



CHILD CARE CENTRES ASSOCIATION OF VICTORIA INC.

Submission
on
PROPOSED CHANGES
TO THE
FOOD ACT

Doc/Date: 3 September 2008

By Email: foodreview@dhs.vic.gov.au

Background

Child Care Centres Association of Victoria, on behalf of our members, their staff, and the many thousands of families served in member centres, is pleased to offer its comments in response to the July 2008 Consultation Paper dealing with proposed changes to the Food Act, 1984.

The Food Act regulates the sale of food in Victoria to ensure that food is safe and is suitable for human consumption.

In September 2006, the Government commissioned the Victorian Competition and Efficiency Commission (VCEC) to inquire into the nature of compliance and administrative burdens of food regulations on businesses, consumers and the not-for-profit sector, and the opportunities for *streamlining regulation* whilst still meeting the objectives of current regulation.

Following a consultation process, VCEC released a final report in September 2007 containing a range of recommendations to change the statutory framework governing food safety, as well as proposing changes to the practices of local government councils, and to clarify the role of the Department of Human Services.

The July 2008 Consultation Paper identifies areas where the Government wants to introduce amended legislation, and explains the proposed amendments to help those affected to comment on the proposals.

We offer the following general comments and then comment on specific matters.

General Comment

CCCAV commended the VCEC work. Their 2006 report suggested, amongst other measures, a general streamlining, as well as a simplification of Food Safety Programs.

Despite that general commendation, our submission and consultations flagged reservations about a number of the VCEC conclusions, and about some of the directions they were proposing.

CCCAV supports the VCEC and the Victorian Government commitment to the development of best-practice regulatory regimes. We support the Government's *Reducing the Regulatory Burden* initiative which seeks to reduce the regulatory burden by cutting red tape for business and for the not-for-profit sector, and to develop new approaches to lower regulatory compliance costs.

CCCAV is disappointed that the current proposals will not achieve those great objectives, at least not for the regulated childcare centre sector. We are concerned that some of the proposals could make regulatory duplication worse rather than

better, add to rather than reduce needless cost, and increase rather than reduce the amount of time currently wasted by centre operators and staff.

We note with great concern and disappointment that, not only has the Consultation Paper ignored important facts the sector put before the VCEC, but also that the Government seems prepared to make regulation easier for food classes who have (compared to regulated childcare centres) a poor track record when it comes to food borne incidents and/or illnesses, whilst continuing to ignore:

- the childcare sector's unblemished record in managing food safety risk,
- our unblemished record with respect to food borne incidents and/or illnesses, and,
- the fact that our food risk management practices are already regulated and inspected by two separate third-party government authorities.

Relating the proposals to the objectives

CCCAV fears the proposals fail to satisfy the objectives in the Consultation Paper. We offer three examples:

1. The new risk-classification system for food premises is supposed to produce different regulatory requirements which are *proportionate to activities undertaken* at a food premise. For regulated childcare centres, the proposals, as worded, will produce the opposite result.
2. Another key proposal is supposed to enable regulatory requirements, such as food safety programs and training, *to be linked more closely with the risk profile* of the food business. The compliance requirements for our sector do not match the regulated childcare sector risk profile.
3. A further objective is that, wherever possible, the administrative requirements will be simplified and any unnecessary duplication removed. Instead of removing duplication, the proposals will produce even further duplication for the regulated childcare centre sector. Childcare centres could end up with *same four government regulators, plus more audits*.

We explore these assertions below. Before turning to those, we offer the following general observations.

Proper risk-management depends on proper risk assessment

As a general proposition, the level of regulatory burden and compliance imposed on any Food Class must be commensurate with the level of *actual (and documented)* risk.

The proposals are not based on that proper risk assessment.

Improved regulation of regulated childcare centres must be based on an assessment of actual risk. Instead, the proposals are based on a level of risk that was *deemed* to exist for the purposes of identifying priority areas when the national exercise was done in or about 2002. That 2002 prioritisation was done at the national level primarily for the purposes of reviewing then existing food-safety regulation, in order to confirm the adequacy or otherwise of that existing regulation.

Childcare centres were understandably a high priority, but it is fundamental to this Victorian review process to understand the reasons for that classification.

Childcare centres were classified as 'high risk' because of our vulnerable population, not because of actual risk-management performance, and not because of any known association with food borne incidents and/or illnesses.

Food Safety - Victoria confirms that there is neither documented nor anecdotal evidence of any association between regulated childcare centres and food borne incidents and/or illnesses. If any stakeholder has a different view of our food safety record, then we would like to hear about it.

Regulation-design implications

A correct appreciation of actual risk, of actual risk-management practices and of actual track record, are each fundamental to proper risk-analysis and to the design of proper risk-management strategies.

The Consultation Paper correctly acknowledges this proposition.

The proposals, however, are based on deemed risk, not actual risk.

That distinction between 'deemed' and 'actual' risk has not yet been properly understood, or properly applied, in relation to regulated childcare centres.

The failure to understand and properly apply that distinction has resulted in an incomplete risk analysis.

And yet, this whole exercise is about improving existing regulation.

Improved regulation can't happen by accident.

Good-quality regulation depends on good quality decision-making process.

Good-quality regulatory decision-making must be based on an assessment of *actual risk*.

Any decision-making process that starts with the wrong risk-assessment will produce the wrong risk-management conclusions.

Instead of streamlining and improving the current food safety regulation in childcare centres, the process will (and in our view, has) suggested proposals that are likely to make things worse rather than better, for children, for families, for operators and for governments.

Proposal 1. SAFETY IS THE KEY ENFORCEMENT PRIORITY

CCCAV supports this proposal that the Food Act be amended to clarify that reducing food borne illness and physical harm be “the key enforcement priority for regulators under the Act”.

Regulated childcare centres already have risk-management practices which are demonstrably successful. There is simply no association between our risk-management history and the incidence of food borne illness and physical harm.

In the past, that proven track record has received at least some recognition.

A perverse outcome of this review however, may be that our proven high-quality risk-management record will result in regulated childcare centres having more onerous regulation, more onerous compliance, and more costly audits than other food classes who have demonstrably worse records.

More analysis and consultation needs to be done in respect of regulated childcare centres.

2. ROLES OF MINISTER FOR HEALTH, THE DEPARTMENT OF HUMAN SERVICES AND COUNCILS

Proposal 2: Role of the Department of Human Services.

CCCAV supports the general thrust of this proposal.

However, we would like to revisit these suggestions when our earlier concerns about the proposals have been resolved.

Proposal 3: Role of Councils

CCCAV supports the general thrust of this proposal.

We mention one concern. At the moment, the amount of resources which councils apply to inspection amounts to a de-facto recognition that regulated centres have a good track record.

The proposal to remove mandated council inspections of premises and assessments of food safety programs in childcare centres and giving those responsibilities to the auditors instead may be well-meaning but it is ill thought out.

Also ill-thought out is the recommendation of twice-yearly audits. This will add unnecessary costs to a process that is working well. In addition, we note with concern that councils would still have the discretionary power to visit and to impose further fees.

We would not want the proposals to create needless additional council inspections. Regulated centres do not warrant that attention.

CCCAV has already helped design and implement what has proved to be, since 2000, a reasonably workable mechanism with reasonable frequency of audits.

We cannot understand why this needs to be changed. We cannot understand why the Government would want to increase the complexity and the cost of these inspections whilst not applying the same requirements on those food services who demonstrably pose a higher risk to Victorians.

Proposal 4: Directions power

CCCAV generally supports this proposal. Nevertheless, we would be troubled by its possible operation in practice if the relevant risk assessment referred to above in relation to childcare centres is not carried out.

3. BETTER KNOWLEDGE ABOUT THE FOOD REGULATION SYSTEM

Proposal 5: Performance reporting framework

CCCAV is not able to comment in detail on this proposal. In broad terms, it seems supportable.

Proposal 6: Information about prosecutions

CCCAV supports this as a matter of general principle.

However, we reserve the right to revisit this matter when the required risk assessment has been done for regulated centres.

Proposal 7: Collection of samples

CCCAV supports this in principle. Nevertheless, we would be troubled by the Secretary's discretion to mandate council collections, or to increase the number of food samples collected by councils. There are inevitable cost impacts associated with this. Consideration of these matters needs to follow the risk assessment referred to above.

4. NEW RISK CLASSIFICATION SYSTEM AND REFORM OF REGULATORY REQUIREMENTS

Proposal 8: New Risk Classification System

CCCAV agrees with the principles outlined in this section.

But we say that those principles have not been properly applied to regulated childcare centres.

The consultation paper notes, at page 20,:

“The Government response indicated that the allocation of food businesses to a risk class *should be based on the underlying risk inherent in their activities*. Given this, rather than adopt an approach of moving businesses between risk categories, mechanisms such as altered inspection or audit frequency and capacity to charge for additional inspections will be introduced to address poor food safety performance”.

CCCAV believes the assessment of underlying risk inherent in the activity is what needs to happen in respect of regulated childcare centres.

The trouble is, that assessment has not yet happened and does not appear to have even been considered.

Proposal 9: Requirements for Class 1 (high risk)

For the reasons outlined above, regulated childcare centres should either not be classified as high risk or, if that reclassification is not feasible, then the level of compliance should reflect, and be based on, the underlying risk inherent in the activities of regulated childcare centres.

We note that the consultation paper at page 25 claims that the Australian and New Zealand food regulation ministerial Council in 2003 identified food services to vulnerable populations as being at a high risk of being associated with food borne incidents and/or illnesses.

We dispute this claim. Our recollection is that such food services serving vulnerable populations were not necessarily associated with risk of food borne incidents and/or illness. Indeed, the evidence as we recall it was specifically that regulated centres had no such association. As we understand the evidence, there is no evidence linking regulated childcare centres with food borne incidents and/or illnesses. If anyone has a different view of the evidence, we would like to hear about it.

There is one other element of the classification process that we want to mention.

CCCAV maintains, speaking generally, that regulated childcare centres do not sell food to their customers for the purposes of the Food Act.

It seems to us that the solution is not to argue about the legalities of the definitions in the Act. Rather, the solution is to do a *proper* risk analysis of the *actual* risk-management practices, and actual risk-management history of regulated centres, and then reflect that proven track record in the content of the requirements.

5. SINGLE REGISTRATION FOR TEMPORARY AND MOBILE FOOD PREMISES

Proposal 14: Single registration

CCCAV supports this proposal in principle.

6. IMPROVED ENFORCEMENT

Proposal 15: Enforceable undertakings

CCCAV supports these in principle. We are not a position to comment in detail until the required risk assessment is carried out for childcare centres.

The same comments apply to the other elements of this section.

Concluding comments

Child Care Centres Association of Victoria supports the Government's objectives in reviewing food safety regulation.

But the current proposals for regulated childcare centres need a lot more risk analysis to be undertaken in order to prevent them doing more harm than good:

- As worded, the proposals for making food safety regulation proportionate to activities undertaken will have the opposite result.
- As worded, the proposals will not enable regulatory requirements to be linked more closely with the risk profile and risk-management history of regulated childcare centres.
- As worded, the proposals will worsen regulatory duplication for childcare centres instead of simplifying it.

All of these difficulties can be resolved by widening and deepening the analysis in relation to regulated childcare centres.

CCCAV looks forward to assisting with that more detailed analysis.