume that the reduced number of under three places will be somehow balanced out by an increase in the number of three-and-over places, thus leaving the overall number of places at each centre unchanged. This is not a correct formulation. Even if it was, it completely misunderstands the importance of *avoiding* a reduction in places for under threes.

There are many other areas where we believe the analysis is incomplete or based on incorrect assumptions.

We have not had sufficient time to analyse these in-depth. What follows flags the further work that is required.

Impact on Available Places for Under-Threes

Understanding cost impact is only one of two major tasks. The second major task which the RIS must investigate is the impact of the proposals on the availability of places, especially for children aged under-three.

Many centres will be able to comply with the proposed staffing requirements only by reducing the number of places they currently offer to children under three.

Reducing the number of existing places is, surely, not a policy objective.

This reduction in places comes about as a result of what can be termed ‘space constraints’.

An important space constraint that should have been modelled is that, in many LGA Shires and Councils planning requirements, extra staff will be able to be accommodated only if extra car parking is available. But there will be instances where extra car parking is not available because it does not exist.

At a recent Victorian departmental presentation, representatives acknowledged that the issue would have impact on services.

CCCAV predicts that many existing childcare centres will need to be afforded existing-use rights in order to be able to continue to operate.

Our predictions about the nature and extent of the space-constraint problem, and how to manage it if it exists, are, in one sense, premature. Before we start designing the best options to solve the problem, we need to know more about the various proposals and how they will impact.

That is what an RIS is supposed to do.

Staffing proposals should not proceed until this analysis has been done. The stakes for children, families, centres, and government are too high to allow for ‘regulating first and asking questions later’. This is exactly why Parliament requires careful decision-making for subordinate legislation, and why *proper* compliance with the COAG Best Practice Regulation Guide is essential.

Other areas needing proper analysis:

1. There is uncertainty about staffing requirements. The fundamental issue concern is the Victorian Department will apply staffing ratios on a per-group and per-room basis, or whether it will revert to its previous practice of enforcing it on a per-centre basis. Expressed in terms of sector terminology, it is unclear whether the proposed regulations will be enforced on an ‘under the roofline basis’, or on some other basis. Recent member meetings have been told by the Department that the intention is to enforce the regulations on an ‘under the roof line basis’. The sector is having trouble getting written confirmation of that undertaking.
2. There is uncertainty about employing staff aged less than 18 years. A particular problem is the confusion about whether ‘Working with Children’ checks are needed or are available. This legal uncertainty needs to be resolved before introducing the proposals. In other words, it should have been properly considered as part of the RIS.
3. The RIS does not appear to have understood the current staff shortages. The nature of the shortages, and the best options for managing the problem, need to be thought about. That discussion needs to include the sector that provides 75% of the services.
4. Some of the most effective child-development staff are those staff who start as trainees, get good on-the-job training and go on to further training later. The proposals are likely to make that much more difficult to achieve.

Key principles which have not yet been adequately canvassed:

1. *the significance of the problem to be addressed* – as explained above, the problem, correctly understood, is how to improve good quality, not correct poor quality.
2. *the need for flexibility or certainty* – the proposal that *only* four-year university trained graduates would be acceptable as ‘teaching staff members’ will needlessly reduce flexibility.
3. *the availability of resources and potential burdens* – the regulation impact analysis has not addressed likely impacts of proposals to increase staff at the time of widespread staff shortages.

CCCAV expects strict adherence to the COAG Best-Practice Principles:

- the assessment of costs and benefits is incomplete,
- financial, economic, social and environmental impacts have not been identified,
- the inadequate analysis means that the staffing and qualification proposals are not yet based on achieving the greatest net benefit to the community.

No regulatory proposal should restrict competition unless it can be demonstrated that the benefits outweigh the costs, and the objectives of the regulation can only be met by restricting competition.

Competition restrictions resulting from the proposals have not been adequately identified or justified. Why have family day care services and outside school-hours services effectively been excluded from changes to staffing and qualification requirements? And what are the competition effects of such exclusions?

How can purpose-built and intensively regulated centre-based premises and equipment be subject to more intensive regulation when home-based operations are not?

Consultation should inform regulatory development

This ‘second stage’ of the COAG process is the beginning of effective consultation. Now consultation needs to be completed and then that consultation must inform the development of proposals.

Policy Implications of Research

CCCAV accepts the broad associations demonstrated by the research described in our attached submission. We do not accept any claim that says the research demonstrates that current Victorian staff/child ratios are inadequate, and therefore need to be changed to ensure adequate levels of quality. There is no evidence to say that one to

five ‘bad’, one to four ‘good’. In fact, the Access Economics analysis makes this very point very clearly.

The adequacy of current ratios should not stop the search for ways to increase service-quality, commensurate with maintaining accessibility and affordability.

But theoretically desirable increases in staffing cannot be allowed to happen at the expense of the children and parents likely to be excluded on the basis of cost or availability of places. The challenge for all of us concerned about improving the well-being of children and families is to find a sustainable balance between affordability and accessibility, while continuing to look for quality-improvement.

Finding that optimal balance is exactly why proper regulatory decision-making process is necessarily required: - to understand what we are trying to fix, and to understand the best option for moving forward.

CCCAV is concerned that the RIS does not faithfully reflect the findings of the Access Economics analysis.

Manage complexity by putting the needs of child and parenting first

As we said at the start of this submission, looking for ways to improve Victoria’s complex regulation is itself a complex job.

We have argued that such complexity should be tackled by understanding and then applying the right principles and the right decision-making methods – especially evidenced-based decision-making.

Our submission considers those principles and explains why evidence based decision-making requirements have not been sufficiently complied with.

We now want to acknowledge that policy and regulation decisions are based on more than ‘evidence’.

To help us explain this point, we again borrow from the words of the Chairman of the Productivity Commission:

“It is clear...that decisions will typically be influenced by much more than objective evidence, or rational analysis. Values, interests, personalities, timing, circumstance and happenstance – in short, democracy – determine what actually happens”.(p 4)

CCCAV does not know which blend of ‘government’ and ‘market’ works best.

We say that there is no magic regulatory formulation that will always work best in all circumstances.

But that is the very reason why there needs to be a proper assessment of those circumstances.

Within that search, we accept that judgments about what is ‘best’ ultimately depends on contestable beliefs, values and experiences.

What we also know is that, in trying to manage those complexities, government often finds it difficult to give proper weight to the perspectives of the child and the perspective of parents, firstly as parents and secondly as workforce participants.

We accept that, even if all of the required evidence had been gathered and analysed, there are still value judgments to be made.

But we are saying that those value judgments should be made on the basis of adequate evidence and analysis.

The Productivity Commission Chairman puts this idea in the following words:

“But evidence and analysis can nevertheless play a useful, even decisive, role in informing policy-makers judgments. Importantly, they can also condition the political environment in which those judgments need to be made.”

We repeat, even when all the required evidence including proper evidence of and analysis of risk and cost, value judgments will still be required.

We say those judgments need to approach the task, first from the child’s perspective, then from the parenting perspective, then from the parent perspective, and then from whatever other stakeholder perspective is relevant.

Our submission tries to come from the perspective of child and parent. For instance, CCCAV accepts the need for ongoing quality-improvement, and that increased costs, by themselves, are not necessarily a reason to prevent changes.

But hoped-for improvements must not be allowed to come *at any cost*.

Well-intentioned changes, we say, must not be introduced if there is a reasonable risk that such change will worsen outcomes for the child, and for the parent, and for other stakeholders – in that order – putting the child’s interest first.

The key point we try to make in this submission is that, unless the Commonwealth agrees to use its resources to eliminate the potential problems, the risk of potential harm to child and parenting is too high. It is too high, we say, partly because the safe level of evidence-gathering and analysis has not yet been reached, especially in terms of assessing risk (the loss of places), and in terms of cost, and in terms of needless paperwork (meaning lesser-quality interaction between child and adult), and also less affordability and less accessibility which in turn leads to increased risk (with parents being forced into higher risk but lower cost childcare options).

CCCAV members live with the affordability struggle which parents live with.

That struggle with affordability needs to be respected by decision-makers. However, we do not say that ‘because costs might go up, therefore change nothing’. To adopt a ‘do nothing’ approach would *overweight* affordability concerns.

We say to decision-makers, do not *underweight* the affordability issue either.

Making judgments about what weight to give to affordability is, we say, best done with a proper appreciation of ‘what happens now’, and a proper appreciation of what we are trying to achieve. The weight one might give to cost impacts (and thus affordability and accessibility and thus risk to child) should depend on what problem we are trying to solve or improve.

If the problem is that centres have poor quality or safety, then the public would expect and demand changes, to some extent regardless of cost impacts.

But that is not a fair characterisation of current Victorian centre’s risk-management practice.

CCCAV believes that centre risk-management is generally well managed. We base that view on the track record.

That does not mean we say ‘don’t look at improving it’.

Our position is that, unless the Commonwealth removes these risks by agreeing to do whatever is needed to remove potential problems with affordability and staffing, the regulations should not be changed without doing enough evidence-gathering and analysis to understand what the risk profile actually is.

We ask for a proper consideration based on proper evidence gathering and proper analysis, in short, proper regulation risk-management.

We push that because inadequate regulation-making risk-management might itself result in harm to child and parent because of unintended consequences flowing from inadequate evidence gathering and analysis.

Summary

Proper analysis of proper evidence will reveal options for improving quality which are more cost-effective than proposals to raise staff or qualification requirements. We believe these alternative proposals are also less likely to cause unintended harm to the children and families. These better outcomes centre around empowering parent customers with improved information and by focusing much-needed increases in spending on things that will enhance the capacity of staff to improve (already good) staff-child interaction skills.

The Commonwealth can elect to spend enough to overcome affordability and staffing problems. A Commonwealth commitment to do so means that the sector would be a position to explore all of the proposals.

Failing that Commonwealth commitment, however, none of the proposals can be properly responded to at this stage given the absence of sufficient information to know how the proposals will impact in practice.

The proposals, as worded, are at risk of:

- Reducing safety, by creating more risk, not less, by needlessly forcing up fees and thus excluding families who already struggle with the cost of high-quality. The risk is that families will be forced into unregulated, higher risk options because they are cheaper.
- Adding needless cost, for parents, and for governments.
- Adding needless complexity for staff, and wasting even more of their time better spent with children.
- Risking staff jobs and parent participation.
- Undermining government economic policy goals – productivity and participation

These unintended consequences reflect a process which is not yet based on enough good evidence and enough analysis.

Unintended consequences can be safely avoided only where the proposals have been properly analysed in the light of all available evidence.

In particular, that evidence needs to include:

1. a proper assessment of risk in the Victorian centre-based sector,
2. a proper assessment of likely cost impacts for Victorian parents,
3. a proper assessment of the competition effects of effectively excluding all service-types-except childcare centres-from staffing and qualification proposals.

Well-meaning proposals to lift service-quality might end up reducing it, thus damaging the children and families all parties are trying to help, as well as damaging jobs, parent workforce-participation, Australian productivity, and childcare centres themselves.

These evidentiary matters can be tackled.

It makes sense to consider how increasing staff or higher-level qualifications might improve already good service-quality, but that inquiry must not be blind to what exists now, and what the likely cost and supply impacts will be. The inquiry must be fair to existing staff, to child and parent customers, and to existing centres.

Until those matters are dealt with, however, it would not be safe for the staffing and qualification proposals to proceed.

A proven way to improve already good quality is through better regulation decision-making. The issue is not whether centre regulation is needed, but how to improve the quality of that regulation. The objective is not ‘more regulation’ – it is ‘better-quality regulation’.

Good-quality, well-designed regulation must be guided by the correct principles and be based on sound evidence. ‘Regulating first, and asking questions later’ can’t be risked when children, families, and jobs are on the line.

The Review should not try to fix what is not broken. Service-quality in centres is demonstrably good. Victoria should be looking for ways to improve already good standards, being careful not to do more harm than good to children and parents by reducing quality rather than improving it, by forcing parents from high-quality but higher-cost centres into lower-quality but cheaper alternatives.

Barriers to be overcome include: needless harm to affordability; needless loss of thousands of under-three places; making chronic staff-shortages worse; making poor coordination between Victorian and Federal governments worse, undermining Australia’s effective and successful partnership between government and child care market.

Higher qualifications and more staff will increase cost but may not increase quality. Attempting to lift quality through qualification and staffing changes may reduce quality, reduce supply, reduce child and parent participation, increase costs, worsen existing labour shortages, eliminate or de-motivate competent teachers, reduce parent workforce-participation, reduce productivity, and undermine a well-functioning open and competitive marketplace by weakening market incentives rather than strengthening them.

The proposals wrongly presume that ‘qualification’ equals ‘competence’. The quality of learning is more associated with the quality of teachers (and management) rather than with their qualifications.

Victoria’s qualifications are already ‘better’, based on international comparisons. Victoria’s high standards do *not* mean that we should not look for ways to improve them. But that search needs to be fair – to all children, parents, and to existing employees and existing operators.

Degree-qualified and TAFE-qualified staff should not be seen as an ‘either/or’ choice. Learning methods in 0-5, play-based, parenting-connected centres succeed because of teamwork, with members having different tasks and roles requiring a mix of different competencies. Imposing formal-school methods, and inflexible management practice, is heading in exactly the wrong direction.

Decision-making is unfinished - because evidence gathering is incomplete. Because it applied wrong assumptions when assessing impacts of staffing and qualification proposals, the RIS is based on modelling which:

- Underestimates Victorian price and affordability impacts – because modelling reflects a wrong understanding of how most Victorian centres operate, particularly in relation to staffing numbers and centre configuration,
- Did not model likely serious loss of baby places – because it wrongly thought that all centres would be able to accommodate increased staff numbers, and that all centres would be able to accommodate more children in different age-groups,
- Wrongly assumed that Certificate III staff are paid the same amount as so-called unqualified staff,
- Wrongly assumed that salary on-costs are 11%, instead of 25%,
- Misunderstood likely restrictions on competition flowing from the imposition of more stringent standards on centres but not on their competitors in family day care and other sectors,
- Misunderstood research on child-staff ratios, and on qualifications, and on the main driver of service-quality,
- Wrongly assumed that the problem with supply is undersupply, when in fact the problem is oversupply, in most locations and for most age-groups,
- Misunderstood the nature and extent of existing staff shortages, and thus failed to model appropriate workforce planning strategies. Instead of encouraging traineeships, the proposals will discourage the entry of staff

Failure to base decision-making on sound evidence, and failure to share the right information with the right people at the right time results in staff and qualification proposals that are unsafe:

- The decision-making wrongly assumes that existing service-quality is poor, and then wrongly assumes that the solution to that imagined problem is more staff and higher staff qualifications, based on an inadequate and incomplete understanding of the research on child-staff ratios and on the effect of changing qualification requirements,
- Instead of looking for the right answers to the right problems, the RIS started with answers, and then looked for evidence to support that pre-existing position.

Those decision-making inadequacies result in proposals which:

- Unduly trespass on the rights of existing children, parents, staff, and providers,
- Make those rights unduly dependent on Departmental discretion,
- Are inconsistent with the principles of justice and fairness,

- Will result in operational uncertainties requiring ongoing explanation as to intention – in particular in relation to minimum staffing levels, and general layout of centres,
- Will result in unintended consequences which in turn will mean that costs will outweigh benefits.

Solutions

- The Commonwealth can, in theory, remove potential problems by spending ‘as much as it takes’ and granting ‘as much time as is needed’ to protect against - affordability, staff continuity, staff training, and all other associated problems.
- If the Commonwealth is not in a position to solve problems in that manner, then staffing and qualification proposals, will need to be properly explored in accordance with COAG Best-Practice Regulation Principle.
- Concentrate on the most important quality drivers – including by investigating improved In-Service and other professional development methods.

CCCAV appreciate the (limited) opportunity to comment on the proposals. COAG proposals to spend money trying to improve quality and governance are worth doing.

Extremely important objectives are at risk of not being financed by the Australian taxpayer because, as proposed, the spending targets are not supported by the research evidence.

All child development and parent support stakeholders have got to take as much time as it needs to ensure that extra investment is secured. That means making sure that the investment will be targeted efficiently. That means good quality regulatory decision-making. That means evidence-based policy making, not policy-based evidence.

CCCAV members want to be involved in the design-thinking around this fantastic opportunity.