berry Cottage childcare and pre-school

Monday 30 October 2023

Ms Gina Cass-Gottlieb
Chair, Australian Competition & Consumer Commission
GPO Box 3131Canberra ACT 2601
By email to mailto:childcareinquirytaskforce@accc.gov.au

Childcare Inquiry 2023

Dear Commissioner Cass-Gottlieb and Childcare Inquiry Task Force

I appreciate I am a day late, but please consider the following submission for your childcare inquiry

It is disappointing that media coverage of ACCC's current inquiry into childcare has failed to alert the general public (and politicians) to the fact that childcare providers across Australia are subject to different laws that significantly impact the cost of providing the service from jurisdiction to jurisdiction. It is a common misunderstanding that there is one single "National law" that applies to all services across Australia. This is simply not the case.

I urge you and the Task Force to properly acquaint yourselves with the significant differences that apply from jurisdiction to jurisdiction (and even within NSW depending on the type of service provider) prior to preparing your final report. If there is to be effective reform of the childcare market across Australia, it is imperative that:

- one set of laws applies to each and every provider and that a level playing field ("level" in terms also of government assistance and government imposts such as payroll tax) does truly exist
- the current advantages/privileges bestowed in New South Wales upon mega-centres/corporate chains (to the detriment of small small family run services like Berry Cottage) are abolished
- the current advantages/privileges bestowed in New South Wales upon not-for-profit services (to the disadvantage of small family run services like Berry Cottage) are abolished

The enclosed papers prepared by the writer touch upon some of the above matters. I urge your team to consider them prior to forming its final position on this important matter. It is imperative the ACCC appreciates that competitive neutrality does not presently exist between providers (not even providers operating inside NSW). It is not possible, for instance, that NSW small family run centres - for decades recognised as being the backbone of the quality childcare in NSW at least - can continue to compete with:

- mega centres who are being allowed to operate at far inferior teacher/child ratios and who are effectively given dispensations on such "quality ratings" factors such as "natural environment", "outdoor space" and "ventilation and natural light", especially for high-rise mega-centres
- "not-for-profit" childcare centres who are not subject to imposts such as council rates and payroll taxes
- "not-for-profit" childcare centres who are now able to effectively offer free childcare/preschool for 4 year olds (because this care is now fully funded by the NSW Government). It is inexplicable that the NSW Government provides this free childcare/preschool for 4 year olds without imposing any sort of means test on the parents. ACCC might already know the Commonwealth's child care subsidy (known as "CCS") is indeed means tested.

Please do not hesitate to call me if you would like any further information.

Kind regards

[redacted]

John Owens LLB (Sydney University) BEc (ANU)
Director, Morschel Pty Limited trading as Berry Cottage Childcare & Preschool

Enclosures:
1. Berry Cottage Summary Letter to Premier Gladys Berejiklian April 2019 (PDF)
2. Berry Cottage Submission to Cth Productivity Commission May 2023 (PDF)

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LETTER TO
NSW PREMIER BEREJIKLIAN
26 APRIL 2019

SUMMARY – NSW'S IRRATIONAL & COUNTERPRODUCTIVE CHILDCARE LAWS

We seek the Premier's intervention to commission – or have her Small Business Minister commission – an independent review of NSW's childcare laws ("**Laws**") to identify how they need to be changed to protect the ongoing viability of small centres and to comply with NSW's Better Regulation Principles.

Some observations in support (refer letter 26 April 2019 for more detail)

1. Small family run businesses provide some 60% of childcare in NSW. They are represented by Australian Childcare Alliance NSW ("**ACA NSW**"). NSW Education (responsible for the content and administration of the Laws) gives ACA NSW just one seat – out of 15 – on its childcare Advisory Group. NSW Education and the community sector take most seats. It is nonsensical to give a body representing 60% of the NSW childcare market a 6% "say" on childcare regulation in NSW.

2. The Laws were enacted pursuant to a 2009 COAG Agreement. The Agreement required NSW Education/interstate counterparts to come up with a consistent national law to assure "Quality" and reduce the regulatory burden on childcare centres. Instead they gave us 1500 pages of laws/guidelines.

3. There is no consistent "National" law. NSW Education refused to accept the "Quality" rules of the other States. It imposed its own rules on elements like teacher/child ratios and core teaching hours.

4. These elements are major drivers of costs: NSW has the most costly childcare laws in Australia.

5. There is no evidence NSW Education's insistence on its own rules for these elements has produced any better outcomes when compared to the outcomes in the other States. In fact, NSW Education accepts that childcare centres in other States operating on the less onerous rules may achieve – and indeed they have regularly achieved – "Quality Ratings" equal to/exceeding the rates achieved in NSW.

6. NSW Education refuses to concede its more onerous rules are not in fact prerequisites to attaining "Quality". But its position is untenable: as a matter of logic, it cannot insist on these stricter "Quality" rules for NSW centres and then accept as legitimate a "National" Rating regime that allows interstate centres to achieve the same Quality Ratings as the NSW centres burdened by the stricter rules.

7. After insisting on such stricter rules for NSW, NSW Education then exempted NSW big businesses from the teacher/child ratio rule. Mega-centres for well over 100 children are now common: they are required to employ no more than the four teachers a smaller centre caring for 80 children must employ.

8. So, NSW Education insists that an 80 place centre operate on a teacher ratio of 4:80 (1:20) but then allows a 160, 240 or 320 place mega-centre to operate on a teacher ratio of 4:160 (1:40), 4:240 (1:60) or 4:320 (1:80). Inexplicably, NSW Education then awards those mega-centres Quality ratings equal to or exceeding those achieved by the small centres with the far superior teacher ratios.

9. NSW Education also provides leniency to mega-centres on the "Quality" indicators "natural environment", "outdoor space", "ventilation and natural light", especially for high-rise mega-centres.

10. NSW Education imposes a level of micromanagement on childcare professionals that would not be tolerated by any other profession. It is illogical for NSW Education to demand childcare centres employ university qualified teachers and then micromanage them as if they were unqualified. *A fortiori* where NSW Education is itself responsible for the quality of the teaching courses and ongoing accreditation.

11. NSW Education rates these teachers/their childcare centres on vague subjective concepts such as "a child's agency [is allowed to] influence events and their world" and "Educators [being] deliberate, purposeful, and thoughtful in their decisions and actions". The serious consequences of breaching the Laws or downgrading a "Quality Rating" demand the Laws be certain/capable of objective assessment.

12. Childcare staff spend 30-40% of their time on red tape tasks that demean their profession and take teachers away from children. These tasks in no way improve the outcomes for children/families.

13. NSW Education rejected the sensible notion adopted in other States that teachers need only attend for core teaching hours. In NSW, teachers must attend "at all times", even sleeping/eating times.

14. In 2017, NSW Planning – relying on NSW Education's case that more centres were needed to match demand shown by centres' Wait Lists – introduced Education & Child Care SEPP making it easier to build centres. NSW Education did not know families place their names on numerous Wait Lists (causing double/triple counting). In fact NSW has a childcare glut; some centres are less than half full.

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29 May 2023

Commissioners Lisa Gropp, Martin Stokie and Deborah Brennan
Australian Government Productivity Commission
Locked Bag 2, Collins Street
East Melbourne VIC 8003

Dear Commissioners

Inquiry into Early Childhood Education & Care ("ECEC") in Australia

Thank you for the opportunity to make a submission to this inquiry.

We note the following from the Treasurer's Terms of Reference for this inquiry:

> *The Commission has been asked to make recommendations that will support affordable, accessible, equitable and high-quality ECEC that reduces barriers to workforce participation and supports children's learning and development.*

Introduction

In making this submission we note the Commonwealth has no apparent constitutional power to make laws with respect to ECEC. But it does have extensive funding powers through which it can effectively require the States and Territories to take actions needed to achieve various desired outcomes in the public interest.

Given the following summary of how the States and Territories ignored the sound principles agreed upon in the *2009 National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care*[1] ("**National Partnership Agreement**"), it is imperative the Commonwealth be more vigilant in exacting compliance with all current and future ECEC funding (and associated) agreements.

Indeed, if the Commonwealth is to have any hope of bringing about the reforms needed to guarantee ECEC of the type mentioned in the Terms of Reference, it must take responsibility for drafting the new set of truly "National" rules that are so sorely needed. Consider this: the current State and Territory ECEC laws were introduced after various COAG agreements were signed in Brisbane in 2009. The National Partnership Agreement was critical: all States and Territories (and the Commonwealth) agreed on a "National Quality Agenda" to be introduced to bring consistency to – and raise the standards of – ECEC across Australia. This agreement effectively required the States and Territories to introduce a single "National" law that would:

- improve the efficiency and cost effectiveness of the regulation of ECEC services (cl.16(d));
- reduce the regulatory burden on ECEC services (cl. 16(e));
- ensure the system will operate in a transparent, accountable, efficient, effective and fair manner (cl.l7(a));
- ensure ECEC services have certainty about the regulator's requirements (cl.17(b)); and
- ensure the regulatory requirements are consistent across Australia (cl. 17(c)).

In defiance of these sound directives, we ended up with some 1500 pages of convoluted and hopelessly subjective provisions that differ across jurisdictions and that to this day bury staff and management in counterproductive and costly red tape. They subject ECEC professionals to an intolerable degree of micromanagement, a major factor in causing staff and management to leave the sector in droves. One cannot have a quality ECEC sector without a core of dedicated and motivated professionals. A recent survey conducted by the United Workers Union found the top reason educators wanted to leave the sector was "Excessive workload and insufficient time to provide quality early childhood education and care".[2]

[1] See https://federalfinancialrelations.gov.au/sites/federalfinancialrelations.gov.au/files/2021-01/national_qual_early-chood_educ_np.pdf
[2] See https://bigsteps.org.au/wp-content/uploads/2022/08/the-crisis-in-early-education-uwu-report.pdf

A new legal framework that respects educators and reduces costs of delivering ECEC

So as to better appreciate what it is that ECEC professionals do each day and to then better appreciate the ruinous impact the current regulatory framework is having on them, we ask that the Commission consider the following excerpt from the writer's letter to former Premier Perrottet of 2 September 2022[3]:

> *I have spent countless hours with these professionals discussing their administrative burdens. I have watched them: • interact with/guide the children in reading, maths, science experiments, musical instruments, dancing, hopping, throwing balls, climbing ropes and obstacles, teaching chess • deal with tantrums • change nappies, prepare & serve food (knowing which children have allergies) • clean up food and vomit, wash clothes • with clockwork precision, put children to sleep at different times/wake each one as per parent instructions • with clockwork precision, take temperatures and administer medicines • communicate daily with parents and help create a support network. And against the impossible noise, they somehow keep their composure: dealing with each child as if they were the only child in the world. What they do is extraordinary.*

Quite apart from the elements mentioned in that letter to the former Premier, the fact is that no tertiary qualified professional – and certainly not one bound to continue their own professional learning under the auspices of a body such as NESA (NSW Education Standards Authority) – should ever be micromanaged to an extent that makes them think their years of study and ongoing training count for nought.

The current laws need to be changed urgently to remove these ruinous features and to lift the administrative burden that is undermining the ability of our ECEC professionals to interact with and teach the children. They chose their profession so they could educate and care for children: not fill in forms for some grand experiment on measuring education outcomes.

Apart from securing a dedicated workforce, the other main challenge for the Commonwealth will be to formulate a new set of rules that will reduce the costs of delivering ECEC. It is not rational to think the Commonwealth can keep allocating taxpayer funds to help families pay ECEC fees without changing the laws that guarantee the costs of delivering the service will keep rising.

The position is particularly troubling in NSW where NSW Education demanded its own set of more onerous rules on critical elements like teacher numbers, core teaching hours and staff ratios. Contrary to popular belief, there is no single "national" law that applies across Australia.

A proper search for solutions will require the Commission to apply a cost benefit analysis to every aspect of the current laws, including the sacred cows of required staff qualifications (especially during the ongoing crisis in the supply of qualified staff); mandated staff/child ratios (especially in the year before school); and the numbers of – and hours of attendance required of – teachers (in NSW, teachers currently need to attend even when no teaching is taking place e.g when the children are sleeping).

NSW Education's insistence on these onerous rules sees NSW families – already burdened by the country's most expensive real estate – having to pay the country's most expensive ECEC fees. There is no evidence these tougher rules have brought about any improved outcomes for NSW children (compared to the outcomes achieved elsewhere). It should also be noted that NSW families receive the same amount of the Commonwealth's childcare subsidy ("**CCS**") as that received by families in the "cheaper" jurisdictions.

Thankfully, the NSW Small Business Commissioner and NSW Productivity Commission in late 2022 released reports identifying the costs of these onerous NSW rules. We urge the Commission to study them:

- https://www.smallbusiness.nsw.gov.au/sites/default/files/2022-09/220926%20-%20Final%20-%20Childcare%20report.pdf
- https://www.productivity.nsw.gov.au/sites/default/files/2022-12/20221207-evaluation-of-nsw-specific-early-childcare-regulations-nsw-productivity-commission.pdf

[3] The letter – which supported the "ECEC strike" organised by the United Workers Union and called for an independent inquiry into NSW's current ECEC laws – can be found here: https://michaelwest.com.au/childcare-owner-to-join-early-childhood-strike-amid-staff-crisis/.

Time to consider offering families a tax deductible basic "childcare only" alternative?

Unless the Commonwealth can break the upward spiral in ECEC fees, some might call for the laws to be changed to allow families to choose between the current expensive "bells and whistles" service of "care and education" and a more basic – much cheaper – service comprising "care only". Current laws effectively consign all families to pay for a "bells and whistles" service of care and early education or none at all. No choice is given to families wanting a more basic – much cheaper – "care only" service. As problematic as a two-tiered ECEC sector would surely be, we mention this possibility out of completeness.

Any calls for allowing a more basic "childcare only" service might logically be accompanied by calls for the Commonwealth to accept that this basic "care only" fee then be tax deductible for working families. The issues have been the subject of great debate in Israel after its Supreme Court accepted that a lawyer's childcare fees (after stripping out the education component) were indeed deductible.[4] Although the Israeli Government quickly passed new legislation to reverse the effects of the decision, the Court's decision is thought provoking. And this statement in particular from the concurring judgment of the Deputy President Justice E. Rubenstein in favour of Ms Peri's case would surely resonate with many across Australia:

> With all due respect, I concur with these last comments, and personally, I cannot understand the claim that recognizing the deduction would not encourage women to work - or couples to work. I have no doubt that, looked at from a broad perspective, it would provide that kind of encouragement, and to me, this appears as clear as day.

Some suggest Australian families would be worse off under a tax deduction scheme. If that be true for lower socio-economic groups, they should continue under the current CCS scheme. But if this be true for high socio-economic groups, might there be an argument the current CCS scheme is too generous for them? In any event, it is difficult to defend a system that allows businesses to deduct the costs of a Lear jet and investors to deduct costs of financing stock trading whilst disallowing a mother the costs of childcare so she can work.

The need to target ECEC funding to better help lower socio-economic groups

The Commonwealth's current CCS scheme is means tested and restricted to those who meet Australian residency rules. Given the profound disadvantages that continue to be experienced by Australia's lower socio-economic groups, why does the Commonwealth then allow the States and Territories to allocate ECEC grant funds (such as the "Start Strong" grants) without these restrictions?

Does that promote a targeted and sustainable use of a government's scarce resources? We do not understand why the Commonwealth is not insisting the States and Territories follow its lead in pushing assistance to those who need it most: namely, those in our society who simply do not have the means to afford ECEC services without government assistance. Not only would that better reflect the egalitarian principles that underpin Australian society, it would ensure a better return on the Commonwealth's investment in ECEC.

And is it appropriate that local community centres – having no access to families' income information – are unable to preference families from lower socio-economic groups? It is imperative the Commonwealth be able to pass on to all State, Territory and local governments the information they need to better target ECEC assistance to lower socio-economic groups.

We appreciate every child – regardless of their parents' income level – has a right to quality early education. But surely the task for the Commonwealth is not to attempt to satisfy all perceived "rights" but rather to design a system that is affordable, sustainable and fair in a society witnessing alarming disparities in income.

Some recommendations the Commission might consider

In addition to the above, we put the following for your consideration. The Commonwealth should:

1. ensure a level playing field (true competitive neutrality) applies to all ECEC providers (at least when they are providing ECEC to the same socio-economic group).

[4] https://versa.cardozo.yu.edu/opinions/assessment-officer-dan-region-v-vered-peri

2. offer some sort of ongoing compensation to all ECEC providers who continue to spend significant sums of money and untold hours of their time (unpaid) administering the Commonwealth's CCS scheme.

3. boost funding to help those ECEC services providing for children with additional needs (including funding to assist with the necessary extra staff). The application process for such assistance should be streamlined to ensure a more rapid processing of applications.

4. demand that all State/Territory governments change their planning laws so as to: first, prohibit the construction of new ECEC services in areas of oversupply; and, second, encourage the quick construction of services in areas of demonstrable need (especially in lower socio-economic areas).

5. demand that all State/Territory governments change their ECEC laws to ensure all providers **across Australia** are in fact subject to one set of rules. This single set of rules must have the features mentioned above concerning proper respect for ECEC professionals, the removal of red tape and the removal of those provisions that are currently driving up costs (without any countervailing benefit to children, families and society as a whole).

6. demand that all State/Territory governments change their ECEC laws to ensure all providers **within every jurisdiction** are subject to the same set of rules. In NSW, for instance, a mega-centre of say 160 or 240 children need only employ the same number of teachers (four) as a smaller centre of 80 children, giving them a much cheaper required teacher/child ratio. This is demonstrably unfair on the small family/community run centres of excellence that for decades have formed the backbone of NSW's sector.

7. investigate the feasibility of introducing a cap on the size of new ECEC services. In NSW, a cap of 90 places applied before the current "National" law came into force: see clause 58(2) of the 2004 Children's Services Regulation of NSW. This cap was a major driver for the emergence of small family and community run centres which to this day remain favoured by families because they foster deeper and more trustful relationships. If the Commonwealth wants to guarantee a future of genuine quality ECEC services, it should investigate whether the introduction/re-introduction of some such cap is feasible. The writer shares the concerns of many in society who lament the rise of the big profit-driven corporate and mega centres: no matter how hard they try, these centres will never be able to replicate the quality delivered by the countless small family and community run centres across NSW. Quite simply, the smaller a centre is, the greater the chance of families being able to form enduring trustful relationships with its owners/management/staff: this is the fundamental driver of overall service quality.

8. demand all State/Territory governments change their payroll tax and local government rating laws to exempt all small family and community run centres from these significant imposts. The retention of payroll tax is particularly oppressive given NSW's ECEC laws require such high employee numbers.

9. demand all State/Territory governments replace the current "National" Assessment & Ratings ("**A&R**") regime with a simpler system such as that set out below (where an ECEC service must be "accredited" in order to continue trading). The current regime is the main cause of ruinous red tape and demoralisation.

More detail on why the current "National" A&R regime must be discarded

There are numerous reasons for discarding the current A&R regime. They include the following:

- the regime's legitimacy rests on the premise there is a single set of objective/measurable rules that apply, first, to all providers across Australia and, second, to all providers within each jurisdiction. As noted above, there is no single National law that applies across Australia. And even within a jurisdiction such as NSW the critical rules on things such as the required teacher/child ratio and teacher attendance hours differ between smaller centres and the politically powerful corporate mega-centres.

- the absurdity of having this A&R regime applying where the rules differ across jurisdictions is best demonstrated by the following example: two centres on different sides of the one street in Coolangatta and Tweed Heads. Assume they are run in an identical fashion, including with staff and teacher numbers and core teaching hours as per the less stringent rules applying in Queensland (not NSW). Assume the total staffing pool is shared between the two centres to ensure perfect consistency in the operations of both

centres. The Coolangatta centre achieves an "Exceeding" rating under Queensland's "National" Law. But the Tweed Heads centre **must** be given a rating under the NSW Law of "Significant Improvement Required" or "Working Toward" because the Tweed Heads centre has failed to comply with the higher staff ratio and teacher number obligations. Indeed, the Tweed Heads centre – in all material ways identical to its twin across the road – is at risk of prosecution.

- NSW Education does not have a sufficient number of suitably qualified and experienced officers at their disposal to conduct the A&R visits. It is utterly demoralising that our professionals – who receive their tertiary (and ongoing accreditation) training and guidance from experts – are then "assessed and rated" by bureaucrats who are not even required by law to be qualified teachers (let alone experts).
- the actual A&R visits take place once every 3-4 years and they last for only a few hours. Even if the visit was able to properly assess the true quality of an ECEC service (which they do not), what is the value of an assessment made so infrequently and based on such a paltry number of hours of observation?
- NSW Education's administration of the current A&R regime is demonstrably unfair. It is having a particularly ruinous impact on small family and community run centres and has become a major factor in staff leaving the sector. Please consider the following:
  - as noted above, a NSW mega centre of say 120, 160 or 240 children need only employ the same number of teachers (four) as a centre of 80 children. So the teacher/child ratio is far lower at the mega centres. NSW Education has always maintained (correctly in the writer's view) that the teacher/child ratio is a critical driver of genuine quality. Yet, it continues to routinely award these mega centres quality ratings exceeding or equal to the ratings awarded to smaller family and community run centres operating at far higher teacher/child ratios.
  - another key driver of quality ECEC is the existence of deep and trustful relationships between all stakeholders. It is clear that small family and community run centres have superior staff retention rates. This – coupled with the fact that the owners and managers of these smaller centres stay put for decades – ensures a depth of relationship between all stakeholders (but especially between the children and their educators) that can never be matched by the large corporate chains or mega centres.[5] And yet again, NSW Education continues to award the mega centres quality ratings exceeding or equal to those given to these smaller family and community run centres of excellence.
  - NSW Education also provides leniency to mega-centres on the quality indicators "natural environment", "outdoor space", "ventilation and natural light", especially for high-rise mega centres. It continues to rate such centres more highly than small family and community run centres situated in quiet residential areas surrounded by gardens and bathed in natural light.
- even if the current rules were the same across Australia (and inside NSW), they are hopelessly subjective and incapable of objective measurement. It follows they are incapable of an objective and meaningful "assessment and rating". Mindful of this, in recent years NSW Education has begun assessing and rating NSW services not against the National Quality Standard appearing in Schedule 1 to the "National" Regulations but rather against a "Guidebook" produced by – and subject to change at the whim of – various bureaucrats. This is plainly unlawful. Consider the following disturbing examples of why NSW Education marked down small family run centres with reputations of excellence:
  - in a group exercise with 10 children, an educator was told it was insufficient she prepared only one file note of the experience. She needed eleven: one for the group and one for each child.
  - failing to meet subjective concepts like "a child's agency [is allowed to] influence events and their world" and "Educators [being] deliberate, purposeful, and thoughtful in their decisions and actions".

[5] It is common for children who attended these smaller centres to return and work as educators. It is common for ex-staff and for families who attended these smaller centres to return year after year (decades after leaving) to say hello to the **same owners and managers** who employed them or educated/cared for their children. Small family and community run centres provide a safe anchor and a support network for so many families that cannot be replicated by the large profit driven commercial operations.

  - failing to involve children in preparing Quality Improvement Plans/Self-Assessments; in assessing/ planning their own learning/development; and in assessing the effectiveness of emergency drills.
  - failing to involve children in preparing meals, when to do so would violate food preparation laws and raise issues of criminal negligence in the event of serious food poisoning or anaphylaxis shock.

- as noted earlier, NSW Education uses the A&R regime to bury our professionals in meaningless red tape and micromanage them to an oppressive extent, contributing to staff departures. High staff turnover is not only prejudicial to children's interests, it generates huge costs in finding and training new staff.
- even though (as noted above) the actual A&R visits are relatively rare, all ECEC services operate each day constantly dreading the receipt of the notice of their next A&R visit (which can now happen on as little as 5 days' notice). Between these infrequent A&R visits, NSW Education demands staff and management work non-stop on their "Quality Improvement Plan". And staff and management must comply because they have no idea when the dreaded A&R Notice will be served on them: the red tape and the pressure are constant even though the visits are rare.
- the results of these rare A&R visits are published, with NSW Education and ACECQA (the national oversight body) exhorting parents to take them into account when choosing a service. A public downgrading further demoralises staff and management. A downgrading will also trigger the usual banking covenants that burden small family run centres.
- the A&R regime is the costliest aspect of the current ECEC laws, at least in NSW. Costliest not only in terms of actual dollars spent by ECEC providers on compliance and administration but also in terms of the negative impact it has on staff and management morale. It is a leading cause of staff leaving the sector. In addition, NSW Education's annual costs of administering the scheme would be considerable.
- families know the current A&R regime is an unreliable indicator of true quality. They do not rely on a bureaucracy to tell them which ECEC service is right for their family. This point needs expanding below.

NSW Education confirms parent decisions are not driven by published ratings

Given the details just given, it is not surprising that families' decisions on choosing an ECEC service are not driven by A&R ratings published and promoted by ACECQA and NSW Education.

To their credit, NSW Education executives – at an open meeting at Hornsby RSL on 18 September 2018 and then at Parramatta RSL on 27 February 2023 (both attended by the writer) – admitted that parents are not greatly influenced by these "Quality" ratings. At the meeting on 27 February 2023, the executive told the meeting these ratings were "not even in the top three things parents consider" when choosing their provider.

And yet NSW Education continues to ask for the help of ECEC services in persuading parents of the "importance" of the A&R system. With respect, it is irrational for NSW Education (and ACECQA) to think parents would ever place more importance on these short, relatively rare and hopelessly subjective A&R assessments than they would place on the information gleaned by these parents from their own due diligence. That due diligence includes word of mouth references from friends, actual visits to a service and of course – for parents already enrolled – the years of day-to-day interactions with that ECEC service.

An alternative approach to the current A&R regime

We put the following outline of a possible alternative to the current A&R regime for your consideration:

- the various levels of Quality under the current law should be replaced with just two categories: Working Towards Accreditation and Accredited. All current ECEC Services holding a Quality rating of Meeting or above would be automatically Accredited. All current ECEC Services holding a Quality rating of Working Towards would become Working Towards Accreditation. New services would be given a Provisional Working Towards Accreditation until publication of the results of their first accreditation assessment (which should happen as soon as possible after they start trading).
- No ECEC service would be allowed to operate unless it is granted one of these levels and each

Accredited service should be subjected to a formal Accreditation visit at least once every 24 months. All services would have their accreditation status published.

- in addition to these formal Accreditation visits, the Regulatory Authority should allocate an officer to regularly attend the Service (say no less than twice per year) to perform audits on compliance and assist with quality improvement and accreditation. These visits would also replace the current surprise "spot checks" the various Regulatory Authorities currently conduct on service providers. It should be noted that having the same officer attend a service for these visits would produce a superior level of trust and a far better working relationship to assure quality improvement.
- accreditation should be determined against one "National" set of objective and measurable criteria.
- if – after a specified number of warnings – a "Working Towards" service fails to achieve full Accreditation status, it should lose its right to trade.
- the extra staffing required by the Regulatory Authority to have their field officers regularly attend and assist ECEC services should be paid for (at least partially) by ECEC services. Annual licence fees should be increased substantially if necessary to finance this new regime that would see NSW Education and the other Regulatory Authorities working constructively and openly with ECEC providers on an ongoing basis. It might be more sensible to calculate this more substantial annual licence fee by reference to the number of children allowed by the licence.

The benefits of a new collaborative A&R regime

The introduction of a collaborative A&R regime of the type just put would bring about huge savings in costs for both NSW Education and ECEC providers. The increased annual licence fees required to help fund this scheme would be a fraction of the costs that are expended every year in connection with the current regime.

But most significantly, a scheme like that just proposed would bring about huge boosts in the morale of both staff and management. It would see our educators being respected and allowed to educate (and care for) the children instead of being burdened by pointless red tape and demeaning micromanagement.

The economic benefits of such a scheme would be most significant whilst there are no downsides. At the risk of labouring the point: there are no downsides because the scheme in no way threatens genuine quality. It simply mandates that the relevant regulatory authority act fairly, respectfully and collaboratively with the relevant service providers and professionals. In respect of NSW at least, it is asking for little more than what is already required of NSW Education and its officers under the NSW Education Code of Conduct and the NSW Public Service Commission's Code of Ethics.

There is no better way of achieving quality in any regulated sector than by having service providers and the regulatory authorities working in concert toward a common goal. Those who oppose this common-sense notion usually have a vested interest in retaining heavy handed compliance-driven frameworks.

We hope the above is of some assistance to the Commission.

Yours sincerely

[redacted]

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Qualifications & experience of the writer: • retired partner of one of the country's largest law firms, having practised primarily in the field of banking/credit laws and litigation • contributing author of Butterworths' publication The New Consumer Credit Code 1994 • presented countless papers on compliance/governance back in the 90s • provided pro bono assistance to countless NSW ECEC providers since commencement of current ECEC laws • over past 10 years, co-convenor of public interest group Crown Land Our Land exposing chronic mismanagement of NSW Crown Land • presented evidence to the inquiries conducted by the NSW Upper House and the NSW Auditor General into Crown land mismanagement • appeared before His Honour Mr Justice Brereton in the landmark Talus Reserve case, presenting the only arguments in favour of the public retaining access to this precious public park near St Leonards Station, thereby defeating the efforts of the NSW Coalition Government and Willoughby Council to hand over this park to private interests.