Children’s Services Regulations 2020: Regulatory Impact Statement

Department of Education and Training

**February 2020**

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# Executive summary

**Background**

Children’s services are provided for the benefit of parents and children, are accessed by many Victorian families, and are offered in various services and facilities. The distinguishing feature of most children’s services in Victoria is the short-term, irregular nature of care.

Children’s services include occasional care services providing care for limited hours on an ad hoc or casual basis (such as services provided by Neighbourhood Houses), activity groups for three-year-old children, services providing (adjunct) care at sports and leisure facilities, school holidays care services designed to care for children for short periods over the school holidays, short term services such as those provided seasonally by ski resorts, and ‘wrap-around’ care offered in conjunction with sessional kindergarten.

As at December 2019, there were approximately 320 children’s services licensed to provide up to approximately 8,120 approved places of education and care, equating to eight per cent of early childhood education and care services in Victoria (all other services operate under the National Quality Framework (NQF)). Legislative and regulatory requirements for these services are currently contained in the provisions of the *Children’s Services Act 1996* (CS Act) and the Children’s Services Regulations 2009(made under the CS Act), and are regulated by the Victorian Government, Department of Education and Training.

The first major review of the NQF was completed in 2017. The review considered bringing children’s services within the scope of the NQF, but decided against it due to the complexity of transitioning a diverse range of services (nationally) to the NQF.

After this decision, the Victorian Government undertook a reform of the regulatory framework for children’s services to better align it with the NQF (where appropriate) resulting in the *Children’s Services Amendment Act 2019* (Amendment Act). The key alignment changes made to CS Act by the Amendment Act are in the areas of: objectives and guiding principles; terminology and roles of key personnel; provider and service approval processes; compliance, monitoring and enforcement approaches; and educational program requirements. In addition, the current Children’s Services Regulations expire on 18 May 2020 and must be replaced with new regulations by that date.

The regulations proposed to be made under the Children’s Service Regulations 2020 provide the operational detail to support the Amendment Act and are now presented for public comment and submission through this Regulatory Impact Statement (RIS). It is intended that the Amendment Act and the new Children’s Services Regulations 2020 will come into effect together on 17 May 2020.

**Proposed regulations**

Remaking sunsetting regulations safeguards the key benefits of regulating children’s services and assures families utilising children’s services that services are meeting acceptable minimum standards.

The **objectives** of the proposed regulations are to:

* Minimise the risk of physical, developmental, social or emotional harm to children while they are not in the care of their parents, guardians or families.
* Drive improvement in the quality of education and care provided to maximise the development of the child through the provision of appropriate programs and opportunities in the children’s services context.
* Align (where appropriate) and simplify regulatory arrangements for service providers to ensure more consistent minimum standards and reduce administrative burden.

The Secretary of the Department of Education and Training (Department) is the regulator for education and care services and children's services operating in Victoria across both National and Victorian regimes. The functions and powers of the regulatory authority are largely delegated to the Quality Assessment and Regulation Division (QARD) of the Department to enable the administration and enforcement of the regulatory regime.

The proposed regulations will impact on existing and future users and providers of children’s services, and on a range of groups in the community. The RIS presents regulatory options, quantifies the cost of proposed regulations to industry and government, includes economic analysis of costs and benefits, and invites public comment about the proposed regulatory options.

The main regulatory proposals fall within the following areas: provider and service approval processes; service types; staffing ratios and qualifications; safety, health and wellbeing of children; programs for children; equipment and facilities; policies, procedures and practices; record-keeping; fees; and waivers.

The proposed regulations will make the following **key changes** to the current regulatory system:

* Streamlining the current seven licence types into two service types—Occasional Care and Limited Hours.
* Aligning the process for provider and service approval with the NQF (replacing premises approvals and licences) to be more straightforward for new providers entering the market and for existing providers operating under the NQF.
* Shifting from periodic licence applications and renewals to perpetual service approvals (removal of the renewal process) with an annual service fee to reduce the administrative burden for most providers (providers previously not required to pay some fees, will be required to pay a nominal annual service fee from 1 July 2021).
* Limited Hours service approval types will benefit from slightly longer hours (i.e. services that care for each child for not more than 3 hours per day, for up to 6 hours per week) and may do so without Diploma qualified staff members.
* Outdoor space for children will be required for Occasional Care service types, and not for Limited Hours service types. Where the increased outdoor space requirement cannot be met by existing services, savings provisions allow services to continue to operate.
* Staff-to-child ratios will be strengthened to align with the NQF. This will have a cost impact on some services. However, the introduction of ‘actively working towards’ and ‘three-month probationary period’ allowances for staff has the potential to reduce costs to providers and support meeting ratios and qualification requirements by allowing students to be counted in ratios.
* Reducing the two staff member minimum requirement (for most services) to one staff member, and requiring only one staff member on duty to hold first aid and other relevant training (as opposed to all staff) provides for clearer responsibility and less onerous minimum requirements.
* Changing the number and structure of fees paid to align with the NQF will see costs rise for some services and remain much the same or less for others. This proposed change will have the greatest impact on new services entering the market, with the annual service fee payable on invoice, for all services.
* Introducing the application for service waivers provides flexibility for existing services that may not be able to meet requirements.
* Additional policies, procedures and practices to align to the NQF and reflect contemporary early childhood practice, the child safe standards and approved learning frameworks. Services will have until 1 January 2021 to develop new policies and procedures.
* For existing services, savings provisions for the period of the new regulations will apply, and transitional arrangements will give services time to adjust to new requirements, and must be met by 1 January 2022.

Overall, under the proposal, regulatory arrangements for service providers would be simplified, ensuring a more consistent minimum standard across both regulatory regimes. Many operational requirements for children’s services would remain broadly the same, while some would increase. Simultaneously, greater flexibility is offered for services in meeting the requirements.

A summary table comparing the current and proposed regulations (with associated transitional, savings provisions and benefits) is shown in Appendix 10.1 of this RIS and should be viewed in conjunction with the Children’s Services Regulations 2020 Exposure Draft.

**Alternatives to the proposal**

The RIS discusses a number of options for each area of the regulations (e.g. provider and service approval process; service types; staffing ratios and qualifications; safety, health and wellbeing of children; programs for children; equipment and facilities; policies, procedures and practices; record-keeping; fees; and waivers) as follows:

* consideration of no regulations (**Base Case**);
* retaining the existing regulations (**Status Quo**); and
* alignment to the NQF, where appropriate (**Alignment**).

In addition, non-regulatory alternatives such as public information and education campaigns or sector adoption of a voluntary code of practice are presented.

While these alternatives could be considered, there are significant barriers to the feasibility of their practical implementation and they are unlikely to achieve legislative objectives. To that end, they are utilised in this RIS as a point of comparison to the preferred option or applied as tools to support implementation of proposed changes.

**Comparison of benefits and costs**

The proposed regulations are expected to slightly decrease the cost of provision of children’s services by approximately $10 million in net present value terms over 10 years, representing a decrease of 4.19% on the expected cost of service provision; based on the assumption of continued current regulatory standards (Status Quo) as summarised in the tables below.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Overall cost per service | Current | Proposed | $ Difference | % Difference |
| Initial approvals for new services | $9,694 | $9,694 | $0.00 | 0.00% |
| Ongoing costs | $75,202 | $74,984 | **$218.90** | **0.29%** |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Projected cost to industry over 10 years – NPV\* | Current | Proposed | $ Difference | % Difference |
| Initial approvals for new services | $1,938,888 | $1,938,888 | $0.00 | 0.00% |
| Ongoing costs | $244,387,699 | $234,363,856 | **$10,023,843** | **4.19%** |

*\*Net Present Value costs calculated at a 4% real discount rate.*

Information gathered from compliance and monitoring visits to children’s services in the last 12 months, indicates that many of the services sampled would already comply with proposed requirements where ratios, qualifications and outdoor space is concerned.

It is expected that impacts of the proposal will vary depending on the particular circumstances of individual services. For example, changed staff-to-child ratios could necessitate the employment of additional staff for larger services, which may have a flow on effect to parents utilising children’s services in the form of increased fees.

Due to the diverse nature of the children’s services sector, it has not been possible to conduct a fully quantified analysis of expected benefits and alternatives, therefore the proposed regulations have been assessed using a Multi-Criteria Analysis (MCA). The criteria, weight and score used is shown in the table below and is relative to the unregulated Base Case represented by a zero score.

|  |  |
| --- | --- |
| Benefits of… | Costs to… |
| **Criteria** | **Weight** | **Score** | **Criteria** | **Weight** | **Score** |
| Safety | 30% | Between 0 and +10 | Industry | 35% | Between -10 and +10 |
| Quality | 20% | Regulator | 15% |
|  | **50%** |  |  | **50%** |  |

The results of this analysis are summarised in table below.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Option | Cost to industry | Cost to regulator | Safety | Quality | Total Score |
| Status Quo | -7.35 | 1.5 | 8.25 | 3.6 | **6.0** |
| Alignment | -4.38 | 2.7 | 14.1 | 7.0 | **19.42** |

Given the results of the analysis, the RIS concludes that the overall benefits of the proposal to the sector outweigh the costs, and implementation of the proposal is necessary to achieve the legislative objective.

**Public consultation**

Public comment is invited on the RIS overall, and the main regulatory proposals presented.

A copy of the RIS and proposed Regulations is available to view, download or print by visiting the Engage Victoria website [www.engage.vic.gov.au/childrens-services-regulations-2020](http://www.engage.vic.gov.au/childrens-services-regulations-2020) at or emailing cs.law.reform@edumail.vic.gov.au

A hardcopy of the RIS is also available to view from the Department of Education and Training, Level 20, 80 Collins Street, Melbourne, Victoria 3000. Please telephone (03) 7022 0673 to arrange access to the hardcopy.

Submitting comments and/or engaging in the consultation process can be undertaken in the following ways.

1. Complete a **short survey** of questions for your consideration and comment, including the following:
* Do you support the reduction of seven (7) licence types to two (2) service approval types?
* Do you support the requirement for outdoor space for new occasional care services?
* Do you support the alignment of staffing requirements with the NQF?
* Are estimated time assumptions for tasks such as record-keeping and the development of additional policies and procedures, reasonable or accurate?
* Do you support the proposed fee structure?
* Do you support the saving provisions for existing services?
* Do you think the transitional arrangements are reasonable?
* Should the preferred option be adopted, what support would your workforce or organisation need to meet the proposed requirements?
1. Register to attend a **public consultation session** – visit the Engage Victoria website at [www.engage.vic.gov.au/childrens-services-regulations-2020](http://www.engage.vic.gov.au/childrens-services-regulations-2020)
2. Submit a **written response** that must be marked ‘Children’s Services Regulations 2020’ and received by no later than midnight, Tuesday 17 March 2020 (Note: if the comments do not meet the above requirements, they may not be considered).

All comments can be submitted by:

* Website – [www.engage.vic.gov.au/childrens-services-regulations-2020](http://www.engage.vic.gov.au/childrens-services-regulations-2020)
* Email – cs.law.reform@edumail.vic.gov.au
* Post – Attn: Children’s Services Regulations 2020, Department of Education and Training, Level 20, 80 Collins Street, Melbourne, Victoria 3000.

The public consultation period **closes at midnight Tuesday 17 March 2020**.

All comments and submissions will be treated as public documents unless clearly marked as “confidential”; will be available in a de-identified summary report on the Department of Education and Training website for review following the public consultation period; and will be used to inform the final Children’s Services Regulations 2020.

# Terms and abbreviations

|  |  |
| --- | --- |
| Term | Abbreviation |
| Approved Associated Children’s Services | AACS |
| Belonging, Being and Becoming: The Early Years Learning Framework for Australia | EYLF |
| Budget Based Funded service | BBF service |
| Children’s Services Act 1996 | CS Act |
| Children’s Services Amendment Act 2019 | Amendment Act; the Act |
| Children’s Services Regulations | CS Regulations |
| Commissioner for Better Regulation | The Commissioner |
| Community Child Care Fund Restricted | CCCFR |
| Cost-Benefit Analysis | CBA |
| Council of Australian Governments | COAG |
| Department of Education and Training | Department |
| Department of Treasury and Finance | DTF |
| Education and Care Services National Law | National Law |
| Education and Care Services National Regulations | National Regulations |
| Effective Early Education Experiences for Kids (study) | E4Kids |
| Multi-Criteria Analysis | MCA |
| My Time, Our Place: Framework for School Age Care in Australia | MTOP |
| Net Present Value | NPV |
| National Quality Agenda Information Technology System | NQA ITS |
| National Quality Framework | NQF |
| National Quality Standard | NQS |
| Neighbourhood Houses Victoria | NHV |
| Quality Assessment and Regulation Division (Regulatory Authority) | QARD; Regulator |
| Quality Improvement Plan | QIP |
| Regulatory Impact Statement | RIS |
| Scrutiny of Acts and Regulations Committee | SARC |
| Subordinate Legislation Act 1994 | SLA |
| Victorian Early Years Learning and Development Framework | VEYLDF |
| Working With Children Check | WWCC |

# Introduction

The Children’s Services Regulations 2009 (CS Regulations) are made under the *Children’s Services Act 1996* (CS Act) and are due to expire (or ‘sunset’) in May 2020 and must be replaced with new regulations by 18 May 2020.

Making new regulations provides an opportunity to update the regulatory settings to keep pace with contemporary regulatory practice; align the Regulations with national requirements; revisit whether the Regulations are still needed and, if so; consider whether there are ways to improve the Regulations.

The *Subordinate Legislation Act 1994* (SLA) requires the preparation of a Regulatory Impact Statement (RIS) for sunsetting regulations or any proposed regulations that impose a significant economic or social burden on a sector of the public, and for the public to review and comment on the proposed replacement regulations. Before new regulations are made, the SLA requires the steps illustrated at Figure 1 to be undertaken.

Figure 1 Making new regulations

Each RIS must include:

* a statement of the objectives of the proposed regulations
* a statement explaining the effect of the proposed regulations
* a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options
* an assessment of the costs and benefits of the proposed regulations and of any other practicable means of achieving the same objectives
* the reasons why the other means are not appropriate
* an implementation plan describing how the proposed regulations will be rolled out; and
* an evaluation strategy describing the mechanisms to be used to gauge the effectiveness of the proposed regulations in meeting their objective.

The Commissioner for Better Regulation provides an independent assessment of RISs, which are assessed against the *Victorian Guide to Regulation*. The Commissioner has determined that this RIS meets the requirements of the *Subordinate Legislation Act 1994*.

## 1.1 Purpose of the RIS

The primary purpose of this RIS is to discuss and evaluate the costs and benefits of options in relation to the proposed regulations, including economic, environmental and social impacts, and administration and compliance costs.[[1]](#footnote-1)

The RIS sets out the proposed requirements in the Regulations for public consideration and comment. It includes the rationale for and economic analysis of the proposed requirements and quantifies the possible cost of regulatory requirements for service providers. The analysis is provided in both qualitative and quantitative form and presents ‘options’ to illustrate the impact of requirements.

* The proposed requirements in the Regulations and possible options are discussed in section 5 of this document.
* The possible costs and benefits of the options are then discussed at section 6 of this document.

To simplify the language and aid the reader’s understanding of the content, a number of terms and abbreviations are used and a list of them are found in the front of this document.

## 1.2 Regulatory regime

All services providing education and care to children in Victoria are subject to regulatory oversight, which provides a basis for establishing and maintaining minimum standards, and for mitigating the risk that children will come to physical, developmental, social or emotional harm while they are not in the care of their parents, guardians or families.

Currently in Victoria, the diverse early childhood education and care services sector (approximately 4,520 services in total) is regulated by two regimes — National and Victorian:

* the National regime, also known as the National Quality Framework (NQF), comprises the Education and Care Services National Law (National Law), the Education and Care Services National Regulations (National Regulations), and the National Quality Standard (NQS)
* approximately 4,200 services in Victoria
* approved to provide centre-based care (long day care, kindergarten, out of school hours care) and family day care
* specifically excludes some services that might otherwise come within scope of the NQF (these services are collectively referred to as ‘out of scope’ services).
* the Victorian regime, as provided for in the Victorian CS Act and CS Regulations
* approximately 320 children’s services in Victoria
* Licensed to provide certain types of care, including occasional care, activity groups for three-year-old children, mobile services, short term services, and school holidays care services, and some regular care services that are explicitly scoped out of the NQF (e.g. former Budget Based Funded (BBF) services[[2]](#footnote-2)).

The NQF came into effect on 1 January 2012, at which time most Victorian early childhood services (formerly regulated under the Victorian regime) became ‘early childhood education and care services’ regulated under the NQF, with a small number of service types continuing to be regulated under the Victorian regime (referred to as ‘children’s services’ throughout this document).

The main distinction between the scope of the National and Victorian regulatory regimes is that services providing regular, ongoing care **must** be regulated under the NQF.

The NQF defines an occasional care service as *“a service providing education and care to children primarily on an ad hoc or casual basis where—(i) the service does not usually offer full-time or all day education and care to children on an ongoing basis; and (ii) most of the children provided with education and care are preschool age or under.”*

Occasional care services are excluded from the definition of an education and care service in the National Law. Therefore, children’s services that provide occasional care are **not eligible** to be regulated under the NQF and continue to be covered by the Victorian licensing and regulatory regime.

The first major review of the NQF by the Council of Australian Governments (COAG) was completed in 2017. This review considered, but decided against, bringing the remaining out of scope children’s services within the scope of the NQF, due to the complexity of transitioning a diverse range of services (nationally) to the NQF.

The two regulatory regimes that apply in Victoria are similar, but not consistent.

Most children’s services in other Australian jurisdictions are regulated by the NQF. Regulation of the remaining services varies from no regulation in the Northern Territory, to a licensing system in Western Australia that is broadly similar to the pre-amendment Victorian regime.[[3]](#footnote-3)

## 1.3 Regulatory authority

The Secretary of the Department of Education and Training (Department) is the regulatory authority for education and care services and children's services operating in Victoria across both National and Victorian regimes. The functions and powers of the regulatory authority are largely delegated to the Quality Assessment and Regulation Division (QARD) of the Department to administer and enforce the regulatory regime.

QARD undertakes the full range of functions and powers provided to promote the safety, health and well-being of children attending education and care and children’s services as guided by the Statement of Expectations[[4]](#footnote-4) issued by the Minister for Education, and published on the Department’s website in September 2019

## 1.4 Affected groups

The proposed Regulations will primarily impact on the existing licensees and proprietors of children’s services, including organisations such as local government, for-profit and not-for-profit entities, who are already in the sector or are considering entry to the sector. In addition, early childhood educators and teachers will have an interest in changes where qualifications and staff to child ratios are concerned.

While the proposed Regulations aim to support increased quality of services, children and their families are not expected to be significantly affected due to the similarity between the current and proposed regulatory requirements. Groups affected by or interested in the proposed Regulations include:

* Children attending children’s services and their families
* Current licensees and proprietors of children’s services, including Local Government, community and not-for-profit organisations
* Operators of sport and leisure facilities that provide occasional care services adjunct to their main business function
* Approved providers under the NQF who operate Approved Associated Children’s Services (AACS)
* Prospective providers of children’s services
* Qualified educators, other staff and volunteers
* People undertaking studies with a view to entering the sector
* Sector peak bodies
* Employee and employer representative bodies.

## 1.5 Invitation to comment

Interested parties affected by, or with an interest in, the proposed Regulations are invited to review, consider and provide feedback on the options presented in this RIS. All feedback will be considered and will assist the Victorian Government in making final decisions about the new Children’s Services Regulations.

* Comparison table of current and proposed regulations are at Appendix 10.1
* Questions for consultation are at Appendix 10.2
* Key amendments the Children’s Services Act 2019 are at Appendix 10.3
* Methodology and assumptions are at Appendix 10.4
* Proposed fee structure is at Appendix 10.5b

This RIS should be viewed in conjunction with the Children’s Services Regulations 2020 Exposure Draft found on the Engage Victoria website.

**Public consultation** sessions are being held in February 2020, at which interested parties may hear more about the proposed changes to regulations, ask questions and have any concerns addressed, prior to submitting comments for the Government’s consideration.

Registration to attend a public consultation session and/or submissions in response to the proposed Regulations a can be made via the **Engage Victoria** website at <https://engage.vic.gov.au/childrens-services-regulations-2020>.

Interested parties are invited to provide comments and feedback about the RIS overall, and specifically the following questions:

* Do you support the reduction of seven (7) licence types to two (2) service aprpoval types?
* Do you support the requirement for outdoor space for new services?
* Do you support the alignment of staffing requirements with the NQF?
* Are estimated time assumptions for tasks such as record-keeping and the development of additional policies and procedures, reasonable or accurate?
* Do you support the proposed fee structure?
* Do you support the saving provisions for existing services?
* Do you think the transitional arrangements are reasonable?
* Should the preferred option be adopted, what support would your workforce or organisation need to meet the proposed requirements?

Following public consultation, a summary report of comments received will be made available on the Department’s website. Copies of all submissions are provided to the Parliament’s Scrutiny of Acts and Regulations Committee (SARC) who examine submissions to verify that the Department has considered the views of stakeholders in the making of new Regulations.

The public consultation and submission period **closes** at midnight Tuesday 17 March 2020.

# What is the problem?

Children’s services play a critical role in today’s society. To meet the needs of families, services have evolved over time, from informal care to a broad range of formal early childhood education and care services for children below school age, and services for school age children. Children’s services are provided for the benefit of parents and children, are accessed by a broad spectrum of Victorian families, and are offered in various services and facilities.

Since the current Regulations commenced, there has been an increase in demand for child care, and in community expectations about the nature and quality of what children’s services do or should provide. More than ever, the community sees children’s services as making a significant contribution in providing developmental opportunities for children, and parents need to access services where they can be confident that their children will receive quality care in a safe environment. There is a community expectation that there is an appropriate legislative and regulatory framework that ensures the safety and wellbeing of those children.[[5]](#footnote-5) The community wants a system of early childhood education and care that promotes responsive arrangements and takes account of complex family needs.

Increasingly, the research shows links between high quality education and care and positive outcomes for the youngest children attending services, including promotion of positive behaviour, increased cognitive skills and assistance with the formation of secure attachments. The evidence shows that the brain develops in the early years through back and forth interactions, which requires individualised attention to allow the ‘serve and return’ process to occur.

The distinguishing feature of most children’s services in Victoria is the short-term, irregular nature of care. Types of children’s services include occasional care services providing care for limited hours on an ad hoc or casual basis (such as services provided by Neighbourhood Houses), activity groups for three-year-old children, services providing (adjunct) care at sports and leisure facilities, school holidays care services designed to care for children for short periods over the school holidays, short term services such as those provided seasonally by ski resorts, and ‘wrap-around’ care offered in conjunction with sessional kindergarten.

People who use children’s services include parents and carers seeking developmental opportunities for their children, those working non-traditional hours, people in or seeking employment, or those pursuing or undertaking training. Additionally, people using recreational or other community facilities and parents and carers at home may seek occasional child care. Occasional care services play an important role in providing access to flexible and affordable service models designed to meet the varied needs of communities. In some rural and regional communities, children’s services are the only education and care offering available to families.

The safety, health and wellbeing of young children is of central importance to the community. The quality of early childhood education and care is vitally important for early childhood development, educational outcomes, and whole-of-life achievement.

**Ensure safety**

Children in education and care settings are at risk of experiencing harm. Young children in care settings are particularly vulnerable because they are not autonomous and may have limited agency or a voice.

There are a range of mechanisms that protect the safety, health and wellbeing of children in the various settings they may attend. These include; Child Safe Standards[[6]](#footnote-6); Working with Children requirements; building standards; work safety laws; and common law principles. While these mechanisms support the quality of facilities and the safety, health and wellbeing of children, they do not fully address the risks to children in early childhood education and care settings. For instance, these regulatory mechanisms do not provide for minimum staff to child ratios or for the qualifications to be held by people educating for and caring children. As will be discussed in later sections of this RIS, having sufficient, adequately trained staff in early childhood education and care services (e.g. with First Aid training) is key to protecting the safety, health and wellbeing of children attending services.

The likelihood of the risk of children experiencing harm may differ in relation to service types. For example, children attending a service on an ad hoc basis (occasional care) may be at a higher risk of harm than children who attend a service regularly (kindergarten), because children’s relationships with educators in occasional care settings may not be as strong nor are children as familiar with the service’s environment and routines.

Families expect assurance that the services they use to care for their children meet minimum standards acceptable to the community, so that their children are protected from potential physical and psychological harm. It is a reasonable expectation that the safety, health and wellbeing of **children in all services** is protected, and there is a community expectation that the safety, health and wellbeing of children attending services will be subject to regulatory oversight.

**Drive quality**

An increasing focus on quality in the early childhood sector has highlighted the need for regulatory oversight to drive quality improvements. This is particularly the case where parent choice is limited by other market factors such as high demand for or lack of services, and therefore a key driver of quality may be absent.

Families expect that their children who attend education and care services are supported to reach their best potential through a quality recreational and educational program delivered by the service. Research also indicates that the meaningful inclusion of children with special or additional needs into universal early childhood education and care settings is supported when there is a higher level of staff to child ratios.[[7]](#footnote-7)

In addition, significant economic returns can be attributed to investment in high-quality early childhood education and care. Through ensuring the availability of high quality and affordable education and care services, **including occasional care**, children’s services can support a critical prerequisite to parents’ ability and willingness to remain in or re-enter the workforce.

Key aspects of quality linked to developmental outcomes include staff qualifications, staff to child ratios, quality of the educational programs provided to children, and the nature of the interaction between the child and staff member or care giver.

Educator to child ratios and educator qualifications support the safety, welfare and wellbeing of children at the service and allow staff to effectively support each child’s learning, development and active engagement. The interactions that occur, or do not occur, have a significant and lasting effect on all the development and learning that follows. For that reason, the ratio of educators to children is important to ensure **each child receives the attention they need to promote their development**.

A large body of evidence underscores the critical importance of high-quality education and care to childhood development.[[8]](#footnote-8) Research shows a positive relationship between time spent in high-quality early childhood education and care and increases in positive cognitive, social and health outcomes. Participation can also narrow achievement gaps across socio-economic groups and these benefits can extend into and beyond adolescence.

Regardless of the type of service—short or long term, the research indicates that qualified educators have a greater understanding and capacity to provide an environment where children receive stimulating education and quality care.

The Effective Early Education Experiences for Kids (E4Kids) Study,[[9]](#footnote-9) undertaken from 2010, confirmed the association of higher-level educator/teacher qualifications with better “process quality” (i.e. the practice of early childhood educators and the everyday experience of children in early education settings), and subsequently improved children’s cognitive outcomes. Similarly, the 2017 Starting Strong report showed that staff’s initial training level is positively associated with overall quality. Higher staff qualifications result in a more stimulating environment and high-quality pedagogical practices, which boost children’s well-being and learning outcomes. However, it is not only qualifications that affect outcomes; it is the ability of staff members to create a better pedagogical environment that makes a real difference.

Higher qualifications of staff educating and caring for children are strongly associated with improved child outcomes, as educators are better able to involve children, stimulate interactions and use a range of strategies to extend and support their learning. Higher qualifications show benefits for all ages of children attending education and care services.

There is sound evidence from research that the ratios of staff to children makes a positive difference in early childhood programs and particularly for children from birth to three years of age. Infants and toddlers do not thrive in environments where their need for individualised, responsive attention and attachment with caring, consistent educators is compromised because there are insufficient skilled adults to meet these critical needs. Research also indicates that the level of sensitive, responsive care for infants and toddlers decreases when the ratios of staff to children is decreased.[[10]](#footnote-10)

Higher numbers of staff to children aged three to five years is associated with important learning outcomes including: more extensive language skills through increased opportunities for conversations with adults; increased literacy skills; improved general knowledge; more cooperative and positive behaviour with peers and adults; and better concentration and attention skills.[[11]](#footnote-11)

In addition to improved outcomes for children, higher numbers of staff to child ratios encourage educators to want to work with young children because there is less stress for them and they appreciate the increased opportunities for more sensitive, responsive education and care for every child.[[12]](#footnote-12)

There is evidence indicating that infants and toddlers especially benefit from stronger child-to-staff ratios. In many countries, child-to-staff ratios have been regulated, with stronger ratios for the very young children and lesser ratios for older children.

As the Strategies for Children Coalition Research report states, ‘better prepared teachers teach better’ because they have a deeper knowledge of child development and how children learn; are more responsive to children’s interests, strengths and needs; have more advanced skills in guiding children’s behaviour and planning for individual differences and learning including using effective early intervention strategies; understand the significance of relationships for learning and have the skills to develop the type of relationships which foster learning dispositions in children which in turn promotes children’s thinking skills, attentiveness, language skills and sociability; have the knowledge and skills to form partnerships with families in supporting every child’s learning and development; and are paid more and therefore are more likely to be retained and stay in the sector which helps programs to maintain quality overtime and reduces disparities in outcomes between services.[[13]](#footnote-13)

Having qualified staff with an understanding of how to engage with children and how to plan for and design a program for children allows for meaningful engagement with children – even for short periods of time – that supports their development.

The NQF’s aim for a highly skilled workforce is supported by a growing body of research around the importance of educator to child interactions, with evidence that stronger educator to child ratios and educator qualifications are associated with higher quality early childhood education and care and, in turn, on outcomes for children.[[14]](#footnote-14) Higher staff numbers allow more individualised attention for each child, which supports the development of better social and learning skills, and the development of stronger relationships between staff and children.

Research also indicates that the meaningful inclusion of children with special or additional needs into universal early childhood education and care settings is better supported when there is a higher level of staff to child ratios.[[15]](#footnote-15)

**Industry efficacy**

It is important that services provide an environment where families feel confident to leave their children and that their children are safe, well cared for and have their developmental needs met, even for very short periods of time. Services providing short-term or ad hoc care are equally as vulnerable (as services providing regular care) to civil and possibly criminal liability should children in their care experience harm.

Compliance with minimum standards compels the industry to provide services that adequately ensure the safety, health and wellbeing of children. For example, facilities such as fitness and leisure centres that provide children’s services as an adjunct to their primary business offering (e.g. while parents undertake a fitness class) have a duty of care for the very young people on their premises. In addition, minimum requirements for service premises to provide indoor and outdoor space for children promotes better supervision of care and provides parameters for what is feasible and safe for both the industry and children.

While children’s services will not be assessed and quality rated against the National Quality Standard, they will be monitored for compliance regularly, and the provider/service approval process for new entrants to the market provides a baseline ‘check and balance’ to assure a service will meet its duty of care and formally reinforces Victoria’s commitment to ensuring the safety, health and wellbeing of all children.

# Picture of the sector

In Victoria, the number of children’s services has been slowly reducing since the commencement of the NQF (from 457 in 2013 to approximately **320 licensed children’s services** in December 2019), as has the number of approved places for children in these services (from 11,248 places in 2013 to approximately 8,120 in December 2019 (equating to 8% of early childhood education and care services in Victoria). This reduction partly reflects some services that have transitioned to the NQF in order to operate for longer hours and provide regular care.[[16]](#footnote-16)

Types of children’s services include occasional care services providing care for limited hours on an ad hoc or casual basis, activity groups for three-year-old children, services providing adjunct care at fitness and leisure facilities, Neighbourhood Houses, school holidays care services, designed to care for children for short periods over the school holidays and wrap-around care offered in conjunction with sessional kindergarten.

The distinguishing feature of children’s services is that most children attend for short periods of time: no more than five hours per day and a total of 15 hours per week.

**Service type**

Of the approximately 320 children’s services, around 88% provide education and care for each child for no more than 15 hours per week, and 12% of services provide education and care for each child for no more than 6 hours per week. Figure 2 illustrates the breakdown of children’s services by service type. The largest portion being occasional care at 88%.

Figure 2 Children's service by type of care

Of the 88% providing occasional care, around 39% are located at sports and leisure facilities (fitness centres/gym crèches), roughly 47% are in community centres, such as Neighbourhood Houses, with the remaining approximately 2% comprised of mobile services and some other services excluded from the NQF, such as former budget based funded (BBF) services, which were funded under a previous Commonwealth funding program.

Former BBF services are primarily in rural locations or providing services to Aboriginal communities. They were originally kept out of the NQF[[17]](#footnote-17) due to the fact many of these services would find it difficult to meet NQF requirements. In Victoria, they provide long day care, kindergarten or occasional care, and are regulated under the Children’s Services Act.

**Management type**

Children’s services are mainly managed by private, not-for-profit, community organisations (47%), as shown in Figure 3.

Figure 3 Children's services by management organisation type

The Approved Associated Children’s Services (AACS) model enables an approved provider to operate a service under both National and Victorian regimes at the same location, under a single NQF service approval. This concept was devised when the NQF was introduced to overcome the need for a provider to obtain service approvals under two regulatory regimes. Currently, there are approximately 40 AACSs operated by 29 NQF approved providers in Victoria.

As these services operate under an NQF service approval, they are **not included** in the children’s services data presented.

**Licence type**

There are currently seven different licences that children’s services can operate under depending on the type of service offered, the number of children attending, and the hours of attendance (see Table 1 below).

Although the current regulations provide for seven licence types, as at December 2019, no services were recorded as holding either of the two ‘short term’ licence types and only one service holing an ‘integrated service’ licence type (in the data below, this service is counted in the School Holiday Care licence data).

Table 1 Number and type of children's services licences in Victoria as at December 2019

|  |  |  |  |
| --- | --- | --- | --- |
| Licence type | Conditions/attributes of the service | No. of services | % of services |
| 1. **Standard service**
 | Occasional Care Service (**longer than 5 hours per day or 15 hours per week**) – e.g. Mobile Services, former Budget-Based Funded Services (long day care or kindergarten) | 29 | 9% |
| 1. **Limited hours type 1**
 | Cares for or educates each child for **not more than 2 hours per day** and not more than a **total of 6 hours** **per week** – e.g. childcare at a gym | 46 | 14% |
| 1. **Limited hours type 2**
 | Cares for or educates each child for not more than **5 hours per day** and not more than a **total of 15 hours** **per week** – e.g. service at a Neighbourhood House | 245 | 76% |
| 1. **School holidays care**
 | Cares for or educates children for **not more than 4 weeks** per calendar year during school holidays | 2 | 1% |
| 1. **Short-term type 1**
 | Cares for or educates children for **not more than 120 days** in a 12-month period | 0 | 0% |
| 1. **Short-term type 2**
 | Cares for or educates children for **not more than 72 hours** over a 3-month period | 0 | 0% |
| 1. **Integrated service**
 | Service consists of 2 or more service types (other than a short-term service) at one premises by one licensee | 0 | 0% |
|  | **322** | **100%** |

**Monitoring and compliance**

As children’s services are out of scope of the NQF, they are excluded from the national quality assessment and rating of education and care services against the National Quality Standard. However, premises visits and inspections to monitor compliance with regulatory requirements are conducted by QARD with a commitment that each service is visited at least once every three years.

The children’s services sector is seen as highly compliant, with a very low incidence of non-compliance, with 90% of children’s services identified by QARD as low risk.

# Legislative reform

Historically, all Victorian early childhood education and care services were regulated under the CS Actuntil the 2012 introduction of the NQF. At that time, the majority of early childhood education and care services in Victoria were brought within the scope of the National Law scheme, leaving around 8% of the remaining children’s services to continue to be regulated under the CS Act — a small but no less important service industry — with a small portion of these services operating under **both** the national and Victorian regulatory regimes.

While the national and state regimes are similar; they are not consistent, and the differences between the two regulatory regimes can cause administrative burden and confusion for service providers.

The CS Act sets out the:

* architecture of the licensing frameworks
* requirements for provider accountability and oversight of services
* principles for the safety, health and wellbeing of children, and
* the powers and duties of the regulator.

The CS Act captures services that *provide education and care for four or more children under the age of 13 years in the absence of their parents or guardians for fee or reward; or while the parents or guardians of the children use services or facilities provided by the proprietor of the service*.[[18]](#footnote-18)

The CS Act requires that services meeting the definition must be licensed to operate a children’s service in Victoria. Services licensed under the CS Act include occasional care, limited hours services, mobile services and activity groups for three-year-olds.

Currently, around 88% provide education and care for each child for no more than 15 hours per week, and 12% of services provide education and care for each child for no more than 6 hours per week (see Figure 2).

The first major review of the NQF by the COAG was completed in 2017. The review considered bringing the remaining out of scope children’s services within the scope of the NQF, but decided against it due to the complexity of transitioning a diverse range of services (nationally) to the NQF.

After this decision, the Victorian Government undertook a reform of the regulatory framework for children’s services, to better align it with the NQF, in order to remove regulatory inconsistencies, reduce the regulatory burden on service providers and the regulator, and address regulatory gaps.

The Children’s Services Amendment Act 2019 (Amendment Act) — passed by Parliament on 6 November 2019 — aligns the CS Act with the National Law (where appropriate), to simplify regulatory arrangements for service providers and to ensure more consistent minimum standards across the two regimes.

While the reform aligns with the National Law (where appropriate), children’s services **will not** be subject to assessment and rating against the NQS. To do so would impose an unreasonable burden on services providing limited hours of care and would require substantial additional regulatory investment.

The **objectives of alignment** (where appropriate) are to provide a consistent framework for all Victorian early childhood education and care services, regardless of which regulatory regime applies to that service.

Aligning the regulatory regimes may realise **benefits** including:

* reducing administrative burden and risk of confusion for service providers operating under both regimes
* increasing confidence for service providers that there is equity across the sector (e.g. operating requirements, offences and penalties for non-compliance)
* achieving greater consistency for consumers of early childhood education and care services
* enhancing the safety of children by providing the regulatory authority with the power to prohibit persons who pose an unacceptable risk of harm to children from working in the sector
* creating potential efficiencies for the Regulatory Authority in Victoria, and
* increasing opportunities to drive quality across the system, and improve educational and developmental outcomes for children in early childhood education and care services in Victoria.

Sector consultation on the law reform proposal during May and June 2019 indicated broad support for aligning the CS Act with the National Law. Feedback noted that it would be much easier for providers operating under both regimes to comply with consistent requirements.

In addition, the sector has welcomed adopting the term ‘**educator**’ to define those working directly with children including those who hold a minimum Certificate III qualification, as it acknowledges the professionalism of the sector and reinforces the important education and care provided in services that offer short-term, ad hoc care.

A key improvement of the alignment is the requirement that a service’s educational program **must** be based on an approved learning framework. The approved learning frameworks are:

* Victorian Early Years Learning and Development Framework (VEYLDF)
* Belonging, Being and Becoming: The Early Years Learning Framework for Australia (EYLF)
* My Time, Our Place: Framework for School Age Care in Australia (MTOP).

The program will need to be tailored to reflect the nature of the education and care being provided and the period of time that the children attend the service, and to reflect each child’s needs and individual differences.

The Amendment Act will commence in May 2020 and coincides with the sunsetting of associated CS Regulations. This provides the opportunity to align the regulatory regimes (where appropriate), such that the sector, the community and the regulator have a more consistent system to work within.

Appendix 10.3 provides further information about key areas of alignment in the Amendment Act that have a direct impact on the CS Regulations, such as changes to terminology, the approvals process for providers and services, other operational requirements and offence provisions.

## 4.1 Statement of objectives

A key responsibility for the Victorian Government is to ensure the welfare of vulnerable members of society. This extends to ensuring that all services provided to children, regardless of their socio-economic characteristics, meet minimum standards that support the developmental and educational outcomes of children and mitigates the risk that children will come to physical, developmental, social or emotional harm. [[19]](#footnote-19)

The proposed Regulations provide the operational detail to support the Amendment Act.

The objectives of the proposed Regulations which apply to children’s services are to:

* **Minimise** the risk of physical, developmental, social or emotional harm to children while they are not in the care of their parents, guardians or families.
* **Drive** improvement in the quality of education and care provided to maximise the development of the child through the provision of appropriate programs and opportunities in the children’s services context.
* **Align** (where appropriate) and simplify regulatory arrangements for service providers to ensure more consistent minimum standards and reduce administrative burden.

In achieving these objectives, the proposed Regulations will ensure adequate services are provided to meet the specific needs of children requiring occasional care and families needing flexible service models designed to meet their varied needs.

# Proposed options

When regulations are remade, the *Subordinate Legislation Act 1994* requires that a RIS considers other practicable means of achieving the objectives of the proposed statutory rules, including other regulatory as well as non-regulatory options.

The three main options presented are:

* **Base Case** – The scenario in which there are no Regulations; the current Regulations are not remade and no new regulations are made to replace them. This option is designed as a point of comparison for other options and is a mandatory consideration for sunsetting regulations.
* **Status Quo** – The scenario in which the Regulations are remade in their current form with no changes.
* **Alignment** – The scenario in which the current Regulations are replaced by proposed Regulations that further the objective of aligning the regulation of children’s services to the NQF (where appropriate).

The RIS also considers non-regulatory options for achieving the objectives, such as:

* **Education campaigns** – The scenario of informing service providers of changed requirements to set up and run children’s services.
* **A voluntary code of practice** – The scenario in which services agree to be bound by a code of practice.

## 5.1 The Base Case

The base case is a mandatory consideration for sunsetting regulations and is used as a **point of comparison** for other options presented in the RIS. It assumes the scenario in which there are no Regulations; that is to say that the current Regulations are not remade and no new regulations are made to replace them. The Amendment Act 2019 remains in place and becomes the sole regulatory instrument for children’s services out of scope of the NQF.

The base case would be represented by the position set out in Table 2.

Table 2 Base Case: Regulatory position if the Regulations are not remade

|  |  |
| --- | --- |
| ****Subject**** | ****Base case**** |
| **Approval applications** | The Act states that a person may apply to the Regulatory Authority for a provider approval,[[20]](#footnote-20) and that an approved provider may apply for a service approval.[[21]](#footnote-21) It is an offence to operate a children’s service without a service approval.[[22]](#footnote-22)The Act states that approval applications must be in writing, contain the relevant prescribed information, and be accompanied by the prescribed fee.[[23]](#footnote-23)**Without regulations**, there would be no specific details regarding ‘relevant prescribed information’ and the ‘accompanied prescribed fee’. Without a fee amount specified, no fee could be charged. |
| **Operation of children’s services: health and welfare of children; equipment and facilities**  | The Act includes offence provisions which set out penalties for failure to comply with certain operating standards. These include general provisions requiring service providers to protect children in their care from harm and hazards[[24]](#footnote-24) and to adequately supervise children at all times.[[25]](#footnote-25) Several of these refer to ‘prescribed information’, to be provided for in regulations.The Act states that service providers must ensure:* that services do not operate without a nominated supervisor, and that each nominated supervisor meets prescribed minimum requirements[[26]](#footnote-26)
* that the number of educators present when children are at the service, and their qualifications, meet the prescribed requirements[[27]](#footnote-27)
* that prescribed information about the provider’s approvals, nominated supervisor, any waivers held by the service, and any other prescribed matters is clearly visible[[28]](#footnote-28)
* that prescribed documents are available for inspection[[29]](#footnote-29)

The Act further states that service providers must notify the Regulatory Authority of certain circumstances within the prescribed period, and of certain other prescribed information.[[30]](#footnote-30) The Regulations currently set out these prescribed details, along with outlining other operational requirements to ensure services are operating at an acceptable standard.**Without regulations** although the obligations under the Act would remain, there would be no detail informing service providers of what they must do to meet their obligations under the Act.  |
| **Registers and record-keeping** | The Act requires the Secretary to keep registers of approved providers and services, containing the prescribed information.[[31]](#footnote-31) The Act states that it is an offence for providers not to keep ‘the prescribed documents’ available for inspection by the Department officers.[[32]](#footnote-32) The Regulations set out the information to be contained in the register and the documents to be kept by providers: attendance records, child enrolment records, medication records, an accident record and a staff record.[[33]](#footnote-33) **Without regulations**, there would be no prescribed guidance to service providers on the information to be recorded. The Department has the power under the Act to request information, and would exercise this power as required.  |
| **Complaints and serious incidents** | The Act requires service providers to notify the Secretary of any complaints alleging that a serious incident has occurred or that the Act has been contravened within the prescribed period.[[34]](#footnote-34)**Without regulation**, there would be no regulatory time limit on notifying the Secretary about these issues.  |

While the Base Case is a mandatory inclusion in the set of options, it is not a desirable option as many of the provisions in the Act refer to, and rely on, additional details prescribed in the Regulations. If current regulations are not remade or no new regulations made to replace them, the specificity and particulars of the Act would not be provided, leaving the sector vulnerable to non-compliance and/or misunderstanding the requirements of the Act. For this reason, the Base Case is provided as a basis for comparison, but is not itself analysed as a potential option for implementation.

## 5.2 Regulatory options

The two main regulatory options outlined in the RIS are ‘Status Quo’ and ‘Alignment’.

The Status Quo option refers to the scenario where the regulations are remade exactly as they are currently. It is included to provide a point of comparison with any changes in the proposed Regulations and uses the terminology of the existing CS Regulations and the CS Act 1996.

As the CS Act has recently been amended to align it with the National Law, where appropriate, new terminology and requirements have been introduced (see Appendix 10.3) and feature in the Alignment option presented in this RIS. The Alignment option includes a transitional period for existing services to allow time to adjust to new requirements. The transitional provisions in the proposed Regulations are discussed at section 9.

The proposed Regulations provide the **operational detail** to support the Amendment Act. A key objective of the proposed Regulations is to **align** to the NQF (where appropriate) and **simplify** regulatory arrangements for service providers to ensure more consistent minimum standards and reduce administrative burden.

A discussion about alternative, non-regulatory options is provided in section 5.3.

The key **regulatory areas** discussed in the RIS are:

1. Approval applications
2. Services approvals
3. Staffing (ratios and qualifications)
4. Safety, health and wellbeing of children
5. Equipment and facilities
6. Complaints and serious incidents
7. Registers and record-keeping
8. Fees
9. Exemptions or waivers

### A. Approval applications

**Option A.1. Status Quo**

The Status Quo option is not considered for provider and service approvals of the Regulations. Changes to the language and structure of the Amendment Act where approvals is concerned (formerly licensing), mean this part of the Regulations are essential for the Act and the Regulations to function together. Assessing the process as it was is no longer relevant nor does it provide a meaningful basis for comparison with the base case option.

**Option A.2. Alignment**

The following table sets out the information included in the proposed Regulations to support the sections of the Act relating to provider and service approvals. In addition to prescribing information for prospective providers’ initial applications, the Regulations also include detail to support provisions of the Act relating to the death or incapacity of approved providers.[[35]](#footnote-35) This table also sets out the conditions on service approvals and the Department’s powers in granting or refusing applications for service approval as included in the proposed Regulations.

Table 3 Option A.2. Alignment – Approval applications

|  |  |
| --- | --- |
| ****Subject**** | ****Details in the Regulations**** |
| **Provider approval: initial application** | Information to be included with an application by an individual:* The applicant’s full name, residential address and contact details
* The applicant’s date and place of birth
* Proof of the applicant’s identity
* Previous service statement made by the applicant (if applicable)
* The applicant’s working with children check, if held
* The applicant’s current teacher registration, if held
* The applicant’s criminal record check from within the last 6 months
* An overseas criminal history statement by the applicant if they have lived or worked overseas in the past 3 years
* A disciplinary proceedings statement made by the applicant
* A bankruptcy declaration made by the applicant

Information to be included with an application by a corporation, etc.:* The applicant’s name and any trading name
* The street and postal addresses of the applicant’s principal office
* The name and contact details of a contact person for the application
* Documentary evidence of the applicant’s legal status and its constitution
* Financial declaration about the applicant
* For each individual who will be a person with management or control of a service: the same information as required for an individual applicant above
 |
| **Provider approval: amendment** | Information to be included in an application for amendment:* The applicant’s full name and provider approval number
* The name and contact details for a contact person for the application
* Details of the desired amendment
* Sufficient information or documentation to support the application
 |
| **Provider approval: voluntary suspension** | Information to be included in an application for voluntary suspension:* The applicant’s full name and provider approval number
* The name and contact details of a contact person for the application
* Reasons for the suspension
* Proposed date and duration of the suspension
* What is intended to happen to each service operated by the approved provider
* Statement indicating affected parents have been notified in accordance with the Act
 |
| **Provider approval: death of approved provider** | Information to be included with an application by an individual executor:* Information to be included in individual applications as above
* The approved provider’s full name and approval number
* The date and certificate of death for the approved provider
* The proposed duration of the approval (max. 6 months)

Information to be included with an application by an executor corporation, etc. in the event of an approved provider’s death:* Information to be included in non-individual applications as above
* The approved provider’s full name and approval number
* The date and certificate of death for the approved provider
* The proposed duration of the approval (max. 6 months)
 |
| **Provider approval: incapacity** | Information to be included with an application by an individual (legal representative or guardian):* Information to be included in individual applications as above
* The approved provider’s full name and approval number
* The proposed duration of the approval (max. 6 months)

Information to be included with an application by a corporation, etc. (legal representative or guardian):* Information to be included in non-individual applications as above
* The approved provider’s full name and approval number
* The proposed duration of the approval (max. 6 months)
 |
| **Service approval: initial application** | Information to be included with an application for a children’s service:* The applicant’s full name and provider approval number
* The name of the proposed service and contact details if known
* The proposed date the service will commence operation
* The proposed ages and maximum number of children to be cared for
* The proposed hours and days of operation of service
* Description of the nature of the service
* Statement that the applicant has prepared the prescribed policies
* The full name and contact details of nominated supervisor(s)
* The location and street address of proposed premises
* Plans prepared by a building practitioner showing:
	+ Location of all buildings, structures, outdoor play areas and shaded areas
	+ Location of all entries, exits, gates and fences (specifying type)
	+ Location of toilet, washing, nappy changing and food preparation areas
	+ Boundaries of the premises
	+ Landscape or landscaping plans for outdoor play spaces
	+ Floor plan indicating unencumbered indoor and outdoor spaces for children, and their calculated areas
	+ Elevation plans
* If located at a premises with access to a swimming pool, a water safety policy
* Soil assessment OR statement of previous soil assessment and results OR a statement that to the best of its knowledge the site history does not indicate a danger to children
* Planning permit if required by local laws
* Evidence of right to occupy premises
* Unless premises is a school, occupancy permit, building certificate OR statement by building practitioner that the premises complies with planning law

The Secretary may determine that the requirements for plans, soil assessments or planning permit do not apply to services to be located at registered schools or in cases where the application relates to the relocation of an approved children’s service. |
| **Service approval: conditions**\* | The following conditions are prescribed to apply to service approvals:* Approved providers must hold insurance in respect of each service: either
	+ current policy providing adequate cover against public liability with a minimum cover of $10m, or
	+ a policy of insurance or indemnity against public liability provided by the Government
* Approved providers/services continue to be entitled to occupy the premises

*[\*New requirement either not in or without equivalent in the current Regulations]* |
| **Service approval: amendment** | Information to be included with an application to amend:* The service’s name and service approval number
* The name and contact details of application contact person
* Details of amendment applied for
* Sufficient information or documentation to support the application
 |
| **Service approval: new nominated supervisor** | A notice that a new supervisor has been nominated must include:* The name and service approval number of the service
* The name and contact details of a contact person for the application
* The full name and contact details of the new supervisor
* The date on which the new supervisor commenced work
 |
| **Service approval: transfer** | Information to be included with a notice of transfer:* The name and service approval number of the service
* The transferring approved provider’s name, contact details and provider approval number
* The receiving approved provider’s name, contact details and provider approval number
* The date on which the transfer is intended to take effect
* Details of any proposed changes to the service
 |
| **Service approvals: voluntary suspension** | Information to be included in an application for voluntary suspension:* The name and service approval number of the service
* The name and contact details of a contact person for the application
* Reasons for the suspension
* The proposed date and duration of the suspension
* What is intended to happen to each service operated by the provider
* Statement indicating affected parents have been notified
 |
| **Service approval: matters the Department must consider** | The Department must have regard to the following matters in determining applications for service approvals:* Any suspension of the applicant’s provider approval
* Any conditions on the applicant’s provider approval
 |
| **Service approval: grounds for refusal** | The Department may refuse to grant a service approval on the following grounds:* The Department is not satisfied the applicant can operate the proposed service in a way that meets the legal requirements
* The Department is not satisfied the applicant is entitled to occupy the proposed service premises
 |

### B. Service approval type

**Option B.1. Status Quo**

Under this option, seven licence types are specified in the Regulations as detailed in Table 1, section 3 and summarised here. Standard service

1. School holidays care service
2. Limited Hours type 1
3. Limited Hours type 2
4. Short-term type 1
5. Short-term type 2
6. Integrated service

The RIS does not consider a status quo option for this area as the amendments to the language and structure of the Act regarding licensing and approvals necessitates that this part of the regulations change in order for the Act and Regulations to function together.

**Option B.2. Alignment**

Under this option, the proposed Regulations prescribe either **Limited Hours** service approval type or **Occasional Care** service approval type aligned to the NQF (streamlined from the previous seven licence types). These are described in Table 4 and further detail about transitional provisions that will apply are provided in Appendix 10.1.

Table 4 Option B.2. Alignment – Service approval type

|  |  |
| --- | --- |
| ****Service Approval Type**** | ****Details in the Regulations**** |
| Limited Hours | Cares for each child for not more than 3 hours per day, for up to 6 hours per week*(Could include former Limited Hours (type 1) and Short-term (type 2) licence types)* |
| Occasional Care | All other services would be fall under this service approval type*(Could include former Standard, Short-term (type 1), Limited Hours (type 2) and school holiday care licence types)* |

### C. Staffing

**Option C.1. Status Quo**

Under this option, information relating to staffing numbers and qualifications is included in the Regulations to support the relevant sections of the CS Act. The current Regulations use the following terminology to describe staff working with children in children’s services: employee, staff member, qualified staff member, teaching staff member and volunteer, and these have been used in the description of this option for clarity and consistency.

See Appendix 10.3 for further details about changes to terminology in the Amendment Act.

Table 5 Option C.1. Status Quo – Staffing

|  |  |
| --- | --- |
| ****Subject**** | ****Details in the Regulations**** |
| Terminology | * **Staff member (any person employed at a service who is educating and caring for children and is not a volunteer and must hold at least a Certificate III qualification)**
* **Qualified staff member (holds a diploma level qualification or above)**
* **Teaching staff member (holds an early childhood teaching degree level qualification or above)**
* **Volunteer (person caring for or educating children in a voluntary or honorary capacity)**
 |
| Qualifications | **Staff members responsible for the education and care of children*** **All staff members must hold at least a Certificate III**
* **For children under 3, at least 1 in 3 staff members must hold a Diploma or above**
* **For children aged 3 and over, at least 1 in 2 staff members must hold a Diploma or above**
* **Services holding a Limited Hours type 1 and Short-term type 2 licence do not have to engage Diploma qualified staff**

**Early Childhood Teachers (only required for services holding a Standard licence)*** **Early childhood teachers hold at least a degree level qualification**
* **Services holding a Standard licence approved to care for fewer than 25 children must have access to at least one early childhood teacher for at least 20% of the time the service is operating**
* Services holding a Standard licence approved to care for 25 or more children must ensure an Early Childhood Teacher for at least the lesser of 50% of the operating hours or 20 hours a week.
 |
| Minimum staff | **School holidays care services licensed to care for no more than 15 children and located in a rural or remote area must ensure that a staff member is on duty whenever children are in attendance, and that one other adult is at or near the premises and able to attend immediately.****All other services must ensure that at least two staff members are on duty whenever children are in attendance.** |
| Staff to child ratios | **The following staff to child ratios are required under the Regulations. Different ratios apply for staff qualified to a Certificate III or Diploma level.** |
| **Licence type** | **Staff qualification** | **Ratio Under 3yo** | **Ratio 3yo and above** |
| **Standard** | ***Staff – Cert III*** | **1:4** | **1:15** |
| ***Qualified Staff – Diploma*** | **1:12** | **1:30** |
| **Limited hours type 1** | ***Staff – Cert III or volunteer*** | 1:5 | 1:15 |
| ***Qualified Staff – Diploma*** | Not required | Not required |
| **Limited hours type 2** | ***Staff – Cert III or volunteer*** | 1:5 | 1:15 |
| ***Qualified Staff – Diploma*** | 1:15 | 1:30 |
| Short term type 1 | ***Staff – Cert III or volunteer*** | 1:5 | 1:15 |
| ***Qualified Staff – Diploma*** | 1:15 | 1:30 |
| **Short term type 2** | ***Staff – Cert III or volunteer*** | 1:5 | 1:15 |
| ***Qualified Staff – Diploma*** | 1:30 (if over 16 children) | 1:30 (if over 16 children) |
| *School holiday care* | ***Staff – Cert III*** | **N/A** | **1:15 (school age)** |
| ***Qualified Staff – Diploma*** | **N/A** | **1:30 (school age)** |

**Option C.2. Alignment**

In this option, the prescribed requirements for minimum staff numbers, qualifications and ratios have been updated to align with the equivalent requirements under the National Regulations (where appropriate). In this option, the terminology of the Amendment Act is used (for more detail, refer to Appendix 10.3).

Table 6 Option C.2. Alignment - Staffing

|  |  |
| --- | --- |
| ****Subject**** | ****Details in the Regulations**** |
| Terminology | * **Staff member (any person employed at a service except a nominated supervisor)**
* **Educator (an individual who provides education and care for children as part of a children’s service)**
* **Early childhood teacher**
* **Volunteer (person educating or caring for children in a voluntary or honorary capacity)**
 |
| Qualifications  | **For services with an occasional care service approval:*** **All educators must hold or be ‘actively working towards’**[[36]](#footnote-36) **at least a Certificate III to be counted in staffing ratios**
* **At least 50 per cent of educators (calculated across the service) must hold or be ‘actively working towards’ at least a Diploma**
* **Educators who have not yet commenced study can be counted in ratios during a probationary period of three months prior to their enrolment in at least a Certificate III qualification**

**For services with an occasional care service approval providing care to any child for over 30 hours per week, in addition to the above:** * **An early childhood teacher must be employed**

**For services with a limited hours service approval:*** **All educators must hold a complete Certificate III**
* **There is no requirement to employ diploma qualified educators or an early childhood teacher**

**For all services:*** **Volunteers may be in attendance and may be counted in the ratios provided the volunteer holds, or is ‘actively working towards’ a relevant approved early childhood qualification.**
 |
| Minimum number of staff | **All services must ensure that at least one educator is on duty whenever children are in attendance.** |
| Staff to child ratios | **The following staff to child ratios would be required:** |
| **All services** | **Under 36 months** | **36 months or over** | **School age** |
| ***Educator*** | **1:4** | **1:11** | **1:15** |

### D. Safety, health and wellbeing of children

**Option D.1. Status Quo**

Under this option, the Regulations include standalone requirements designed to promote the safety, health and wellbeing of children attending services.

Table 7 Option D.1. Status Quo – Safety, Health and Wellbeing of children

|  |  |
| --- | --- |
| ****Subject**** | ****Details in the Regulations**** |
| **Safety, health and wellbeing of children** | Service providers are required to ensure that:* parents and guardians are able to access the service premises and exchange information with staff about their children
* children are not given into the care of any person without lawful authority to collect them from the service
* service staff don’t take children on excursions without lawful authorisation (as detailed in the Regulation)
* staff members taking children on excursions are properly equipped and have conducted a risk assessment
* emergency procedures are developed and practised by staff and volunteers
* staff have ready access to a telephone
* the personal hygiene needs of children are attended to as soon as practicable[[37]](#footnote-37)
* children have access to fresh drinking water
* suitable, regular and uncontaminated food and beverages are provided
* if food is served, a weekly menu is displayed and the food is nutritious, varied and adequate in quantity
* children are cared for in a smoke-free environment
* there is a first aid kit at the premises and appropriate first aid is provided
* the service has an anaphylaxis management policy including:
	+ procedures for training staff
	+ practices and policies to ensure compliance with requirements around keeping allergy records and management plans, relevant staff training, displaying notice that a child at risk of anaphylaxis attends the service and management and administration of medicine
	+ requirement that risk minimisation plans for each affected child have been developed by the service in consultation with the child’s parents, which includes:
		- an assessment of the risks of anaphylaxis to the child at the service and how those risks can be minimised, reviewed and documented
		- practices and procedures to minimise those risks
		- practices and procedures regarding the safe handling and preparation of food (if relevant)
		- practices and procedures for ensuring that all parents and guardians of children at the service are notified of the known allergens and risk minimisation strategies
		- means to ensure each staff member can identify the child and is familiar with their allergies, medical management plan and the location of their medicine
	+ requirement that the service obtain a medical management plan from the parents of each relevant child, which:
		- is individualised to the child
		- is signed by the child’s treating doctor
		- describes the child’s prescribed medication
	+ requirement that the management plan must be followed for any child who has an anaphylactic episode at the service
	+ a communication plan, including policies to ensure that:
		- all staff and parents or guardians of children at the service are informed about anaphylaxis management at the service
		- a parent or guardian of a child at risk of anaphylaxis can communicate with staff about any changes required to the child’s risk minimisation and medical management plans
* all staff are familiar with the risk minimisation and medical management plans of all relevant children at the service
* all staff members counted in staff to child ratios or as part of the minimum staff number requirement have completed training in:
	+ First aid
	+ Anaphylaxis management
	+ Administration of the adrenaline auto-injection device
	+ CPR
* parents are notified as soon as practicable if their child becomes sick or is injured
* parents are notified of any infectious disease which occurs
 |

**Option D.2. Alignment**

Under this option, services are required to abide by the same regulatory requirements as outlined in Option D.1. Status Quo with four substantive changes, as outlined in Table 8 below.

Table 8 Option D.2. Alignment – Safety, health and wellbeing of children

|  |  |
| --- | --- |
| ****Subject**** | ****Details in the Regulations**** |
| **First aid and other training** | **All services must ensure that at least one educator on the premises has had the following training (and is currently certified):*** **first aid**
* **anaphylaxis management**
* **asthma**
 |
| **Notification of risks and incidents** | **Services must notify the Department of the following matters:*** **any change to the service’s hours and days of operation**
* **any incident that requires the closure of the service or a reduction in the number of children attending for a period**
* **any circumstance arising that poses a risk to the health, safety or wellbeing of a child or children attending the service**
* **the attendance of any additional child or children in an emergency (including a description of the emergency and a statement that the approved provider has taken into account their safety, health and wellbeing when deciding to provide education and care to them)**
* **any incident where the provider reasonably believes that physical or sexual abuse of a child has occurred at the service**
* **allegations of physical or sexual abuse against a child at the service**
 |
| **Interactions with children** | All services must take reasonable steps to ensure that the service provides education and care to children in a way that:* **encourages the children to express themselves and their opinions**
* **allows the children to undertake experiences that develop self-reliance and self-esteem**
* **maintains at all times the dignity and rights of each child**
* **gives each child positive guidance and encouragement toward acceptable behaviour**
* **has regard to the family and cultural values, age, and physical and intellectual development and abilities of each child being educated and cared for by the service.**
 |
| **Relationships in groups** | **All services must** take reasonable steps to ensure that the service provides children being educated and cared for by the service with opportunities to interact and develop respectful and positive relationships with each other and with staff members of, and volunteers at, the service. |

### E. Equipment and facilities

**Option E.1. Status Quo**

Under this option, the Regulations include standalone requirements designed to ensure that services provide adequate equipment and facilities to enable children to be properly cared for. These requirements are the same as those currently prescribed in the Regulations.

Table 9 Option E.1. Status Quo - Equipment and facilities

|  |  |
| --- | --- |
| **Subject** | **Details in the Regulations** |
| **Equipment** | **Children must have access to the furniture, materials and developmentally appropriate equipment for the educational or recreational program provided to them.** |
| **Children’s rooms** | **Services must provide children’s rooms.****If children under 3 years old are being cared for, standard services must provide at least 2 children’s rooms.****Children’s rooms at standard services must have adequate natural lighting.****The floor area must allow a clear space for each child of at least 3.25 square metres, not including hallways, kitchens, bathrooms, cupboards, door swing areas, cot rooms or any other ancillary areas.** |
| **Outdoor space**  | **Services holding a Standard licence must provide outdoor space which:** * has a useable area of at least 7 square metres per child
* includes features enabling children to explore and experience the environment
* has adequate shade
* is enclosed by a fence at least 1.5m high and impossible for children to get through, over or under

**School holidays care services must ensure each child has access to 7 square metres of outdoor or indoor playing space, at or near the service.****The following don’t count as outdoor space: pathways, car parks, storage sheds or any other ancillary area.** |
| **Administration room** | **Services must provide a space for:*** **conducting administrative work**
* **consulting with parents or guardians**
* **respite facilities for employees**
 |
| **Toilet and washing facilities** | **Toilet and hand-washing facilities must be:*** **age-appropriate and adequate for children’s use**
* **located and designed to enable safe use by children**
 |
| **Nappy changing facilities** | **If services care for nappy-wearing children, facilities must be provided which are adequate and age-appropriate for safe and hygienic nappy-changing.**  |
| **Sleep and rest facilities** | **Services other than school holidays care services must ensure that:*** **an adequate number of suitable cots, beds, stretchers or mattresses are provided**
* **an adequate supply of bedding is available**
* **all bedding is kept clean and in good repair.**

**School holidays care services must provide an adequate rest area for children.** |
| **Food preparation** | **The following must be available to and accessible by staff:*** **facilities to cook or heat food**
* **washing up facilities**
* **refrigerated food storage facilities**
 |

**Option E.2. Alignment**

Under this option, services are required to abide by the same regulatory requirements as outlined in option E.1. Status Quo, with three changes as outlined in Table 10. As with the Status Quo option, minor changes will also be made to update the Regulations to refer to the correct provisions in the amended Act. Transitional provisions will also apply; see section 0.

Table 10 Option E.2. Alignment - Equipment and facilities

|  |  |
| --- | --- |
| **Subject** | **Details in the Regulations** |
| **Children’s rooms** | **Services will not have to provide a second room for children under 36 months.** |
| **Outdoor space**  | **Services with an Occasional Care service approval must provide outdoor space which:** * has a useable area of at least 7 square metres per child
* includes features enabling children to explore and experience the environment
* has adequate shade
* is enclosed by a fence at least 1.5m high and a child cannot go through, over or under the fence or barrier or any gate fitting

**The following do not count as outdoor space: pathways, car parks, storage sheds or any other ancillary area.****Services with a Limited Hours service approval do not need to provide outdoor space.** |
| **Laundry facilities** | **All services must:*** Have access to laundry facilities or,
* Make other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage prior to their disposal or laundering.
 |

### F. Complaints and serious incidents

**Option F.1. Status Quo**

Under this option, the Regulations include a standalone provision, requiring services to deal with and respond to complaints as soon and discreetly as possible. The Regulations also provide that services must notify the Secretary of any complaint that relates to the health, safety or wellbeing of a child or a contravention of the Act or Regulations.

**Option F.2. Alignment**

The proposed Regulations provide that services must notify the Secretary of any Complaints and serious incidents within 24 hours.

### G. Registers and record-keeping

**Option G.1. Status Quo**

Under this option, the Regulations specify the information to be included in the register of children’s services kept by the Secretary, and the documents services need to display and keep available for inspection. These details are the same as those contained in the current Regulations.

Table 11 Option G.1. Status Quo - Registers and record-keeping

|  |  |
| --- | --- |
| ****Subject**** | ****Details in the Regulations**** |
| **Register of children’s services**  | **The Register must include:** * The name, address and contact details of the service
* The names of the licensee and primary nominee
* The number, type, date and expiry of the licence
* The services provided at the premises
* The maximum number of children who may attend the service
 |
| **Information to be displayed at service** | **Each service must display:*** **The service’s hours and days of operation**
* **The names of the licensee and nominees**
* **An outline of the service’s educational or recreational programs**
* **Fees**
* **Details of emergency evacuation procedures**
* **The name and phone number of the person responsible for receiving complaints**
* **The address and telephone number of the responsible office of the Department**
* **A list of the information available for inspection by the Department officers**
* **If applicable, a notice stating that a child diagnosed as at risk of anaphylaxis attends the service**
 |

**Option G.2. Alignment**

Under this option, the Regulations specify the information to be included in the registers of children’s services and approved providers kept by the Secretary, and the documents services need to display and keep available for inspection by the Department officers. These details are the same as those contained in the current Regulations, with the addition of information to be included in the register of approved providers.

The proposed Regulations impose new requirements on providers relating to emergency procedures and rehearsals, annual review of policies, documenting a child’s educational program, evidence of insurance, and the storage and confidentiality of records. In addition, the proposed Regulations set out a list of policies and procedures to be maintained by services, some of which are not required under the current Regulations. Table 12 outlines the new requirements.

Table 12 Option G.2. Alignment - Registers and record-keeping

|  |  |
| --- | --- |
| ****Subject**** | ****Details in the Regulations**** |
| **Register of approved providers**  | **The Register must include, for each approved provider:** * The postal address of the approved provider
* Any conditions on the approval
* The date the approval was granted
* The provider approval number
* The service approval number of all services provided by the provider.
 |
| **Emergency rehearsals** | **Services must rehearse and document emergency evacuation procedures every 3 months.**  |
| **Information for inspection** | **Each service must ensure the following are kept available for inspection:*** **The admission requirements and enrolment procedures**
* **Arrangements for fee payment**
* **Employment policy for qualified staff**
* **Educational or recreational programs**
* **Behaviour management policy**
* **Arrangements for the delivery and collection of children**
* **Procedures for dealing with illness and emergency care**
* **Procedures for dealing with infectious disease**
* **Provision for dealing with Complaints and serious incidents**
* **The anaphylaxis management policy.**
 |
| **Miscellaneous** | **Each service must provide to any parent or guardian of a child diagnosed as at risk of anaphylaxis with a copy of the service’s anaphylaxis management policy.****Services must ensure that a parent or guardian may access and be provided with a copy of the accident and illness record for their child as soon as practicable after a request is made.** **Services must notify parents within 28 days of any changes to policies and procedures at the service.** |
| **Records** | **Each service must keep the following records:*** **Attendance record, including the full name of the child and the time at which they arrive and depart**
* **Enrolment record, including**
	+ **The name, date of birth and address of each child, their parents or guardians and emergency contact**
	+ **Details of any court orders**
	+ **Language used at home**
	+ **Relevant health information**
* **Medication record, including**
	+ **Authorisation to administer medication**
	+ **Name, time, date and dosage of medication administered**
* **Accident, injury, trauma and illness record, including the details of any accident or other such incident and action taken in response**
* **Staff record, including**
	+ **Name, address and date of birth of each staff member**
	+ **Copy of qualifications**
	+ **Working hours**
	+ **Date of first aid and other training**
* **Staff roster**
* **Record of educational and recreational programs.**
 |
| **Policies to be in place** | **Services must have policies and procedures in relation to:*** Health and safety (including food and beverages, dietary requirements, sun protection, water safety, first aid and sleep and rest)**\***
* Incident, injury, trauma and illness procedures
* Infection diseases procedures
* medical conditions covering:
	+ medical management plans to be provided by the parents or guardians of any children with a medical condition**\***
	+ risk-management plans for each child with a medical condition to be developed by each service in consultation with the child’s parents or guardians**\***
	+ communication plans for each child with a medical condition for informing staff of the child’s medical plans and inputting any changes to these plans**\***
* emergency and evacuation
* delivery and collection of children
* staffing (including code of conduct, determining responsible person present, participation of volunteers and students)**\***
* interactions with children\*
* enrolment and orientation
* governance and management of service including confidentiality**\***
* acceptance and refusal of authorisations**\***
* payment of fees
* Complaints and serious incidents

**An asterisk (\*) indicates new requirements not in the current Regulations.** |
| **Review of policies** | **Services must review policies annually and update as required. Parents must be notified of any changes.** |
| **Prescribed insurance** | **Providers must keep evidence of their current, prescribed insurance available for inspection by the Department officers.**  |
| **Confidentiality** | **Approved providers must ensure that information kept in a record under the Regulations is not communicated to another person other than:*** **To the extent necessary for medical treatment of a child**
* **To a parent (apart from staff record information)**
* **To the Department or one of its officers**
* **As expressly authorised under the Act or another law**
* **With the written consent of the person who provided the information**
 |
| **Storage** | **Approved providers must ensure that records and documents are stored in a safe and secure place.****Records must be kept for the following periods:*** **Incidents, illness or trauma records: 25 years**
* **Death of a child: 7 years**
* **All other records: 3 years**

**If a service approval is transferred, any records or documents relating to children currently enrolled at the service must be transferred to the receiving approved provider as long as a parent consents.**  |
| **Educational program** | **Services must document children’s progress against the outcomes of the educational program(s) offered by the service, proportionate to the time spent by the child at the service.**The outcomes that a program should contribute towards are:* The child will have a strong sense of identity
* The child will be connected with and contribute to his or her world
* The child will have a strong sense of wellbeing
* The child will be a confident and involved learner
* The child will be an effective communicator.
 |
| **Record of educators working directly with children** | **Services must keep a record of the educators working directly with children, including their names and the hours they are working with children at the service.** |

### H. Fees

The Act requires a number of applications to be accompanied by a “prescribed fee”. It also requires approved providers to pay the prescribed annual service fee in respect of each service they operate, and states that the prescribed fee must accompany any notification to the Department of the transfer of a service approval.

Under the **Base Case**, these fees would still be required when each application is made or action taken as stipulated in the Act, but in the absence of Regulations (current or new), the particulars of fees (unit or dollar amount) would not be detailed, therefore technically, a fee could not be charged.

Under Option H.1. **Status Quo**, the Regulations set out the prescribed fees relevant to provisions in the CS Act in ‘fee units’. However, the current Regulations uses terminology and refers to some provisions that no longer apply following the 2019 amendments to the Act.

Under Option H.2. **Alignment**, the Regulations set out the fees prescribed in relation to each of the applications as relevant to the amended Act and includes the discontinuation of some fees and the introduction of new fees. The Alignment option presents a more streamlined fee structure that is simpler to navigate for new services entering the market, and is simpler for existing services because the current licence renewal process is being replaced by a proposed annual service fee paid on invoice.

For the purpose of comparison, the Status Quo option has preserved the substance of the current Regulations (terminology and type of applications), while the Alignment option presents the proposed fee structure and units as it pertains to the Amendment Act.

Appendix 10.5a sets out the fee structure under the current regulations for Standard, Limited Hours (type 1 and 2) and School Holiday Care licences respectively, in both fee units and dollars. Service level data as at December 2019 indicates that there are no services currently holding a Short term licence (type 1 or 2) and the integrated service licence has been captured in the School Holiday Care licence data, therefore fees related to these licence types are not shown in the table at Appendix 10.5a.

Appendix 10.5b sets out the proposed fee structure to reflect alignment to the NQF (where appropriate) and shows the new applications for which a fee is prescribed.

More detail on the proposed structure and rationale for change is provided in section 6.

### I. Exemptions or waivers

A **new provision** of the Amendment Act provides that approved providers may apply to the Department for a waiver from any prescribed requirement in the Regulations. The Amendment Act requires that an application for a service waiver, temporary waiver or extension to a temporary waiver must include the prescribed information and fee.

**Option I.1. Status Quo**

The CS Act provides that the Minister can declare a service exempt from any of the Act’s requirements. The current Regulations do not contain guidance or requirements in relation to service exemptions. Under Option I.1. Status Quo, the Regulations would continue to be silent on this matter.

**Option I.2. Alignment**

Under this option, the proposed Regulations prescribe the regulations that may be waived for the purposes of the Amendment Act. As in the Status Quo option, the Minister can declare a service exempt from any of the Act’s requirements, and **in addition**, the power to waive specific regulations is delegated to the Regulatory Authority. The proposed Regulations also prescribe the information to be included with applications for service waivers and temporary waivers,[[38]](#footnote-38) along with the fees to be paid (discussed in Option H.2. above).

Table 13 Option I.2. Alignment – Exemptions or waivers

|  |  |
| --- | --- |
| ****Subject**** | ****Details in the Regulations**** |
| **Waivers: prescribed requirements** | Services may apply to have the following requirements waived:* Fencing around outdoor spaces
* Laundry and hygiene facilities
* Indoor space
* Ventilation and natural light
* Administrative space
* Nappy change facilities
* Natural environment in outdoor spaces
* Shade in outdoor space
* Supervision capacity for facilities
* Supervision of educators under 18
* Minimum educator/child ratios for occasional care services
* Minimum educator qualifications
* Early childhood teacher for occasional care services
 |
| **Application for service waiver** | An application for a service waiver must include:* The name and service approval of the service
* Name and contact details of a contact person for the application
* A statement of:
	+ The regulations in relation to which the waiver is sought
	+ The way in which the service does or will not comply with the regulations
	+ The reasons why the service cannot comply
	+ Evidence of attempts made to comply
	+ The reasons why the waiver is sought
	+ The measures being taken to protect the wellbeing of children at the service while the waiver is in force
 |
| **Application for temporary waiver** | An application for a temporary waiver must include:* The same information as described above in relation to service waivers
* The period for which the waiver is sought (max. 12 months)
 |

## 5.3 Options not considered in this RIS

### 5.3.1 Full alignment with the NQF

If the Regulations were to be ‘fully’ aligned with the NQF, children’s services would be subject to assessment and rating against the NQS. The NQS sets the national benchmark for early childhood education and care services in relation to seven quality areas:

* Educational program and practice
* Children’s safety, health and wellbeing
* Physical environment
* Staffing arrangements
* Relationships with children
* Collaborative partnerships with families and communities
* Governance and leadership.

Each service subject to the NQS is assessed and rated by the relevant state or territory regulatory authority, given a rating for each of the seven quality areas and provided with an overall rating based on these results. Services also prepare a Quality Improvement Plan (QIP). In preparing a QIP, services state their operating philosophy, consider their quality assessment and rating, and identify areas for improvement and how these improvements will be made.

The NQF defines an occasional care service as *“a service providing education and care to children primarily on an ad hoc or casual basis where—(i) the service does not usually offer full-time or all day education and care to children on an ongoing basis; and (ii) most of the children provided with education and care are preschool age or under.”*

Occasional care services are excluded from the definition of an education and care service in the National Law. Therefore, children’s services that provide occasional care are **not eligible** to be regulated under the NQF and continue to be covered by the Victorian licensing and regulatory regime.

The first major review of the NQF by the COAG was completed in 2017. This review considered, but decided against, bringing the remaining out of scope children’s services within the scope of the NQF, due to the complexity of transitioning a diverse range of services (nationally) to the NQF.

To this end, children’s services would not be subject to the NQS nor be required to prepare a QIP. Imposing these requirements would be too burdensome for services operating to provide occasional or limited hours of care and would require significant additional regulatory investment.

Additionally, services with a Limited Hours service approval will not be required to provide outdoor space (as is required under the NQF), nor will the NQF requirement to appoint an educational leader be imposed on any children’s service.

### 5.3.2 Non-regulatory options

Non-regulatory options alone would be highly unlikely to achieve the objectives of the Amendment Act. These options could include:

* Public information and education campaigns to inform service providers of the details to be included in applications and the ongoing operating requirements for services
* Industry adopts a voluntary code of practice

On their own, the non-regulatory options would be less effective, not enforceable or result in an increased cost to government (particularly costs associated with more intensive monitoring of compliance with the Act). In addition, some of the problems outlined in Chapter 2 cannot be addressed through the use of non-regulatory options. For example, the service approval process would become more difficult as the Act merely requires that providers be approved, whereas the Regulations detail the specificity of information required to complete the approval process.

The inability of non-regulatory options to achieve the stated objectives means they are not considered further in the options development and analysis. However, non-regulatory options such as information and education campaigns will be considered and utilised in the implementation of the final Regulations insofar as they can assist the sector to understand their responsibilities and compliance with new requirements.

# Assessment of Options

The RIS process seeks to ensure that proposed regulations are well-targeted, effective and appropriate, and impose the lowest possible burden on businesses and the community. The keystone of this process is comparing the options to determine which one has the highest net-benefit.

## 6.1 Multi-Criteria Analysis

Ideally, where data is available, a quantitative cost-benefit analysis (CBA) is used. However, as is frequently the case, costs and benefits associated with regulations are not readily quantifiable, therefore a qualitative analysis is provided to explain the cost/benefit. As such, the overall assessment of the options will be presented in this RIS using a multi-criteria analysis (MCA) decision tool, which utilises a system of scoring and weighting each criteria on which options are assessed.

### 6.1.1 Criteria

Each option has been assessed by balancing its expected benefits against its estimated costs.

|  |  |
| --- | --- |
| ****Criteria**** | ****Assesses**** |
| Benefit of… | Safety | The effectiveness of the option in ensuring the safety, health and wellbeing of children attending children’s services |
| Quality | The effectiveness of the option in improving children’s educational and developmental outcomes and lifting the broader quality of the sector |
| Cost to… | Industry | Business/Service costs related to administrative activity, ‘red tape’ and substantive compliance with requirements |
| Regulator | Monetary cost to government (and therefore the taxpayer) of monitoring compliance and administering the regulations |

The benefit criteria assess the ability of each option to promote the core objectives of the Act—ensuring the safety, health and wellbeing of children attending occasional care services, and promoting their educational and development outcomes, along with lifting the broader quality of the sector.

Theoretically, costs to industry and the regulator are the most suitable to express in monetary terms. In practice, however, it is often difficult to obtain adequate data to precisely identify the costs that an option would impose, and decision-makers must rely on approximate or relative cost estimates. In addition, as the cost to industry is not significant in the Alignment option and very little or no flow on costs to families, such as increased fees, would be expected.

The expected costs of each option have been quantified as much as possible given the available data. Where costs have not been fully quantified, a qualitative assessment of the likely financial imposition on industry and regulator is provided. These costs are then compared against the benefits (effectiveness) of the options in achieving the objectives of the Act. This comparison is undertaken through the MCA tool described below.

### 6.1.2 Scoring

In MCA, each option is scored against the benefit criteria and costs identified above, relative to the base case as shown in Figure 4.

Figure 4: Multi-criteria analysis scale used in scoring options



**Benefits** are scored between 0 and +10.

|  |  |
| --- | --- |
| ****Score**** | ****Meaning**** |
| 0 | A zero score does not further the objectives of the Act in any way, relative to the Base Case. |
| +10 | A positive score furthers the objectives of the Act to the optimum extent possible. |

A negative score is not possible for effectiveness as options contrary to the objectives of the Act would not be considered.

**Costs** are scored from –10 to +10.

|  |  |
| --- | --- |
| ****Score**** | ****Meaning**** |
| -10 | A negative score imposes costs that are significantly higher relative to the Base Case. |
| 0 | A zero score does not add any regulatory costs over the Base Case. |
| +10 | A positive score would be given where the regulations reduce costs relative to the Base Case.This might happen in a situation where the regulations clarify what would otherwise be an ambiguous (and therefore more demanding) requirement arising from the Act. While theoretically possible, it is unlikely that any option would return a strongly positive score. |

### 6.1.3 Weighting

Benefits and costs have been weighted equally at 50 per cent each. The weighting of criteria is outlined in Table 14.

As there are two benefit criteria, the weighting has been further divided into 30 per cent for safety and 20 per cent for quality. Similarly, the 50 per cent weighting of the two costs has been further divided into 35 per cent for cost to industry; and 15 per cent for costs to regulator, reflecting the relative importance government places on lowering regulatory burden on industry.

Table 14: Criteria weightings

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | ****Criteria**** | ****Weighting**** |  | ****Criteria**** | ****Weighting**** |
| **Benefits of…** | Safety | 30% | Cost to… | Industry | 35% |
| Quality | 20% | Regulator | 15% |
|  |  | **50%** |  |  | **50%** |

Once an option has been scored on all of the above criteria, each score is multiplied by its corresponding weighting. The results are summed and the option returning the highest value is preferred.

### 6.1.4 Rate of compliance

The rate of compliance refers to the percentage or number of services that fully adhere to the legislation. Although not expected to make a significant difference to scoring the options, rate of compliance is an important consideration.

In some cases, not to complying with legislation is a conscious choice. However, the rate of compliance may be affected by the amount and clarity of information provided in the Regulations and the consequent ability of service providers to fulfil their roles (such as planning or reporting requirements). Where regulations create costs or savings to regulated businesses, the rate of compliance will affect the financial burden of regulations on non-compliant businesses and the sector as a whole.

Available data suggests that there is a low incidence of non-compliance in children’s services, with 90% of children’s services identified by QARD as “low risk.”

Where possible and relevant to the analysis (given available data), a **90% rate of compliance** among existing services has been assumed in the assessment of the options.

## 6.2 Cost analysis

This section assesses the costs to industry (businesses in the children’s services sector) associated with each option. This RIS assesses the following costs to industry imposed by the Regulations:

* Applying for initial provider and service approvals, along with applications to vary or voluntarily suspend approvals
* Meeting staff ratio, qualification and minimum number requirements
* Undertaking administrative tasks to comply with safety, health and wellbeing provisions
* Equipping premises with required facilities and providing indoor and outdoor space per child
* Undertaking miscellaneous paperwork including enrolment records and notifying the Secretary of Complaints and serious incidents
* Fees
* Exemptions or waivers.

The costs analysed in the ‘Status Quo’ options reflect those imposed under the current Regulations, while the costs of the ‘alignment’ options are those expected to be incurred if the proposed Regulations are made. Both options are assessed, as far as possible, against the costs incurred in the base case of no Regulations.

Methodology and assumptions used to undertake the costs analysis are detailed in Appendix 10.4.

The costs measured in this RIS were identified through an assessment of the key activities required by the current and proposed Regulations. Each activity was costed based on:

* **Assumed time** or effort taken to complete the activity drawn from secondary sources, including:
	+ the 2013 ACECQA Report on the National Quality Framework and Regulatory Burden
	+ the 2009 RIS prepared for the last iteration of the Regulations
	+ discussions with the Department
* **Minimum wage** rates set by the Children’s Services Award 2010.

The staffing costs reflect the minimum wage required to be paid under the Children’s Services Award 2010 plus a 20% mark-up to reflect overheads.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Staff member type | Award level | Minimum award wage | Overheads mark-up (20%) | Cost to service per staff member, per hour |
| Actively working towards Certificate III | Level 2.1 | $20.70 | $4.14 | $24.84 |
| Certificate III | Level 3.1 | $22.70 | $4.54 | $27.24 |
| Actively working towards Diploma | Level 4A | $24.22 | $4.84 | $29.06 |
| Diploma | Level 4.1 | $26.74 | $5.35 | $32.09 |
| Degree/Director | Level 6.1 | $32.24 | $6.45 | $38.69 |

The secondary sources used to develop the time assumptions for this RIS differ in how they categorise services. Data from the 2009 RIS and the Department use the licence types under the current Regulations, while the 2013 ACECQA Report uses the NQF service size framework: small, medium and large, defined as:

|  |  |
| --- | --- |
| Services size | NQF Approved Places |
| Small | up to 24 places |
| Medium | from 25 to 80 places |
| Large | from 81 places and above |

The average number of approved places across the Limited Hours type 2, Limited Hours type 1 and Standard licence types is 26, and departmental data shows that, as at December 2019, the sector is currently comprised of NQF equivalent services as follows:

|  |  |  |
| --- | --- | --- |
| Services size  | % of Children’s Services Sector | # of Children’s Services |
| Small | 58.5% | 188 services |
| Medium | 41.0% | 132 services |
| Large | 0.5% | 2 services |

Together, Limited Hours type 2, Limited Hours type 1 and Standard licence services comprise 99% of the sector, with the remaining 1% of the sector holding a School Hours Care licence:

|  |  |  |
| --- | --- | --- |
| Licence type | # of Services | % of the Sector |
| Limited Hours Type 2/LH2 | 245 services | 76% of the sector |
| Limited Hours Type 1/LH1 | 46 services | 14% of the sector |
| Standard Licence/SL | 29 services | 9% of the sector |
| School Hours Care/SHC | 2 services | 1% of the sector |

The total cost to industry and forecasted expected cost over 10 years draw on the current sector profile including service size and type. It is assumed that each size and type will continue to be represented in approximately the same proportion as is currently the case, consistent with the trend observed over recent years.

For ease of analysis, the two School Holidays Care (**SHC**) services have been rolled into the ‘LH2’ data. The key cost likely to differ between LH2 and SHC services is staffing. Given the staffing requirements for SHC services are overall less onerous than those for LH2 services, a conservative total cost estimate is considered.

### 6.2.1 Cost to industry

6.2.1.1 Approval applications

Under the Act, new providers seeking to enter the market must apply for a provider approval (once only) and a service approval (per service). Existing providers can apply to vary or suspend their approvals. Both the current and proposed Regulations prescribe the documents and information required to accompany these applications.

There are two types of costs associated with these applications—**time** taken to complete the applications and the **fee** for eachapplication. This section only assesses the application completion costs, while fees are assessed in section 6.2.1.8.

**Base case**

As the Act requires providers to hold approvals in order to operate, costs under the base case would be similar to, or slightly higher than, those currently imposed and those incurred in Option A.2. Alignment, as the information required for an application would not be prescribed in Regulations; rather, it would be known to the Regulatory Authority. The slightly higher cost is associated with the applicant spending time on activity, such as contacting the Regulator, to determine the information required to fulfil on the application process in place of this being specified in regulations.

**Status Quo**

Under the current Regulations, applicants can apply for licences of up to 1, 3 or 5 year terms. This means that both application costs and fees recur at a frequency corresponding to the term of the licence chosen (every 1, 3 or 5 years). A service premises is approved indefinitely unless and until it is renovated, or the service moves or ceases to operate.

The proposed Regulations broadly require the same documents and information as the current Regulations. This means that the shift from licences and premises approvals to provider and service approvals is not expected to result in considerable variation of cost to industry. The Status Quo option is therefore neither scored nor weighted here.

**Alignment**

In contrast, under Option A.2. Alignment, provider and service approvals are granted in perpetuity and an annual fee is raised each year. This means that the application cost is a ‘once-off’ event while the fees recur annually, resulting in business saving.

Additionally, aligning the approval system with the NQF is expected to reduce confusion and create efficiencies for providers currently operating services under both regimes, or for current NQF providers seeking to enter the children’s services sector. Feedback from consultations held with stakeholders in relation to the Amendment Act noted that it would be easier for those providers operating under both regimes to comply with consistent requirements.

**Assumptions**

Time assumptions for Option A.2. Alignment are drawn from the NQF Regulatory Burden report (checked for applicability with the Department).[[39]](#footnote-39) Slightly longer time assumptions are made for the base case for the reasons discussed above. Time savings have also been assumed based on the intention that the current paper-based application system would be replaced with an online system (similar to that used in the NQF) within two years of the Regulations taking effect; this transition is expected to provide a modest time (and therefore cost) savings.

Staffing cost assumes a Director-level staff member would complete the application process.

Figures for ‘cost over 10 years’ are based on the assumption that the approximately 320 services currently in the sector will continue to operate, with new services entering the sector at a rate of 20 per year (in the same proportion services are currently represented).[[40]](#footnote-40)

Table 15 outlines the estimated time and costs for small providers of preparing initial applications for service and provider approvals under the base case and Option A.2. Alignment (the proposed Regulations). Table 16 provides the same analysis for medium providers.

Table 15 Approval application costs to industry - small services

|  |  |  |
| --- | --- | --- |
| Approval application - Small services | Base case | Option A.2. Alignment |
| **Hours** | **Cost per app.** | **Cost over 10 years** | **Hours** | **Cost per app.** | **Cost over 10 years** |
| Provider approval/licence | 2 | $77.38 | $9,035.68 | 1.7 | $65.78 | $7,680.33 |
| Premises approval/service approval | 1.7 | $65.78 | $7,680.33 | 1.4 | $54.17 | $6,324.97 |

Table 16 Approval application costs to industry - medium services

|  |  |  |
| --- | --- | --- |
| Approval application - Medium services | Base case | Option A.2. Alignment |
| **Hours** | **Cost per app.** | **Cost over 10 years** | **Hours** | **Cost per app.** | **Cost over 10 years** |
| Provider approval/licence | 2.4 | $92.86 | $7,613.04 | 2.1 | $81.25 | $6,661.41 |
| Premises approval/service approval | 2.8 | $108.33 | $8,881.88 | 2.5 | $96.73 | $7,930.25 |

Costs shown should be viewed as **opportunity costs** rather than additional costs i.e. applications would be completed by staff during their working hours (thus included in staffing costs to providers), therefore representing costs associated with time that staff could otherwise spend on other tasks.

This similarly applies to the estimated costs of preparing applications to vary or suspend approvals as provided in Table 17. These tasks impose a much smaller time burden than the initial applications; as reflected in the time assumptions used.

Table 17 Vary or suspend approval application - costs to industry

|  |  |  |
| --- | --- | --- |
| Vary or suspend approval application | Base case | Option A.2 Alignment |
| **Hours** | **Cost per app.** | **Hours** | **Cost per app.** |
| Small services | 0.4 | $15.48 | 0.3 | $11.61 |
| Medium services | 0.6 | $23.21 | 0.5 | $19.36 |

While available data[[41]](#footnote-41) shows a declining trend in the number of new children’s services entering the market, it does not accurately reflect the real number of new services (or providers). Provisions under the current Regulations do not allow for the transfer of provider or service approvals (as is available in the NQF). Instead a provider or service must surrender their approval/licence. Another provider, existing or new, seeking to operate a children’s service from a “surrendered” premises, must apply anew to operate in that location, thereby triggering new application activity, rendering the data misleading. Said another way, current data does not capture the difference between a “new” provider or service, as opposed to a “transferred” provider or service. For this reason, the total cost to industry over 10 years in relation to new providers and services entering the market, has not been quantified in this RIS.

Table 18 provides the score allocated to the approvals option in relation to the cost to industry criterion, as assessed against the base case. Option A.2. Alignment is expected to result in slightly reduced costs in comparison to the base case, mainly through time savings associated with clearer guidance to applicants.

Although a Status Quo option has not been considered in relation to approval applications, three factors under the proposed Regulations would result in slightly reduced costs in comparison to the current Regulations; being the:

* shift to perpetual service approvals thereby removing costs associated with periodic licence renewals
* ability to hold one provider approval in respect of multiple service approvals
* movement from paper-based to online application system expected within two years of the proposed Regulations coming into effect.

Table 18 Approval applications – costs to industry

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ****Criterion**** | ****Description**** | ****Weighting**** | ****Option A.1****  | ****Option A.2****  |
| Cost to industry | Cost to industry of preparing provider and service approval applications in line with regulation requirements | 35% | 0 | 3 |
| **Total** |  |  | **0** | **1.05** |

* + - 1. Service approval types

Two options are considered in relation to service approval types: Option B.1 Status Quo and Option B.2 Alignment.

As the Act does not provide for service approval types; they would not exist in the base case scenario. The absence of service approval types would have no real impact on costs to providers as the Regulatory Authority can attach conditions to service approval types under the Amendment Act,[[42]](#footnote-42) which would take the place of the limitations imposed through the licence structure in the current Regulations.

It is unlikely that service providers would experience a difference in costs between conditions specifically imposed on their licence type (current Regulations), and conditions attached to service approval types (proposed Regulations). The cost burden to the regulator of imposing conditions is addressed at section 6.2.2.2.

In Option B.1 Status Quo, providers apply for one of seven licence types prescribed in the current Regulations. Each licence type carries different conditions on the duration of a child’s attendance, staffing number and qualification requirements, and outdoor space requirements.

In Option B.2 Alignment, the proposed Regulations streamline these licence types into two service approval types — Occasional Care and Limited Hours. The aim of this approach is to increase the quality of services operating in the ‘middle’ of the current licensing structure, but recognises that services operating for very limited hours require specific, more limited, regulatory requirements.

The new **Limited Hours** service approval type will be restricted to services caring for each child for no more than 3 hours per day (expanded from the current 2 hours per day), and no more than 6 hours per week. All other services would hold the new **Occasional Care** service approval type.

Services in the current ‘middle’ group will move to one of the two new service approval types, depending on whether they are able or willing to meet the higher requirements for the Occasional Care service approval type. Noting that the previous ‘integrated service’ licence type would be discontinued as it would no longer be required in the alignment option.

The diagram below illustrates the potential movement of current licence types to the new service approval.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| New Limited Hours Service Approval Type |  |  |  | New Occasional Care Service Approval Type |
| Current Licence TypeLimited Hours Type 1Short Term Type 2 | **Current Licence Types** (‘**middle’** group)\*School Holidays Care Limited Hours Type 2Short Term Type 1 | **Current Licence Type**Standard |
|  | *\*Licence types that could move to either of the two proposed service approval types* |  |

The costs currently imposed by the licence types are not readily quantifiable, but it can be assumed that the process of researching and deciding upon which licence type to apply for contributes to the overall cost of the initial set-up of a service. For this reason, the specificity of the seven licence types may impose a greater administrative burden in comparison to the alignment option. Three of the licence types (Short-Term Types 1 and 2, and Integrated) are not currently held by any service provider in Victoria, suggesting that the current level of licence specificity may be unnecessary.

Similarly, while the cost to determine the new service approval is not easily quantifiable, it is not expected to be significant. The Department have advised that under an alignment option, readily accessible guidance would be available to help the applicant quickly determine which service approval is appropriate for their operations.

Table 19 provides the score given to the Status Quo and alignment options against the cost to industry criterion.

Table 19 Service approval types - costs to industry

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ****Criterion**** | ****Description**** | ****Weighting**** | ****Option B.1****  | ****Option B.2****  |
| Cost to industry | Costs to industry imposed by regulated service approval types  | 35% | -2 | -1 |
| **Total** |  |  | **-0.7** | **-0.35** |

* + - 1. Staffing

The Act requires service providers to ensure that whenever children are being cared for or educated at a service, the number of staff is not less than the prescribed number. The Act also requires providers to ensure that staff have the qualifications prescribed in the Regulations.

In the base case scenario, no regulatory detail would support these provisions. However, due to other requirements in the Act, such as the need to develop and provide an educational program and nominate a qualified supervisor to be in day-to-day charge of a service, and the practicalities of caring for children, it is unlikely that fewer than two staff members or entirely untrained staff, would be employed by services. This means that there would still be some staffing-related costs incurred under the base case, but they may be expected to be lower than the two regulatory options because staff numbers and qualifications may not meet the current or proposed requirements. On the other hand, market forces could play a role in pushing services towards higher levels of staffing as parents may prefer services employing more or better qualified staff.

Under Option C.1. Status Quo, the Regulations provide for staff to child ratios for each of the seven licence types, which differ according to the age of the children and qualification held by the staff member. Additionally, the Regulations require that at least two staff members (or a staff member and a responsible adult, in the case of school holidays care services) must be in attendance when children are present.

Under Option C.2. Alignment, the proposed Regulations provide stronger staff to child ratios for both service approvals and a minimum number of staff requirement.

Some requirements under the Alignment option can be expected to impose additional costs on business in comparison to the Status Quo or the base case, while other requirements would reduce costs.

Requirements under Option C.2. Alignment expected to **increase** costs to providers are:

* Increased staff to child ratios for current Limited Hours type 2 and Limited Hours type 1 providers[[43]](#footnote-43)
* An increase to 50 per cent of educators across the service for existing Standard, Limited Hours type 2 and School Holidays Care services needing to have Diploma level qualified educators.

Requirements under Option C.2. Alignment expected to **reduce** costs to providers are:

* Allowance for staff to be ‘actively working towards’ a qualification to be counted in ratios
* Allowance for staff in a 3-month period prior to enrolment in a qualification to be counted in ratios
* Services providing education and care to any child for less than 30 hours per week would no longer need to employ a degree-qualified early childhood teacher.

Interactions between these requirements mean that, for many providers, staffing costs under Option C.2. Alignment are not expected to differ significantly from costs currently incurred by providers under Option C.1. Status Quo. For example, under Option C.2. Alignment, one in two educators at a service holding an Occasional Care service approval caring for children 36 months of age or over must be at a Diploma level, as opposed to one in three educators under the current Regulations. As a Diploma-qualified educator must be paid at a minimum $26.74 per hour, in contrast to a Certificate III-qualified employee paid at least $22.70 per hour, this may be expected to raise costs to businesses.

However, this requirement applies across all educators educating and caring for children and the total number of children attending the service at the time, rather than in relation to the educator to child ratios in particular rooms. Additionally, an educator could be qualified at Certificate III level but actively working towards a Diploma and therefore counted in the ratios but paid at a lower rate, such as the Award rate for a Certificate III employee with one year of experience ($23.48 per hour).

As the costs imposed under both options will vary depending on the type and size of providers and the number of children that attend on a particular day, **three examples** (Service A, B and C) have been developed to illustrate the changing requirements and the costs associated with them.

The staffing costs reflect the minimum wage required to be paid under the Children’s Services Award plus a 20 per cent mark-up to reflect overheads.

For the Option C.2. Alignment calculations, it has been assumed that some services would take advantage of the ability to hire staff who are actively working towards the required qualification, but not all. This has been modelled by shifting staffing costs from the fully qualified wage to a cost reflecting 50% at the actively working toward wage and 50% at the fully qualified wage for Certificate III and Diploma.

**Service A** holds a Limited Hours type 2 licence or ‘Occasional Care’ service approval under proposed Regulations. On this particular day, 16 children attend of whom 9 are at least 3 years of age and 7 are under 3 years of age. Service A is approved to care for children for a maximum of 15 hours per week.

|  |
| --- |
| Service A has 16 children attending on the day – 9 at least 3 years and 7 under 3 years |
|  | **Option C.1. Status Quo** | **Option C.2. Alignment** |
| Licence/Service type | Limited Hours type 2 licence | Standard licence | Occasional Care service type |
| Educator to child ratio requirements | * Under 3yo (1:5)
* 3yo and over (1:15)
 | * Under 3yo (1:4)
* 3yo and over (1:15)
 | * Up to 36 months (1:4)
* 36 months and over (1:11)
 |
| Minimum qualification requirements | 3 staff required2 qualified staff* All hold at least Cert III
* 2 hold a Diploma
 | 3 staff required2 qualified staff* All hold at least Cert III
* 2 hold a Diploma
 | 3 educators required* 2 hold or are AWT[[44]](#footnote-44) a Diploma[[45]](#footnote-45)
* 1 holds or is AWT a Cert III[[46]](#footnote-46)
 |
| **Staff costs** | **$1,371.30** | **$1,371.30** | **$1,325.85^** |

*^ Staffing costs for Service A under the Alignment option have assumed 1 fully qualified Cert III educator; 1 AWT Diploma educator and 1 fully qualified Diploma educator.*

**Service B** holds a Limited Hours type 1 licence or ‘Limited Hours’ service approval under proposed Regulations. On this particular day, 32 children attend: 20 at least 3 years of age and 12 under 3 years of age. Service B is approved to care for each child for not more than 3 hours a day to a maximum of 6 hours per week.

Under the Alignment option, Service B would hold a Limited Hours service approval, which means that any Certificate III-level staff it employs **must** **hold** their qualification; they cannot be ‘actively working towards’ it.

|  |
| --- |
| Service B has 32 children attending on the day – 20 at least 3 years and 12 under 3 years |
|  | **Option C.1. Status Quo** | **Option C.2. Alignment** |
| Licence/Service type | Limited Hours type 1 licence | Limited Hours service approval |
| Educator to child ratio requirements | * Under 3yo (1:5)
* 3yo and over (1:15)
 | * Up to 36 months (1:4)
* 36 months and over (1:11)
 |
| Minimum qualification requirements | 5 staff required* All hold at least Cert III
* No Diploma required
 | 5 educators required* All hold at least a Cert III
* No Diploma required
 |
| **Staff costs** | **$817.20** | **$817.20** |

**Service C** holds a Standard licence type or ‘Occasional Care’ service approval under the proposed Regulations. On this particular day, 50 children attend: 30 at least 3 years of age and 20 under 3 years of age. Service C is approved to operate for a maximum of 30 hours per week.

|  |
| --- |
| Service C has 50 children attending on the day – 30 at least 3 years and 20 under 3 years |
|  | **Option C.1. Status Quo** | **Option C.2. Alignment** |
| Licence/Service type | Standard licence | Occasional Care service approval |
| Educator to child ratio requirements | * Under 3yo (1:4)
* 3yo and over (1:15)
 | * Up to 36 months (1:4)
* 36 months and over (1:11)
 |
| Minimum qualification requirements | 7 staff required3 qualified staff* 3 hold at least Cert III
* 3 hold a Diploma
* 1 holds a Degree[[47]](#footnote-47)
 | 8 educators required* 4 hold or are AWT a Cert III
* 3 hold or are AWT a Diploma
* 1 holds a Degree[[48]](#footnote-48)
 |
| **Staff costs** | **$6,500.40** | **$7,037.25^^** |

*^^ Staffing costs for Service C in the Alignment options, have assumed that 2 of the 4 Certificate III staff are actively working towards their qualification, and have used a 50:50 split between the fully qualified wage and actively working towards wage for the 3 Diploma educators.*

The costs calculated for these examples depend on how many staff are actively working towards their qualification as opposed to being fully qualified. If a service were to retain fully qualified staff under the proposed Regulations, staffing costs would **increase** for services required to meet the increased staff to child ratios. On the other hand, if a service employed as many staff as possible who are ‘actively working towards’ their qualifications, its staffing costs would be **lower**.

For example, if Service A continued to employ only fully qualified staff under the Alignment scenario, its weekly staffing costs would be $1,371.30 – the same as under the Status Quo option because it is not affected by the changing staff to child ratios.

By contrast, the weekly staffing costs for Service C under the Alignment option could vary from $7,317.60 if all staff were fully qualified to $7,756.90 if all eligible staff were actively working towards or in the pre-enrolment period for their qualification.

Information gathered from compliance and monitoring visits to children’s services in the last 12 months indicates that the majority of services sampled would already comply with the proposed requirements under Option C.2. Alignment, with approximately 18 per cent of services inspected in 2019 needing to replace a current Certificate III level employee with a Diploma qualified employee. Furthermore, the flexibility offered in the Alignment option of allowing educators to be ‘actively working towards’ a qualification being counted in ratios, means that it would be sufficient for services to have one Certificate III level employee enrol in a Diploma to meet the proposed requirement.

However, for services choosing to enrol an existing employee in a Certificate III or Diploma to meet any changing requirement under the Alignment option, there may be an education cost to be borne by either the service or the employee to obtain the qualification. Notably, under the Victorian Government’s ‘free TAFE’ scheme, both the Certificate III and Diploma of Early Childhood Education and Care will be free to study in 2020 which could off-set any potential educational costs to services or employees. How long these courses will remain free is unknown, therefore this aspect of potential costs has not been quantified in the Alignment option.

Table 20 provides the **estimated total costs to industry** imposed by the requirements under Option C.1. Status Quo and Option C.2. Alignment. As stated, a significant proportion of these costs would still be incurred in the base case but it is difficult to discern to provide a meaningful comparison. These overall costs are based on the average size (in terms of number of approved places) and day-to-day attendance of existing services in the sector, drawn from compliance and monitoring visit data.

Table 20 Staffing - total costs to industry

|  |  |  |
| --- | --- | --- |
| Option | Staffing costs per service per year | Staffing costs to industry as a whole |
| **LH2** | **LH1** | **SL** | **Total per year** | **Total over 10 years** |
| Option C.1. | $67,525 | $25,496 | $152,911 | $22,285,846 | $285,148,097 |
| Option C.2. | $64,470 | $25,496 | $148,676 | $21,408,755 | $273,925,697 |

Table 21 gives the score allocated to Option C.1. Status Quo and Option C.2. Alignment based on the costs they impose on providers and the industry as a whole relative to the base case.

Table 21 Staffing - costs to industry

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ****Criterion**** | ****Description**** | ****Weighting**** | ****Option C.1**** | ****Option C.2**** |
| Cost to industry | Costs to industry imposed by staffing requirements under the Regulations. | 35% | -3 | -2.5 |
| **Total** |  |  | **-1.05** | **-0.88** |

* + - 1. Safety, health and wellbeing of children

The Act includes a general obligation on providers to protect children in their care from harm and hazards. The safety, health and wellbeing requirements under Option D.1. Status Quo and Option D.2. Alignment outline specific requirements in relation to children’s safety, health and wellbeing, but do not specifically support this obligation under the Act. Therefore, quantifying the cost of the two options in relation to the base case is challenging because it is difficult to estimate the degree to which services would prepare emergency procedures, ensure children have access to fresh drinking water, have a first-aid kit on hand, etc., to comply with the Act, even without any specific requirement to do so.

Generally, both regulatory options would likely impose greater immediate costs than the base case because they require specific steps to be taken (services have less autonomy in choosing how they protect children in their care); and several impose administrative as well as substantive requirements, for example, as well as food being appropriate and nutritious, a weekly menu must be displayed (services may not consider it necessary to comply with the broader obligations under the Act).

On the other hand, these requirements may act to avoid or considerably reduce the likelihood of other, more substantial costs to business, such as civil litigation arising from failing to properly protect children from harm.

The following requirements are not costed in this section as they are covered elsewhere in this RIS as noted:

* Develop emergency procedures and anaphylaxis management plans – included in the ‘initial establishment of policies and procedures’ costed in the registers and record-keeping section 6.2.1.7
* Staff familiarisation with risk and medication plans part of training new staff – included in staffing costs outlined in section 6.2.2.3

Two requirements are considered unlikely to impose any additional costs in comparison to the base case, for reasons noted:

* Children be cared for in a smoke-free environment – other legislation imposes this requirement[[49]](#footnote-49)
* Staff have access to a telephone – given the prevalence of mobile phone ownership, it is highly unlikely that staff members at a service would not have access to a phone.

Most of the remaining safety, health and wellbeing requirements under the Status Quo and Alignment options impose costs that are difficult to quantify because of variabilities in service environments and circumstances across this highly diverse sector. These requirements include:

* Ensuring parents can access services and exchange information about their children
* Ensuring that children do not leave the service in the care of someone other than their parent or other authorised person (this may also be covered in the costs of keeping enrolment and attendance records, costed in section 6.2.1.7)
* Children’s personal hygiene needs being met
* Suitable food and beverages being provided
* Food being nutritious and varied with a weekly menu displayed
* Ensuring access to fresh drinking water (it is also highly unlikely that any premises approved to operate a children’s service would not comply with this requirement)

Option D.1. Status Quo and Option D.2. Alignment impose the same requirements on providers, such as excursions and first aid training. This analysis is contained in Table 22 and Table 23. The figures in these tables should not be considered as absolute costs, as services may well comply with these requirements even in the base case scenario. However, for new providers to the sector, they do provide an indication of some costs.

Table 22 sets out the excursion requirements which are the same in Status Quo and Alignment options. The cost to industry reflects the projected costs over the next 10 years. A Certificate III-employee is assumed to complete these tasks.

Table 22 Safety, health and wellbeing for children - costs to industry

|  |  |  |
| --- | --- | --- |
|  | Cost per provider | Cost to industry |
| **Small** | **Medium** | **Per year** | **Over 10 years** |
| Obtaining authorisation for excursions**\*** | 1.3hrs | $35.41 | 1hr | $27.24 | $10,253.14 | $131,189.19 |
| Excursion risk assessment**\*** | 0.7hrs | $19.07 | 0.7hrs | $19.07 | $5,121.12 | $68,265.81 |

***\*****The authorisation must be obtained annually for each child and covers routine outings. Parental or guardian authorisations and risk assessments are also required for any additional excursions, which would vary widely from provider to provider and from year to year, so the administrative costs of these additional outings are not included in the costings.*

Table 23 provides the estimated costs of the Status Quo and Alignment option requirements for staff to have first aid, anaphylaxis management and asthma training and for each service to have a first-aid kit.

Under Option D.1. Status Quo, all staff members must hold this training, whereas under Option D.2. Alignment, only one educator on duty needs to hold current training. In theory, this difference results in a cost saving to providers, but given that most services in this sector employ a small pool of casual or part-time staff (and all are currently required to be first aid trained) it is hard to say how extensively this cost saving would be realised in practice.

The costings represent the one-off costs of buying a first-aid kit and paying for first-aid training for the required number of staff, noting that first aid certification and most products contained in a first-aid kit, lasts 3 year.[[50]](#footnote-50) The costings draw on the example services discussed in section 6.2.1.3.

Table 23 First-aid training - costs to industry

|  |  |  |
| --- | --- | --- |
| First-aid training | Option D.1. Status Quo | Option D.2. Alignment |
| **Per service** | **# of services** | **All services** | **Per service** | **# of services** | **All services** |
| Service A – LH2 | $432 | 247 | $106,704 | $144 | 247 | $35,568 |
| Service B – LH1 | $432 | 46 | $19,872 | $144 | 46 | $6,624 |
| Service C – SL | $432 | 29 | $8,352 | $144 | 29 | $4,176 |
| **First-aid kit** |  |
| All services | $124.96 | 322 | $40,237.12 | $124.96 | 322 | $40,237.12 |
| **TOTAL** |  |  | **$168,541.12** |  |  | **$86,605.12** |

Table 24 provides the score given to Options D.1. Status Quo and Option D.2. Alignment against the cost to industry. Both options would impose higher immediate costs on providers and the sector as a whole than would be incurred in the base case. On the other hand, the regulatory requirements may mitigate risks to providers that could otherwise result in significant costs, and many services may meet these standards even without being required to do so. For this reason, both options have been scored as mildly negative relative to the base case.

Table 24 Staffing - costs to industry

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Criterion | Description | Weighting | Option D.1. | Option D.2  |
| Cost to industry | Costs to industry imposed by health and welfare regulations. | 35% | -6 | -4 |
| **Total** |  |  | **-2.1** | **-1.4** |

* + - 1. Equipment and facilities

The Act does not impose requirements in relation to the equipment and facilities services need to provide. Theoretically, this means that Option E.1. Status Quo and Option E.2. Alignment impose costs that would not be incurred under the base case.

However, given that service premises must be approved under the Act in order for services to legally operate, and that the Department inspects premises before granting approvals, many of the costs would likely be incurred in the base case. Additionally, the base case scenario would not necessarily result in cost savings because existing services already providing these facilities would not realistically remove, for example, a fridge or administration room just because providing one was no longer a legal requirement.

Option E.1. Status Quo and Option E.2. Alignment impose largely identical requirements regarding facilities and equipment, with the only changes under Option E.2. Alignment relating to the outdoor space to be provided per child, laundry facilities and the removal of the need for a children’s room for under 3 year olds.

Both options require the provision of the same equipment or facilities, which can be costed. Although the average cost of each item to be installed can be estimated, figures provided in Table 25 should not be viewed as absolute costs to all services in the sector as some items would not be required by certain services (e.g., school holidays care services would not need toddler cots), some services could choose to meet the requirements in other ways (i.e., have children sleep on mats on the floor rather than bedframes), and because many premises from which children’s services are operated (e.g., Neighbourhood Houses or gyms) likely already have equipment like fridges and microwaves.

All children’s services can provide education and care to toddlers and babies. The average service is approved to provide care to 26 children and it is assumed that services would have sufficient equipment to cater to the full number of places a service is approved for.

Table 25 Equipment and facilities costs[[51]](#footnote-51)

|  |  |  |  |
| --- | --- | --- | --- |
| Equipment and facilities | Cost per service | Equipment and facilities | Cost per service |
| Fridge | $749.99 | Microwave | $169.00 |
| Sink | $239.00 | Stretcher bedframe | $2,276.30 |
| Baby bath | $79.95 | Mattress | $1,903.20 |
| Toddler cots | $3,354.00 | Bedsheets | $923.00 |

The obligation in both regulatory options to provide facilities for children to participate in the service educational and care programs is not costed for two reasons:

* the cost would vary too widely considering the broad range of programs and care offered by services, and
* services would by necessity comply with this requirement through fulfilling their obligation under the Act to provide appropriate educational or recreational programs to children.

Both Option E.1. Status Quo and Option E.2. Alignment require children’s hygiene needs to be met, and that children’s toilets and hand basins are appropriate for hygienic and safe use by children. The Building Code of Australia requires buildings used for the provision of early childhood education and care (including children’s services regulated under the Act) to include child-appropriate bathroom facilities.[[52]](#footnote-52) This means that these facilities would be required in the base case, and this aspect of both regulatory options is not considered to pose any additional costs. Both options also impose minimum required indoor and outdoor space allowances for each child attending a service as well as an administration room for staff.

While services generally operate out of premises primarily built for early childhood education and care, many that offer limited hours use existing community facilities (e.g. Neighbourhood Houses) that may also be used for another purpose. Similarly, many organisations that offer children’s services, do so not as a profit-making venture; rather as an adjunct offering to support their primary business (e.g. Fitness centres or gyms). It is extremely unlikely that a new premises would be constructed for the sole purpose of offering a children’s service, and in the event of a new fitness centre being constructed (for example), given the primary motivation for the construction is the fitness facility, any costs associated with children’s service offered, would be secondary. It is assumed, that this approach will continue over the next 10 years for the children’s service sector and costs associated with providing indoor and outdoor space for children, and room for staff, would either incur no cost or some incremental cost, should a service undertake minor renovations to enlarge space or to repurpose existing space.

Option E.2. Alignment imposes a slightly higher outdoor space requirement for some service approvals, resulting in additional costs when compared with Option E.1. Status Quo and the base case.

Under the Status Quo option, only services operating under a Standard licence are required to provide outdoor space on the premises. As at December 2019, there are 29 Standard licences operating in Victoria, comprising 9% of the sector. Under the alignment option, the outdoor space requirement extends to services currently operating under the Limited Hours type 2 and School Holidays Care licences.[[53]](#footnote-53) Together, there are 291 of these services, representing 90% of the sector. This means that the alignment option could impose extra costs on the industry as a whole. However, existing services affected by this change would be permitted to rely on access to a nearby community space or have conditions imposed on their service approval restricting the duration of time they may care for children. In effect, these measures would grandfather the Status Quo requirements for these services. New services entering the market could experience some additional costs in comparison to current services should they renovate existing space or construct a new to meet the increased requirement under the E.2. Alignment option, but as stated, this is assumed unlikely or too infrequent an occurrence. In contrast, the removal of the need for a separate children’s room for under 3-year-olds may reduce costs through reducing the amount of space required to operate all children’s services, both existing and future.

The proposed Regulations also require services to have access to laundry facilities or make other arrangements for dealing with soiled clothing and linen. This requirement is not specified in the current Regulations but given that services are currently required to ensure that children’s hygiene needs are met, it is assumed that services would already have such laundry facilities or arrangements in place and that this aspect of Option E.2. Alignment does not pose any additional costs relative to Option E.1. Status Quo. Hygienic laundry facilities would also be necessary to comply with services’ obligations to keep children safe from harm and hazards under the Act, meaning that these costs would also be incurred in the base case.

The score given to both regulatory options are provided in Table 26. These scores reflect the minimal actual costs imposed on businesses through the minimum space requirements alongside the more significant costs incurred through meeting the equipment standards, considering that many services will already provide these or equivalent facilities.

Table 26 Equipment and facilities - costs to industry

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Criterion | Description | Weighting | Option E.1 | Option E.2 |
| Cost to industry | Costs to industry imposed by Regulations relating to equipment and facilities.  | 35% | -4 | -5 |
| **Total** |  |  | **-1.4** | **-1.75** |

* + - 1. Complaints and serious incidents

The Act requires providers to notify the Secretary of complaints in relation to any serious incidents, contraventions of the Act or other prescribed matters.

Table 27 and Table 28 provide the number and type of complaints and incidents notified in children’s services in recent years.

Table 27 Number and type of complaints received by the Department

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Complaint type | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 |
| Direct complaint | 8 | 12 | 15 | 14 | 9 |
| Notification of complaint | 1 | - | 3 | 2 | - |
| **Total** | **9** | **12** | **18** | **16** | **9** |

Table 28 Number and type of incidents occurring at children's services

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Incident category | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 |
| General incident | 6 | 7 | 7 | 4 | 7 |
| Serious Incident | 4 | 27 | 17 | 14 | 14 |
| **Total** | **10** | **34** | **24** | **18** | **21** |

Under Option F.1. Status Quo, services must notify the Secretary of complaints by telephone within 48 hours and in writing as soon as practicable. Under Option F.2. Alignment, services must notify the Secretary of complaints within 24 hours.

Both options do not impose additional requirements in comparison to the base case, but do impose timeframes in which the notification obligation under the Act has to be completed. The cost of notifying the Secretary of complaints relates to the time taken for a staff member to notify the Department, which does not change depending on when the action is taken. Accordingly, neither option imposes additional costs compared to the base case.

Table 29 provides the scores given to Options F.1. Status Quo and Option F.2. Alignment.

Table 29 Complaints and serious incidents - costs to industry

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Criterion | Description | Weighting | Option F.1 | Option F.2  |
| Cost to industry | Costs to industry imposed by Regulations relating to Complaints and serious incidents. | 35% | 0 | 0 |
| **Total** |  |  | **0** | **0** |

* + - 1. Record-keeping and display of information

The Act requires providers to **display** the prescribed information and **keep** the prescribed records for inspection by Departmental officers.

In the base case, there would be no Regulations to provide details as to the exact records and information envisaged by the Act. This may result in additional costs incurred through providers needing to contact the Department for guidance.

Option G.1. Status Quo and Option G.2. Alignment prescribe broadly the same information and documents (including policies and procedures) to support these provisions and are expected to impose similar costs to providers and the industry as a whole.

The costs presented here are **opportunity costs,** representing the time that staff could spend on other tasks, noting that the time taken to comply with this requirement will vary according to the complexity of policies and procedures at each service.

*Policies and procedures*

Table 30 provides indicative costs for the initial **establishment** of the policies and procedures required under both options. It is assumed that a Diploma-level employee would prepare the policies[[54]](#footnote-54) and time estimates have been drawn from the NQF Regulatory Burden report. Available trend data assumes approximately 20 new children’s services per year.

Table 30 Initial establishment of policies and procedures costs

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Hours per service | Cost per service | Annual cost – all services (new) | Cost over 10 years – all services (new) |
| Small providers | 189.30 | $6,074.64 | $70,933.65 | $780,270.14 |
| Medium providers | 130.60 | $4,190.95 | $34,360.62 | $377,966.78 |
| **TOTAL** |  |  |  | **$1,158,236.93** |

Both options also require the **display** of certain policies and procedures, along with the service contact details, hours of operation and fees. Costs incurred in complying with these requirements are considered to be included in the cost of establishing the policies and procedures.

Option G.2. Alignment requires services to **review** policies annually and update if necessary. There is no equivalent provision under Option G.1. Status Quo, meaning that this aspect of the alignment option imposes additional costs on services (noting that these are opportunity costs not financial costs).

Table 31 provides the average time and cost associated with this task, drawing on time assumptions taken from the NQF Regulatory Burden report. It is assumed that a Certificate III level staff member would complete this task. This requirement will apply to all existing services as well as new services entering the sector each year. The costing over 10 years draws on available trend data that indicates approximately 20 new children’s services will enter the market per year.

Table 31 Annual review and update of policies and procedures – Alignment

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Hours per service | Cost per service | Annual cost – all services (new and existing) | Cost over 10 years – all services (new and existing) |
| Small providers | 75.9 | $2,067.52 | $388,693.01 | $4,973,339.11 |
| Medium providers | 51.4 | $1,400.14 | $184,817.95 | $2,364,751.44 |
| **TOTAL** |  |  |  | **$7,338,090.54** |

Option G.1 Status Quo and Option G.2 Alignment also require services to **notify** parents of any changes to policies. There is no available data on how frequently services alter their policies, rendering it highly difficult to quantify the associated costs in Option G.1 Status Quo. It is assumed that under the Status Quo option, services would amend their policies less frequently than once per year, meaning that Option G.2 would impose greater costs than Option G.1.

*Records*

Both options require the same records to be kept by services. Option G.2 Alignment includes more detailed requirements for the outcomes of educational programs for children than are currently stipulated in the Regulations; this could increase the costs associated with keeping educational program records very slightly, but the extent of any increase is difficult to estimate and has therefore not been costed. Similarly, Option G.2 Alignment requires a record to be kept of all educators working directly with children, but it is expected that this information would already be maintained in services’ existing staff record.

Table 32 provides the estimated costs for keeping the records required under both options, based on the assumption that a Certificate-III level employee would keep these records. The costs associated with keeping the following records have been provided on a **per-event** basis as there is no data available regarding how frequently services need to complete each type of record, either annually or from year to year.

The time taken to complete each record is drawn from the 2013 NQF Regulatory Burden Report. Readers are invited to comment on whether these time assumptions seem reasonable: please refer to the questions for consultation in Appendix 10.2.

Table 32 Record-keeping costs

|  |  |  |
| --- | --- | --- |
| Record keeping | Small services | Medium services |
| **Hours** | **Cost per event** | **Hours** | **Cost per event** |
| Child enrolment record | 0.7 | $19.07 | 0.7 | $19.07 |
| Medication record | 0.1 | $2.73 | 3 | $81.71 |
| Incident record – general | 0.2 | $5.45 | 0.2 | $5.45 |
| Incident record – serious | 3 | $81.72 | 1.2 | $32.69 |
| Staff record (initial documentation) per staff member | 1.4 | $38.14 | 1.2 | $32.69 |
| Educational program records | 0.5 | $13.62 | 0.5 | $13.62 |

Both Option G.1 Status Quo and G.2 Alignment require services to keep an attendance record. In practice, this is usually a hardcopy notebook or online system completed by parents or guardians when they drop off or collect children. According to information collected by the Department, this requirement is considered to impose only negligible costs on providers and it has therefore not been costed.

Table 33 provides the score given to Option G.1 Status Quo and Option G.2 Alignment against the costs to industry criterion.

Table 33 Registers and record-keeping - costs to industry

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ****Criterion**** | ****Description**** | ****Weighting**** | ****Option F.1**** | ****Option F.2**** |
| Cost to industry | Costs to industry imposed by Regulations relating to registers and record keeping. | 35% | 1 | 1 |
| **Total** |  |  | **0.35** | **0.35** |

* + - 1. Fees

The fees prescribed in the current and proposed Regulations can be categorised as initial set-up fees to establish and operate a service, and fees attached to particular applications or actions under the Act and Regulations.

Given the proposal to streamline from seven licence types to two service types and the objective of aligning to the NQF (where appropriate), the fee structure for children’s services must change—some fees are altered to align, others are no longer required, and some new fees are introduced—therefore, the current and proposed fee structures cannot be directly compared side-by-side.

The NQF fee structure is simpler to understand and apply compared to the current Victorian fee structure and the aim of providing consistency across the two regulatory regimes compels the Department to revisit both the fee structure and the quantum of each fee.

In Victoria, fees are prescribed as ‘fee units’ as defined in the *Monetary Units Act 2004* (Vic). The dollar amount of a fee unit is set annually, and the annual fee schedule is published on the Department’s website.

The fee unit value for the July 2019 to June 2020 financial year is $14.81.

**Cost recovery**

Guidelines issued by the Department of Treasury and Finance (DTF) outline government policy on the fixing of fees. The guidelines stipulate that while general policy is for costs to be set to recover full cost, there are situations (explicit policy or public good reason) where it may be desirable to recover at less than full cost, or not to recover costs at all.[[55]](#footnote-55)

The fees in both the current and proposed structure do not provide cost recovery to the Department.

The children’s services sector is small, mostly community-based or not-for-profit and many operators provide children’s services as an adjunct to their main business (e.g. fitness centres) and do not provide the service with a profit-making intent. Similarly, the setting of fees is not a revenue raising exercise for the Department, and does not result in full cost recovery.

Rather, the fees set are modest and representative of a portion of the time spent by Departmental staff in the administration of applications and monitoring compliance with regulatory requirements.

Furthermore, the proposed fee structure and quantum are predicated on the principle that any change to the status quo will not place too great a financial burden on smaller service providers or be a barrier to communities accessing childcare, particularly in regional and rural settings where the children’s service may be the only education and care offering available.

If a fee value was set to achieve full cost recovery, this could potentially prohibit providers from offering children’s services in places where they are most needed, or diminish the capacity for families to access children’s services if providers chose to shift increased costs to parents and families in the form of higher service fees.

The proposed fees are **proportional to the NQF fees** and are a fair compromise between full cost-recovery and a full government subsidy.

In actuality, the cost to the regulator of ensuring service compliance, far exceeds any fee imposed in the current or proposed fee structure. As at 30 June 2019, the estimated cost to the regulator to undertake regulatory activity (including ensuring compliance with fee payments) for children’s services is approximately $1,630 per annum per service.

Furthermore, the revenue represents a minimal revenue stream for government (and nil for the regulator) as payment goes directly to consolidated revenue.

**Approved place brackets**

Options for the proposed approved places ‘bracket’ scale were considered, with the current and National structure representing the upper and lower parameters, respectively.

The current fees are prescribed under five ‘brackets’ of approved places: (1) ≤15; (2) 16-30; (3) 31-60; (4) 61-120; and (5) ≥121. In some instances, the fee is static across some or all brackets.

When the NQF came into effect in 2012, the following three ‘brackets’ of approved places for centre-based services were adopted: (1) small 0-24; (2) medium 25-80; and (3) large 81 and more.

If Victoria were to adopt the NQF centre-based brackets, the distribution of services would be skewed towards the smaller end with nearly 60% of children’s services falling into the small bracket. Maintaining the five approved place brackets is too granular considering the distribution of licensed services with less than 0.5% of services approved for 121 places or more.

In order to preserve a normal distribution of fees, it is recommended that the proposed regulations retain the current approved places brackets, but reduce the scale to **four brackets**: (1) 1-15; (2) 16-30; (3) 31-60; and (4) 61 or more approved places for Occasional Care service types; and having only the first three brackets apply to Limited Hours service types.

**Fee units**

All services entering the market incur initial fees for approval of provider and approval of the service (including the service premises) to operate, followed by fees for future renewals of approvals on an ongoing basis. The 2019 amendments to the Act change the approval process and therefore also change the basis for approval (or licence) fees. Currently, following the initial grant of a licence to operate and premises approval, the most frequently purchased licence term is for a 3-year period. To continue to operate, a service is required to pay a licence renewal fee commensurate with the period of the licence (1, 3 or 5 years). However, services approved to provide up to 15 places for children incur a ‘Nil’ fee value to renew a licence.

Anecdotal evidence suggests that some services currently restrict the number of approved places for which they are licenced to less than 15, in order to retain the ‘Nil’ licence renewal fee. Services restricting approved places is undesirable, particularly if this reduces the number of places that parents and families in rural and regional communities can access, where occasional care is the only care available.

Licence renewal fees are redundant inside the proposed approval process, where the service approval is ‘perpetual’. Instead, an annual service fee would be instituted, applicable across all services regardless of type or size. For smaller services where previously a Nil fee applied, the annual service fee would constitute a modest cost increase, however, this would be offset by the static or nil fee values that apply for other fee related activities.

As all services are required to purchase a licence to operate, and the most frequently purchased licence term is 3-years, the proposed **annual service fee** is modelled on one-third of the 3-year licence application fee as the **median price point** between a current Standard and Limited Hours application fee and representing a fair and reasonable amount across the sector.

**Fee structure**

The proposed fee schedule is consistent with the NQF in terms of the proportion of unit (cost) per transaction. It is proposed that standard applications will incur a static fee regardless of service type and size.

In the proposed fee structure, a provider entering the market will pay a fee to apply for provider approval (**static** across all types and brackets) and a fee to apply for a service approval (**proportional** to the number of approved places and service type).

The application for provider approval fee is static across the NQF and proposed fee schedule as the regulatory effort to consider the suitability of a provider is largely similar regardless of the number of approved places or whether they have multiple services. The proposed fee for an application for provider approval is 15 fee units ($222.15).

While the combined total of fees for provider and service approval represents an increase to set up a service under the proposed fee schedule, there is an economy of scale associated for providers seeking to operate multiple services—they can do so without having to purchase individual provider approvals per service. Under the current law, a service requires both an approval of premises and license approval per service. If the proposed fee schedule had been in effect, 27 current licence holders, who offer multiple occasional care services, would have benefitted from this economy of scale.

A **late payment** **fee** will apply to the annual service fee, consistent with the NQF: *The regulatory authority may charge a late payment fee if an annual service fee is not paid by 1 July. The late fee is 15% of the relevant annual service fee per 30 days (or part thereof) that the payment is overdue. If the annual service fee is not paid, the regulatory authority may consider taking compliance action. Failure to pay the annual service fee is grounds for suspension of provider approval and service approval (sections 25 and 70). Repeated instances of non-payment may indicate poor financial management, and the regulatory authority may decide to reassess the provider’s fitness and propriety to provide an education and care service*[[56]](#footnote-56).

The fee for **transfer of service approval** to another provider is set at 7 fee units ($103.70), slightly lower than the equivalent fee under the NQF ($111.00).

Previously, there was no fee to apply for an exemption from a regulatory requirement. Under the proposed fee structure new fees are introduced to support the processes of seeking a **waiver** from certain prescribed regulatory requirements:

* Application for a service waiver
* Application for a temporary waiver
* Application for extension of a temporary waiver.

The new fees for these waiver applications are set at 7 fee units ($103.67), slightly lower than the equivalent fees under the NQF ($111.00).

In addition, the Department will have a regulatory discretion to waive fees in appropriate circumstances under the proposed structure.

**Other fees**

Under the proposed structure, the following fees **will not be prescribed** in the regulations, representing a reduction in regulatory burden for services and for the regulator:

* Late application for licence renewal
* Application for the approval of new nominees
* Application to vary or revoke a condition or restriction
* Application to impose a new condition or restriction
* Application to vary the period of a licence.

***Current Fee Structure***

Fees are included in the body of the current Regulations and in a schedule to the Regulations.

The current structure details up to 17 applications for which a fee is prescribed depending on the licence type a service holds and the number of approved places that a service is licensed to provide. It also reflects the current ‘application process’ to establish a new service—that is, approval of premises, approval of licence for a term of up to 1, 3 or 5 years, and associated licence renewal depending on the term of that licence (e.g. 1, 3 or 5 years).

The prescribed fee units are differentiated by licence type (currently 7 types) and rise incrementally based on the number of places the service is approved provide, as defined by the following five brackets: 1-15, 16-30, 31-60, 61-120 and 121 or more approved places.

Appendix 10.5a details the fee unit and dollar value of the current fee structure for Standard, Limited Hours (types 1 & 2) and School Hours Care licence types.

***Proposed Fee Structure***

The proposed Regulations prescribe fees in support of the provisions in the Amendment Act and associated approval processes.

The proposed fee structure details 13 activities for which a fee is prescribed, depending on the streamlined service type (two types) and differentiated according to the number of places a service is approved to provide, as follows:

* For **Occasional Care** services: 1-15, 16-30, 31-60 and 61 or more approved places
* For **Limited Hours** services: 1-15, 16-30, 31 or more approved places.

As per the current structure, fee units and associated dollar amounts of proposed fees that relate to service establishment and continued operation, rise incrementally based on the number of places a service is approved to provide. For other activities, the prescribed fee unit is **static** or **zero** across all services, regardless of the service type or size e.g. **late payment fee**, application for service **waivers** and **transfers** of service.

The proposed fees also support the new approval processes in the Act whereby an application for provider approval occurs **once only** and an application for service approval is costed **per service** – allowing a provider to operate a number of services under the one provider approval and across both regulatory regimes. Furthermore, the service approval is **perpetual** – removing the necessity to apply to renew a licence periodically, which carries administrative burden in the preparation of paperwork to support the application.

Appendix 10.5b details the fee unit and dollar value of the proposed fee structure for Occasional Care and Limited Hours service types.

**New Market Entry – cost of initial approvals**

Examples are provided below to illustrate how providers/services **entering the market** may experience the proposed fee structure, as well as comparison against the NQF structure. The examples are based on the **16 to 30** approved places bracket and should be viewed in conjunction with the full fee structures shown in Appendix 10.5a (current structure) and Appendix 10.5b proposed structure.

Under the current Regulations, to obtain the necessary initial approvals to operate a children’s service with between 16 and 30 approved places under a one-year Standard Licence would cost 41 fee units ($607.21). The bulk of the cost is associated with the application for approval of premises and this cost rises incrementally based on the number of approved places. Similarly, to set up a children’s service with between 16 and 30 approved places under a Limited Hours type 2 (most common) Licence would cost 20 fee units ($296.20) – as shown in the table below.

|  |
| --- |
| Children's Services Regulations 2009 – Current cost of initial approvals |
| **Fee Transaction and Section of the Law** | **Standard Licence** | **Limited Hours 2** |
| **16 – 30** | **16 – 30** |
| Application for approval of premises (Schedule 2, Part 1 - r6) | $459.11 (31)\* | $222.15 (15) |
| Licence to operate a children's service (Schedule 2, Part 2 - r8) – ongoing licence renewal required for future continued operation | $148.10 (10) | $74.05 (5) |
| **Cost of initial approvals for new services** | **$607.21 (41)** | **$296.20 (20)** |

*\*Fee units shown in brackets*

Under the proposed Regulations and associated fee structure, the approval process will be more consistent with the NQF meaning a provider approval is required (once only) and a service approval will be required (per service, rising incrementally based on the number of approved places in each service). Given the proposed change to the current licence structure, the cost of approvals for a new service seeking to operate between 16 and 30 approved places, is calculated as 29 fee units ($429.49) for Occasional Care services and 25 fee units ($370.25) for Limited Hours services.

|  |
| --- |
| Children's Services Regulations 2020 – Proposed cost of initial approvals |
| **Fee Transaction and Section of the Act** | **Occasional Care** | **Limited Hours** |
| **16 – 30** | **16 – 30** |
| Application for provider approval (s11(d)) – once only | $222.15 (15)\* | $222.15 (15) |
| Application for service approval (s43(f)) – per service | $207.34 (14) | $148.10 (10) |
| **Cost of initial approvals for new services** | **$429.49 (29)** | **$370.25 (25)** |

*\*Fee units shown in brackets*

By way of comparison, the cost of initial approvals for a service of similar size under the NQF is $681.00 (the NQF does not use fee units; all fees are expressed in dollar amounts) with the application for provider approval being a flat rate regardless of the size of a service, and the application for service approval rising incrementally as the size of the service increases – as shown in the table below.

|  |
| --- |
| Current NQF Fees |
| **Fee Transaction and Section of the Law** | **Approved places** |
| **Small (0-24)** | **Medium (25-80)** | **Large (81+)** |
| Application for provider approval (s11(d))  | $227.00 | $227.00 | $227.00 |
| Application for service approval (s44(1)(e)) | $454.00 | $682.00 | $910.00 |
| **Set-up cost for new NQF services** | **$681.00** | **$909.00** | **$1,137.00** |

While the proposed fee structure in most circumstances is higher than currently in fee units and dollar value, it is well below the NQF (for a similar sized service) and will apply for **new children’s services only**. Existing services will not be impacted by this proposed change.

**Comparison of current and proposed structure of fees for approvals to operate**

The following two examples illustrate how services may experience the changing fee structure for approvals to operate, with each example covering a period of 3 years.

**Service A** holds a Limited Hours type 2 licence and is opened by a leisure centre as a trial to attract increased membership as a result of providing childcare services. The service is approved to provide education and care for up to 25 children. It is successful in attracting new members and the leisure centre operator decides to seek a licence renewal for 3 years.

For comparison purposes, it is assumed that Service A holds an Occasional Care service type in the Alignment option.

|  |  |  |
| --- | --- | --- |
| Service A | Option C.1. Status Quo | Option C.2. Alignment |
| Licence/Service approval | Limited Hours Type 2 licence | Occasional Care service approval |
| Renewed periodically | Perpetual approval |
| Approved places | 16 to 30 places | 16 to 30 places |
| Set-up fee costs | Premises approval: $222.15Licence up to 1 year: $74.05 | Provider approval: $222.15Service approval: $207.34 |
| Renewal/Annual fee costs | Licence renewal up to 3 years: $192.33 | Annual service fee ($88.86 x 3 years): $266.58 |
| Other costs/savings | Administrative costs associated with document collection and renewal applicationNotification of changes to nominees and regulator assessment of new primary nominees | Administrative costs associated with annual invoice payable on 30 June each yearNotification of changes of nominated supervisor only |
| **Total fee costs to operate over a 3 year period** | **$488.53##** | **$696.07** |

*## The fee costs outlined above do not include the additional costs that would be incurred under Option H.1. Status Quo during the licence renewal process i.e. the time and resources required to complete the renewal each period and the need to obtain and provide information such as a Police Check (no more than 6 months old). These costs are not included as they cannot be accurately estimated, but it is expected that, once these costs are considered, there would be no significant difference between the two options.*

In the Alignment option, an approved provider would need to maintain a current Working with Children Check (WWCC), and in the Status Quo option an approved provider would need to provide a current Police Check at renewal.

* A WWCC costs $126.50 (initial check) and $93.60 (renewal check), and is valid for 5 years.[[57]](#footnote-57)
* A Police Check costs $48.90 and does not have an expiry.[[58]](#footnote-58)

In the Status Quo option, there are also **administrative costs** associated with the additional time taken to compile the paperwork and complete the application process. Costing assumes that a Diploma-level educator completes this task, at a cost of $32.09 per hour in wages, and the time taken to complete this administrative task is estimated to be 1.4 hours for a small service and 2.5 hours for a medium service – the estimated cost is $44.93 for small services and $80.23 for medium services.

These are conservative estimates due to the difficulty in determining the actual time taken by services to complete applications currently.

**Service B** is an existing service, operating out of a Neighbourhood House. It holds a Limited Hours type 1 licence and has been operating for a number of years. It is approved to provide education and care for up to 40 children. The Neighbourhood House renews its licence for 3 years and subsequently, undergoes renovations to provide additional capacity.

For comparison purposes, it is assumed that Service B holds a Limited Hours service approval in the Alignment Option.

|  |  |  |
| --- | --- | --- |
| Service B | Option C.1. Status Quo | Option C.2. Alignment |
| Licence/Service approval | Limited Hours Type 1 licence | Limited Hours service approval |
| Renewed periodically | Perpetual approval |
| Approved places | 31 to 60 places | 31 + places |
| Renewal/Annual fee costs | Licence renewal up to 3 years: $281.39 | Annual service fee ($148.10 x 3 years): $444.30 |
| Other fee costs | Application for approval of alteration to premises: $162.91Voluntary suspension of Licence due to renovations: $74.05 | Voluntary suspension of service approval: Nil ($0)Amendment of service approval: Nil ($0) |
| Other costs/savings | Administrative costs associated with document collection and renewal application e.g. Police ChecksNotification of changes to nominees and regulator assessment of new primary nominees | Administrative costs associated with annual invoice payable on 30 June each yearNotification of changes of nominated supervisor only |
| **Total fee costs to operate over a 3 year period** | **$518.35** | **$444.30** |

**Conclusion**

Initial costs for new providers to operate new services are higher under the H.2 Alignment option than H.1 Status Quo.

While the shift from licence approval and renewal applications to an annual service fee would result in a reduced administrative burden for all existing (and future) services, costs directly associated with fees would fall for current Standard licence holders and rise for both Limited Hours service types. This would be balanced by the discontinuation of some fees and the introduction of new fees, and the alignment structure of imposing a static fee across all services for activities that do not require additional time or resources regardless of service size or type.

Overall, both options have been scored as moderately negative relative to the Base Case (under which no fees could be set without regulations), with the H.2 Alignment scoring slightly better owing to the clearer fee structure and the expectation that this will reduce administrative burden for service providers compared to Option H.1. Status Quo.

Table 34 provides the score given to H.1. Status Quo and H.2. Alignment options against the costs to industry criterion.

Table 34 Fees - costs to industry

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ****Criterion**** | ****Description**** | ****Weighting**** | ****Option H.1**** | ****Option H.2**** |
| Cost to industry | Costs to industry imposed by Regulations relating to fees. | 35% | -7 | -6 |
| **Total** |  |  | **-2.45** | **-2.1** |

* + - 1. Exemptions or waivers

The Act provides that approved providers can apply for a waiver exempting a service from complying with the prescribed Regulations. The Act provides that applications must be accompanied by the prescribed information.

Under Option I.1.Status Quo, the Regulations are silent as to waivers or exemptions. This option would impose increased costs relative to the base case through the increased administrative burden for providers needing to contact the Department to clarify the scope of possible waivers and the information needed to accompany applications.

Under Option I.2. Alignment, the proposed Regulations outline the information to be provided with waiver applications, resulting in a cost saving compared to the base case and Option I.2 through the reduced administrative burden associated with regulatory guidance. There will, however, still be some administrative costs incurred through the application process and the subsequent communications between the provider and the Department.

Table 35 provides the scores given to Option I.1 and Option I.2 against the cost to industry criterion. The scores reflect the mild cost saving to businesses expected under Option I.2.

Table 35 Exemptions or Waivers - costs to industry

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ****Criterion**** | ****Description**** | ****Weighting**** | ****Option H.1**** | ****Option H.2**** |
| Cost to industry | Costs to industry imposed by Regulations relating to exemptions or waivers. | 35% | 0 | 2 |
| **Total** |  |  | **0** | **0.7** |

* + - 1. Total costs to industry

It is difficult to fully quantify the total costs to industry expected under the Status Quo and alignment options because it has not been possible to quantify costs associated with all areas within each option. However, the total costs to industry have been assessed insofar as possible, and are shown in Tables 46 and 47 below.

These tables include costs imposed by the current and proposed Regulations which are:

* Obligatory, thus incurred by all providers
* Actual costs rather than opportunity costs
* Possible to calculate across the industry as a whole given available data (e.g. how often events occur per provider, per service or per year).

These costs are:

* Staffing
* Health and welfare requirements relating to excursions
* First-aid kits and training
* Equipment and facilities
* Incident records
* Notification and display of changes to policies
* Initial establishment of policies and procedures.

Requirements such as keeping records and the process for applying for provider and service approvals, which have been described as opportunity costs, are not included in these total costs to industry. It is assumed that these tasks would be completed by staff during their usual working hours, and would be reflected within the staffing costs experienced by services.

In addition, the following ‘equipment and facilities’ costs have not been quantified and are not included in these total costs: providing facilities for children to participate in educational and care programs; meeting children’s hygiene needs/providing toilets and hand-basins; indoor and outdoor space requirements; and staff room.

Note that some of these costs vary considerably depending on the type and size of a service, meaning that the ‘per service’ costs provided below relate to the average service across the industry as a whole, and may not reflect the costs experienced by individual services in reality. In addition, it has been assumed that all services operate to their maximum weekly hours every week of the year, meaning that costs may be over-estimated if this is not the case. Nonetheless, these costs are provided to give an indicative guide to new entrants to the market and to illustrate the expected cost impacts for individual services of both options. Both real and net present value (**NPV**) projected costs are included. The NPV cost is calculated using a real discount rate of four per cent.

Table 36 provides the estimated total initial set-up costs incurred in relation to each new service and to the industry overall each year under the Status Quo and alignment options. These costs are limited to the purchase of equipment required under the options as the other set-up costs, such as applying for approvals or establishing policies, are considered opportunity costs. As the equipment and facilities required under both options are the same, the **costs are expected to be the same** for both options.

Table 36 Total costs to industry: initial set-up

|  |  |  |  |
| --- | --- | --- | --- |
| Option | Total cost per service | Total cost to industry per year | Total cost to industry over 10 years - NPV |
| Status Quo | $9,694 | $193,888 | $1,572,611 |
| Alignment | $9,694 | $193,888 | $1,572,611 |

Table 37 provides the estimated ongoing annual costs per service and to the industry as a whole under the Status Quo and alignment options. The ongoing costs included in these figures are staffing, first-aid training and kits and equipment that needs to be replaced at intervals (mattresses and sheets, e.g.). Staffing costs comprise the bulk of these costs and it should be noted that, as discussed at section 6.2.1.3., these costs may vary considerably depending on individual providers’ size, attendance rates, weekly hours of operation and staffing choices.

Table 37 Total costs to industry: ongoing costs

|  |  |  |  |
| --- | --- | --- | --- |
| ****Option**** | ****Total annual ongoing costs per service**** | ****Total cost to industry per year**** | ****Total cost to industry over 10 years - NPV**** |
| Status Quo | $75,202 | $24,215,355 | $244,387,699 |
| Alignment | $74,984 | $24,144,870 | $234,363,856 |

### 6.2.2 Costs to regulator

The Secretary of the Department of Education and Training (**Department**) is the regulator for education and care services and children's services operating in Victoria across both regulatory regimes. Regulator functions and powers are largely delegated to the Quality Assessment and Regulation Division (**QARD**) of the Department to administer and enforce the regulatory regimes.

QARD undertakes the full range of functions and powers provided to promote the safety, health and well-being of children attending education and care and children’s services as guided by the Statement of Expectations[[59]](#footnote-59) issued by the Minister for Education, and published on the Department’s website in September 2019 – the bulk of which is dedicated to NQF services.

The bulk of QARD’s time is dedicated to NQF services and includes the time and resource intensive work of quality assessing and rating services against the NQS. By contract, the proportion of time spent by QARD on the administration, monitoring and compliance of children’s services specifically is small at approximately 7.5%, reflecting the size of the sector and that quality assessment and rating against NQS does not apply to children’s services.

(Approximately 4570 early childhood education and care services across Victoria, of which about 320 represent the children’s services sector, equating to 7.5%)

The main activity undertaken by QARD directly attributable to monitoring and compliance of children’s services, is shown in the Table below.

Regulatory Effort for Children’s Services as at 2018-19 Financial Year:

|  |  |  |
| --- | --- | --- |
| QARD Function | QARD Teams[[60]](#footnote-60) | % of time directly attributable to Children’s Services |
| Processing Applications at Market Entry | SASU | 10.0% |
| Information, Guidance and Enquiries | SASU and CPSU | 17.0% |
| Inspections and Visits | Operations | 11.2% |
| Monitoring and Compliance Actions (including investigations) | MCU and Investigations | 8.2% |
| System Reporting and Administration (including licence renewals) | BSRU and SASU | 2.0% |

Changes in the Amendment Act and proposed Regulations will have a **short-term cost impact** on QARD in the period leading up to, and for a short time following, the Act and Regulations taking effect insofar as updating information and guidance material, updating provider and service approvals to reflect new or amended requirements/conditions, and communication activity with sector and stakeholders about and in response to changes.

However, it is expected that these **costs will be off-set** by longer-term efficiencies offered by the two regimes being aligned (where appropriate) in terms of streamlined processes and reduced administrative burden.

As at 30 June 2019, the Department estimates that the current cost of regulating children’s services is approximately **$1,630.00 per service, per annum**. This cost is assumed in the Status Quo options.

The bulk of Department’s regulatory costs for children’s services are associated with the approvals process, keeping registers, and monitoring and compliance responsibilities provided for in the Act, which would still be incurred under the base case scenario. It should be noted, however, that both options can be expected to create general efficiencies for the Department through:

* Providing guidance to providers on how to comply with the Act, which the Department would otherwise have to find other means to provide
* Alerting providers to the information they need to have ready for inspection by the Department officers.

In general, the Alignment options are likely to reduce costs to the Department because of the reduction in variation between the two regulatory systems the Department is responsible for administering: the NQF and the Act. This can be expected to reduce, for example, time taken to train staff and inspecting officers.

The following subsections assess the cost to government imposed by each option. The costs expected to arise under each option are included in the total cost per regulator and have been assessed qualitatively.

* + - 1. Approval applications

Option A.2 Alignment is likely to reduce costs to the Department in comparison to the base case because under this option, clear guidance is provided to service and provider approval applicants about the documents and information required to accompany applications, reducing the likelihood of applicants seeking assistance from the Department staff.

Guidance is also provided to both the Department staff and applicants regarding the specific grounds of refusal the Department can rely on in rejecting applications for service approvals; this guidance may result in administrative savings for the Department through reducing confusion and disputes over refused applications.

Additionally, the Alignment option is likely to result in cost savings for the Department through facilitating the use of the same IT systems, staff training, etc., for both children’s services and NQF services rather than two disparate systems and resources.

Table 38 provides the score given to Option A.2 Alignment against the cost to regulator criterion.

Table 38 Approval applications - costs to regulator

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ****Criterion**** | ****Description**** | ****Weighting**** | ****Option A.1**** | ****Option A.2**** |
| Cost to regulator | Costs to government imposed by Regulations relating to approval applications. | 15% | 0 | 3 |
| **Total** |  |  | **0** | **0.45** |

* + - 1. Service approval types

Option B.1 Status Quo and Option B.2 Alignment are both expected to impose lesser regulatory costs to the Department in comparison to the base case.

Under Option B.1, the capacity to classify new services into licence types enables the Department to apply operating restrictions or requirements across multiple services. In the base case, the Department staff would need to develop and tailor such requirements to each individual service upon its being approved, which would take more time and staff resources.

Option B.2 would realise the cost savings arising under Option B.1 Status Quo while also likely further reducing costs by creating a clearer and more streamlined set of approvals. The reduction from 7 licence types to 2 service approvals may make it easier for the Department to approve new services and identify whether services are operating to the required standards.

Table 39 provides the scores given to Options B.1 Status Quo and B.2 Alignment against the cost to regulator criterion. The scores reflect the mild cost savings both options are expected to cause, with a slightly increased cost savings under Option B.2.

Table 39 Service approval types - costs to regulator

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ****Criterion**** | ****Description**** | ****Weighting**** | ****Option B.1**** | ****Option B.2**** |
| Cost to regulator | Costs to government imposed by Regulations relating to service approval types. | 15% | 3 | 4 |
| **Total** |  |  | **0.45** | **0.6** |

* + - 1. Staffing

Option C.1 Status Quo and Option C.2 Alignment could either create additional regulatory costs to the Department in comparison to the base case or reduce costs.

**Additional costs: more detailed standards to enforce**

In the base case, services have a general obligation to adequately supervise children and protect them from harm and hazards.

Under both options, specific staffing requirements are added to the regulatory system and therefore need to be monitored by the Department and its inspecting officers. This could increase the regulatory burden for the Department as officers have to ascertain whether services are complying with the detailed staffing requirements rather than just meeting the general obligations under the Act.

**Reduced costs: more efficient regulation; reduced risks for the Department**

On the other hand, the additional requirements in the regulations may make it easier for inspecting officers to ensure that services are meeting the general obligations under the Act because officers can assume that services compliant with the ratios, qualification requirements and minimum staff numbers are adequately protecting, supervising and educating children. The regulatory specifications may also ease the burden for the Department staff and inspectors needing to explain to services how they can and should meet their obligations under the Act, ultimately increasing regulatory efficiency.

Including more staffing requirement detail may mitigate the risk of additional costs to the Department incurred through litigation. Providing more detailed guidance to services about how to properly supervise children and monitors services for compliance should, theoretically, lower the risk of legal culpability for any harm which may be caused to children.

Additionally, the Department may realise savings associated with reduced complaints or concerns from parents or guardians flowing from the strengthened staffing requirements, but it is difficult to assess whether this impact would in fact occur.

No significant variation in cost to the Department is expected between the two regulatory options.

Table 40 provides the scores given to Option C.1 Status Quo and Option C.2 Alignment against the cost to regulator criterion. The scores reflect the similar and minimal cost savings to the Department imposed by both options.

Table 40 Staffing - costs to regulator

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ****Criterion**** | ****Description**** | ****Weighting**** | ****Option C.1**** | ****Option C.2**** |
| Cost to regulator | Costs to government imposed by Regulations relating to staffing. | 15% | 1 | 1 |
| **Total** |  |  | **0.15** | **0.15** |

* + - 1. Safety, health and wellbeing of children

The Act requires services to protect children from harm and hazards but does not provide any specific guidance or standards as to how services should comply with this obligation.

Options D.1. Status Quo and D.2. Alignment both contain detailed requirements to supplement this provision in the Act. Both options are expected to at once increase and reduce regulatory costs compared to the base case in similar ways to those discussed in relation to the staffing options in section 6.2.2.3.

The specific requirements imposed under both Option D.1 and Option D.2 result in additional inspection obligations for the Department officers compared to the base case, but also provide a clear means of assessing services’ capacity to protect children’s health, safety and welfare, and the other cost reductions discussed above flowing from easier or more straightforward regulation.

No significant variation in cost to the Department is expected between the two regulatory options.

Table 41 provides the scores given to Option D.1 Status Quo and Option D.2 Alignment against the cost to regulator criterion. The scores reflect the negligible impact on regulatory costs expected under both options.

Table 41 Safety, health and wellbeing of children - costs to regulator

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ****Criterion**** | ****Description**** | ****Weighting**** | ****Option D.1**** | ****Option D.2**** |
| Cost to regulator | Costs to government imposed by Regulations relating to safety, health and wellbeing of children. | 15% | 0 | 0 |
| **Total** |  |  | **0** | **0** |

* + - 1. Equipment and facilities

The analysis described in relation to the safety, health and wellbeing of children options also applies to the equipment and facilities options.

While both options create a more detailed and therefore possibly more onerous regulatory burden, this increased detail also has the potential to make monitoring and enforcement of services’ general obligation under the Act more straightforward. This is because ascertaining whether services are providing facilities such as appropriate sleeping furniture and staff amenities, and sufficient space for children to play and learn in, is one way of determining whether services and their staff are able to adequately look after the children in their care (as required under the Act).

No significant variation in cost to the Department is expected between the two regulatory options, as they impose similar requirements.

Table 42 provides the scores given to Options E.1 Status Quo and E.2 Alignment against the cost to regulator criterion. The scores reflect the way that the possible increase and possible decrease in regulatory costs expected under both options counteract each other to result in minimal impacts to the Department costs overall.

Table 42 Equipment and facilities - costs to regulator

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ****Criterion**** | ****Description**** | ****Weighting**** | ****Option E.1**** | ****Option E.2**** |
| Cost to regulator | Costs to government imposed by Regulations relating to equipment and facilities. | 15% | 0 | 0 |
| Total |  |  | **0** | **0** |

* + - 1. Complaints and serious incidents

Option F.1. Status Quo and Option F.2. Alignment may both lead to mild cost savings for the Department compared to the base case.

By requiring services to report complaints or other issues earlier, the Department is better placed to assess and respond as necessary, before situations could escalate and ultimately require more intensive intervention.

No significant variation in cost to the Department is expected between the two regulatory options.

Table 43 provides the scores given to Option F.1. Status Quo and Option F.2. Alignment against the cost to regulator criterion.

Table 43 Complaints and serious incidents - costs to regulator

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ****Criterion**** | ****Description**** | ****Weighting**** | ****Option F.1**** | ****Option F.2**** |
| Cost to regulator | Costs to government imposed by Regulations relating to Complaints and serious incidents. | 15% | 2 | 2 |
| **Total** |  |  | **0.3** | **0.3** |

* + - 1. Registers and record-keeping

The Act requires the Secretary to keep registers of approved providers and services. Under both options, the Regulations specify the details to be kept in the registers in relation to each provider and service. The cost to the Department in keeping the registers is negligible and would not vary significantly between the base case, Option G.1 Status Quo and Option G.2 Alignment.

The Act also requires services to keep prescribed documents for inspection by the Department officers. This requirement can be expected to result in mild cost savings for the Department through facilitating more efficient inspection by the Department officers.

No significant variation in cost to the Department is expected between the two regulatory options.

Table 44 provides the scores given to Option F.1 Status Quo and Option F.2 Alignment against the cost to regulator criterion.

Table 44 Registers and record-keeping - costs to regulator

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ****Criterion**** | ****Description**** | ****Weighting**** | ****Option G.1**** | ****Option G.2**** |
| Cost to regulator | Costs to government imposed by Regulations relating to registers and record-keeping. | 15% | 3 | 3 |
| **Total** |  |  | **0.45** | **0.45** |

* + - 1. Fees

The Act requires certain applications to be accompanied by the prescribed fee, paid to the Regulator.

Both Option H.1. Status Quo and Option H.2. Alignment are considered to **reduce costs** for the regulator relative to the Base Case. The cost reduction is achieved by the Regulations stipulating the specific fee unit of each activity, making the requirement and value clear and transparent, as opposed to the regulator spending time and resources in providing verbal and/or written guidance to service providers in response to the limited direction of the Act alone.

As shown in the table below, the **H.2 Alignment** option scores better than **H.1 Status Quo** option due to the streamlined nature of the proposed fee structure, which includes a reduction in the number of applications that incur a fee, the static value of fees regardless of service type or size, and the introduction of an annual service fee across all services payable on invoice in place of the added time and resource required to review and process licence renewal applications periodically.

Overall, the Alignment option is expected to have a stronger positive effect for the regulator in terms of time and resources.

Table 45 Fees - costs to regulator

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ****Criterion**** | ****Description**** | ****Weighting**** | ****Option H.1**** | ****Option H.2**** |
| Cost to regulator | Costs to government imposed by Regulations relating to fees. | 15% | 2 | 3 |
| **Total** |  |  | **0.3** | **0.45** |

* + - 1. Exemptions or waivers

The Act provides that approved providers can apply for a waiver exempting a service from complying with the prescribed Regulations. The Act provides that applications must be accompanied by the prescribed information.

Under Option I.1Status Quo, the Regulations are silent as to waivers or exemptions. This option would impose increased costs relative to the base case through the increased administrative burden for the Department needing to respond to enquiries from providers, clarify the scope of possible waivers and provide guidance as to the information needed to accompany applications. There may also be increased regulatory costs for the Department flowing from greater need for compliance activities should providers operate in a non-compliant way rather than seeking an exemption or waiver.

Under Option I.2 Alignment, the proposed Regulations outline the information to be provided with waiver applications, resulting in a cost saving compared to the base case and Option I.2 through the reduced administrative burden associated with clearer regulatory guidance for providers.

Table 46 provides the scores given to Option I.1 and Option I.2 against the cost to regulator criterion.

Table 46 Exemptions or waivers - costs to regulator

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ****Criterion**** | ****Description**** | ****Weighting**** | ****Option I.1**** | ****Option I.2**** |
| Cost to regulator | Costs to government imposed by Regulations relating to exemptions or waivers. | 15% | -1 | 2 |
| **Total** |  |  | **-0.15** | **0.3** |

## 6.3 Benefits

This section assesses the ‘Status Quo’ and ‘alignment’ options against the two benefits criteria:

* **Safety** – effectiveness of the option in ensuring the safety, health and wellbeing of children attending children’s services
* **Quality** – effectiveness of the option in improving children’s educational and developmental outcomes and lifting the broader quality of the sector.

### 6.3.1 Health, safety and wellbeing of children

This criterion reflects the responsibility children’s services take on for the physical and psychological welfare of children left in their care, and the overarching obligation of government to protect children as vulnerable members of society. This criterion measures each option’s effectiveness in ensuring the primary purpose of the Act: protecting the safety, health and wellbeing of children.

Aside from meeting obligations to a vulnerable segment of society, ensuring that children attending services remain safe and well has two other key benefits.

First, the provision of safe children’s services potentially bolsters **parental confidence** that their children will remain healthy and well in their absence. This means that parents may be better placed to re-enter or remain in the workforce, pursue their outside-of-work interests and activities.

Secondly, healthy and safe **children are better able to engage** in interactions with educators and peers, and educational programs that are beneficial for developmental outcomes (supporting research provided in section 2).

### 6.3.2 Quality of service and the broader sector

This criterion reflects the Act’s other legislative purposes to improve educational and developmental outcomes for children and to promote the continuous improvement of the children’s services sector. Regulation designed to improve the quality of early childhood education and care has benefits for individual children attending services and for the sector as a whole.

The years from birth to age five have been identified as the most important developmental period during childhood, and research shows that brain development in these early years ‘lays the foundation for language development, literacy acquisition, cognitive processes, emotional development, self-regulation and problem-solving skills, and has a lasting impact on health, future learning and life success’.[[61]](#footnote-61)

The ‘quality’ of an early childhood education and care service relates to its ability to encourage the healthy development of children during this crucial period.

Various aspects of a service can be indicators of the quality of service it provides. These include:

* level of individualised attention paid to children and stimulating interactions between educators and children
* strength of educational programs provided to children
* physical environment provided for children in which to play and learn.

For example, services with higher staff to child ratios may be considered of ‘higher quality’ because children can receive more individualised attention and engage in more of the ‘serve and response’ interactions with adults shown to be essential for healthy development.[[62]](#footnote-62) This effect is heightened if the staff hold qualifications in early childhood education and care, as qualified staff are better equipped to engage in interactions with children designed to promote their social and cognitive development. Research referred to in NQF performance reports, indicates that stimulating environments lead to more positive cognitive and social outcomes for children.[[63]](#footnote-63)

Conversely, low-quality care has been associated with no benefits or even detrimental effects on children’s learning and development.[[64]](#footnote-64)

An increasing focus on quality in the early childhood sector, especially since the decision to develop and implement the NQF, has highlighted the value of regulatory oversight to drive quality improvements and, therefore, to ensure developmental outcomes for all children attending all services – including occasional care – across the sector. Regulatory intervention through imposing and, where appropriate and necessary, increasing quality standards is particularly important where other market factors which could otherwise drive improvement – such as parent choice – are limited by high demand or lack of availability. This may be especially true for occasional care services operating in rural or remote areas, where the children’s services market is likely to be considerably smaller than that of more urban regions.

### Benefits analysis

6.3.3.1 Approval applications

**Option A.2. Alignment**

Under this option, the proposed Regulations provide information to prospective and current service providers regarding the applications to obtain, vary and voluntarily suspend provider approvals and service approvals that may be made under the Act. Under the base case, no regulatory detail would be provided to support these provisions. The information required under Option A.2. Alignment is not substantively different from that currently required by the Regulations. However, in relation to initial approvals, the prescribed documents are required at different stages of the process. There are also grounds for refusal of a service approval specified in the proposed Regulations, which is a new addition compared to the current Regulations.

***Initial approvals***

The approval system is designed to ensure that only fit and proper applicants operating out of appropriate premises are legally permitted to provide services. The proposed Regulations in relation to initial applications for provider and service approvals are more effective than the base case because they ensure that prospective providers submit details relevant to their ability to keep children safe alongside their approval applications. Requiring prospective providers to compile and submit these documents enables the Secretary to make well-informed decisions about applicants and premises, about whether to provide approval and whether it is necessary to place any conditions on a service approval. This, in turn, ensures that the approval system is able to fulfil its regulatory function of keeping children safe, with the flow-on benefits discussed in section 0 above.

**It could also be said that proposed Regulations provide an educational benefit to new or returning providers by raising awareness through the new approvals process of the facilities, environmental quality controls and operating features necessary to keep children attending services safe and well.**

***Applications to transfer***

**In relation to applications to transfer approvals in the event of the death or incapacitation of the approved provider, the proposed Regulations are more effective than the base case because they limit the period for which the executor or legal guardian of the former approver is permitted to hold the approval (to 6 months). This ensures that third parties who may not have the necessary expertise to properly operate a children’s service are not permitted to do so for longer than is necessary to make appropriate transfer or closure arrangements.**

***Applications to vary***

**The proposed Regulations provide guidance as to the information to be included in applications to amend provider and service approvals, notably the reasons for and details of the requested variation. This aspect of the option does not have any significant impact on the safety, health and wellbeing of children.**

*Applications for voluntary suspension*

**The proposed Regulations regarding voluntary suspension of provider and service approvals support sections of the Act designed to create a compliance flexibility for non-compliant providers to temporarily cease operating without giving up their provider and service approvals.**[[65]](#footnote-65) **The information prescribed in the proposed Regulations includes reasons for the suspension, the provider’s intentions for each service during and after the suspension, and a statement indicating that parents have been notified (a separate requirement under the Act**[[66]](#footnote-66)**).**

**This option is more effective than the base case because it ensures that the Department is made aware of the reasons for the application for voluntary suspension, including any situation which may endanger children and require regulatory intervention.**

***Conditions***

**The proposed Regulations state that service approvals are granted subject to the conditions that providers hold the prescribed insurance and are legally entitled to occupy the proposed premises. The requirement to hold insurance may not have a directly protective effect for children attending services but may result in improved or less costly medical treatment for any children harmed as a result of incidents occurring at services, improving their long-term wellbeing. The condition relating to legal occupation of premises is not expected to have any material consequence for the safety of children attending services because, realistically, a service would not be evicted from a premises while children were present.**

*Initial applications*

The proposed Regulations are more effective than the base case for reasons similar to those discussed in relation to the safety criterion: requiring applicants to provide information such as plans of the proposed service premises and the qualifications of the nominated supervisor enables the Secretary to make appropriate approval decisions, ensuring that minimum standards can be met by all entrants to the children’s services sector or, if necessary, that the duration for which services can provide education and care is limited according to the quality of service they propose to provide.

The proposed Regulations also **encourage higher quality services than the base case (of no Regulations) because they provide an initial opportunity for applicants to understand and demonstrate their capacity to provide the quality of service expected under the regulatory framework. This is particularly true of the regulations requiring applicants to provide a statement that the prescribed policies have been prepared.**

***Applications for voluntary suspension***

**This option is slightly more effective than the base case in ensuring the quality of children’s services insofar as the guidance to providers seeking to temporarily suspend their services facilitates the services ceasing operation for the period they are unable to meet the service quality requirements in the Act or Regulations.**

***Applications for variation***

**This aspect of the option does not have any real impact on the quality of services provided to children or the broader sector because the prescribed information to be included in applications does not relate to the quality of service provided.**

***Conditions***

**The proposed Regulations relating to the insurance and legal occupation conditions on service approvals are not expected to have any material impact on the quality of service provided to children because these conditions do not relate to service quality.**

Table 47 provides the score given to Option A.2. Alignment against the two benefits criteria.

Table 47 Approval application - benefits score

|  |  |  |  |
| --- | --- | --- | --- |
| ****Criterion**** | ****Description**** | ****Weighting**** | ****Option A.2.**** |
| Safety | Effectiveness of information provided in the Regulations regarding the process of applying for provider and service approvals in protecting the health, safety and wellbeing of children. | 30% | 6 |
| **Total** |  |  | **1.8** |
| Quality | Effectiveness of information provided in the Regulations regarding approval processes in promoting the educational and developmental outcomes of children and the development of the children’s services sector. | 20% | 6 |
| **Total** |  |  | **1.2** |

* + - 1. Service approval types

Two options with respect to service approval types are assessed in this section: Status Quo and alignment. Under the Act, prospective providers must apply for service approvals and approvals are granted subject to conditions, but no service approval types are specified, meaning that no service approval types would exist in the base case.

**Option B.1. Status Quo**

Under this option, the Regulations prescribe seven licence types and impose different staffing and other operating conditions on each licence type. This option is mildly more effective than the base case, as assessed against both the safety and quality criteria.

Under **the Act, service approvals are granted subject to any conditions prescribed by the Regulations.**[[67]](#footnote-67) **The main role played by the licence types in the current Regulations is creating a mechanism for the Department to categorise services and apply appropriate operating conditions and limitations across all services within each category. Service approval types automatically ensure that all services operating for particular durations with particular traits are required to provide education and care to children at the standard suitable for that category.**

Both **regulatory options are slightly more effective than the base case because they enable more efficient regulation of the sector. The Department staff are readily able to place and identify operating conditions on a service approval and assess compliance with those conditions. As the service approval types are differentiated in ways relevant to the health, safety and wellbeing of children and the quality of service (for example, the duration for which children may be cared for at a service), enabling the Department staff to more efficiently assess compliance with category conditions makes Option B.1 and B.2 somewhat more effective than the base case.**

**Additionally, the service approval types may mean that applicants can readily identify the conditions applying to the type of service they wish to operate (as set out in other parts of the Regulations). This could assist providers in ensuring that their services meet the minimum protective and quality standards deemed necessary for their type of service. However, it is not clear that having conditions attach to approval types would be a more effective way of achieving this outcome than each specific approval being granted subject to equivalent conditions.**

**There may be a slight additional benefit in relation to driving quality improvements across the sector through the relatively** minimal **regulatory reform of amending conditions for a particular service category, the Department can make changes to lift quality in multiple services.**

The capacity for the service approval types to facilitate more efficient regulation and to educate applicants about the operating requirements for different types of service mean that Option B.1 would be mildly more effective relative to the base case in achieving the safety and quality benefits.

**Option B.2. Alignment**

The proposed Regulations prescribe two service approval types. The ‘Occasional Care’ service approval type includes the current Standard, Short-term type 1, Limited Hours type 2 and School Holidays Care licence types. The ‘Limited Hours’ service approval type includes the current Limited Hours type 1 and Short-term type 2 licences.

The alignment option has similar beneficial effects described in relation to the Status Quo option above.

However, the proposed Regulations regarding the two service approval types – Occasional Care and Limited Hours – may **be more effective than the current Regulations as they provide a clearer and more straightforward way for applicants to understand the conditions applying to the type of service they wish to operate and for the Secretary to determine the conditions which should apply to each prospective service.**

**The current seven licence types are overly specific and the differing conditions of each licence type can cause confusion for service providers. Streamlining the types means that service providers will be better able to understand and comply with the conditions attaching to their service approval and, therefore, to operate in a way that protects the safety, health and wellbeing of children in their care and deliver quality services to children.**

Table 48 provides the scores given to Option B.1 and Option B.2 against the two benefits criteria.

Table 48 Service approval types– benefits scores

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ****Criterion**** | ****Description**** | ****Weighting**** | ****Option B.1.**** | ****Option B.2.**** |
| Safety | Effectiveness of the proposed Regulations’ service approval types in protecting the health, safety and wellbeing of children. | 30% | 1 | 2 |
| **Total** |  |  | **0.3** | **0.6** |
| Quality | Effectiveness of the proposed Regulations’ service approval types in promoting the educational and developmental outcomes of children and the development of the children’s services sector. | 20% | 2 | 3 |
| **Total** |  |  | **0.4** | **0.6** |

* + - 1. Staffing

The Act requires service providers to ensure that whenever children are being cared for or educated by a service, the number of staff is not less than the prescribed number. The Act also requires services to ensure that children are adequately supervised at all times.

Under both Option C.1. Status Quo and Option C.2. Alignment, the Regulations set minimum staff numbers, qualifications and ratios to support these provisions of the Act. In the base case, no such regulatory detail would be provided.

**Option C.1. Status Quo**

The current Regulations set minimum staff numbers, qualifications and ratios for the seven licence types as detailed in section 6.2.1.3. This section assesses the benefits of these requirements being continued in the new Regulations.

Educator to child ratios protect the health, safety and wellbeing of children attending children’s services through reducing the stress placed on staff members, allowing for the development of stronger relationships between staff and children, ensuring that children are adequately supervised and facilitating swift responses to any situations or incidents posing risks to children. Meanwhile, better qualified educators are better equipped to handle and avoid risks to children.

In the base case scenario, two key consequences would flow from the Regulations around educator/child ratios and minimum staff numbers not being remade:

* the Department would have to find other ways of disseminating information about acceptable staffing numbers, and
* Complying with these standards may not be mandatory.

In the base case, although services would still employ staff to care for children, they may not implement the same staffing levels as imposed by the Regulations, meaning that staff may be less able to adequately supervise children and mitigate risks to their safety.

Consequently, the Status Quo option is more effective than the base case for two main reasons:

* The Regulations clearly specify staffing requirements for each type of service so that services understand what they need to do to adequately supervise children and keep them safe
* Staffing numbers fall within the scope of the regulatory regime and therefore subject to the Act’s monitoring and enforcement mechanisms. This means that the Department officers are empowered to investigate non-compliance and issue responses, such as compliance notices, as necessary to protect children’s safety.

Ensuring children are adequately supervised by qualified educators can be expected to be more effective in achieving the benefits of keeping children attending services healthy and well.

As discussed, research shows that higher numbers of better qualified staff are strongly associated with improved social and developmental outcomes for children, as educators are better able to involve children, stimulate interactions and use a range of strategies to support their learning.

Under this option, the Regulations provide for staff to child ratios and qualifications, setting minimum quality standards for services across the sector.

Without Regulations, the Department would have to find other ways to inform services of these standards, and the specific ratios and qualification requirements may not be subject to the oversight and regulatory mandate of the Department. The option is more effective than the base case because services are clearly informed of the quality at which they must operate, and any non-compliance can be monitored and rectified through the Department intervention where necessary.

Setting minimum standards in relation to staffing matters also encourages the broader development of the sector by providing services with a clear path to improved quality and differentiation in the market: employing more, better qualified staff than the legislated minimum.

**Option C.2. Alignment**

The overall effect of the changes imposed in the proposed Regulations is that staff to child ratios would be strengthened, the mix of qualified staff would be simplified and staff who are actively working towards or about to commence studying could be counted in the ratios as if they have that qualification.

Under this option, the Regulations also require that at least one educator is on duty whenever children are in attendance.

Under this option, staff to child ratios are strengthened to align with the NQF, where appropriate, and the proportion of Diploma-level educators has been slightly raised. Given the benefits associated with higher staff to child ratios and better qualified staff, this option therefore realises and exceeds the benefits of the Status Quo option in comparison to the base case and would be more effective in relation to both criteria. However, the ability for staff to be ‘actively working towards’ their qualifications creates the possibility that some staff will be less qualified, moderating the impact of these changes in relation to service quality.

Option C.2. Alignment also incorporates added flexibility for services in meeting the staff to child ratios and minimum staff number requirements by allowing services to include staff who are actively working towards and/or in the three months prior to commencing qualifications in ratios, and through amending the minimum number of staff. This is likely to encourage greater compliance with the regulatory requirements, consequently, maintaining children’s safety and service quality at an acceptable level.

Table 49 provides the score given to Option C.1 and Option C.2 against the two benefits criteria.

Table 49 Staffing - benefits scores

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ****Criterion**** | ****Description**** | ****Weighting**** | ****Option C.1.**** | ****Option C.2.**** |
| Safety | Effectiveness of the proposed Regulations around staffing requirements in protecting the health, safety and wellbeing of children. | 30% | 8 | 9 |
| **Total** |  |  | **2.4** | **2.7** |
| Quality | Effectiveness of the proposed Regulations around staffing requirements in promoting the educational and developmental outcomes of children and the development of the children’s services sector. | 20% | 7 | 8 |
| **Total** |  |  | **1.4** | **1.6** |

* + - 1. Safety, health and wellbeing of children

As noted above, the Act includes a general obligation on providers to protect children in their care from harm and hazards, which would apply under the base case, while Option D.1. Status Quo and Option D.2. Alignment outline specific requirements in relation to children’s safety and wellbeing.

**Option D.1. Status Quo**

Under this option, the Regulations include standalone requirements designed to promote the health and welfare of children attending services, along with detail to support provisions of the Act.

The Regulations impose a comprehensive range of safety, health and wellbeing requirements on services, covering matters from staff having access to a telephone, to anaphylaxis management policies to the circumstances in which children can leave services. Many of these regulations are standalone provisions; that is, they do not support any specific provision in the Act other than services’ general obligation to protect children in their care.

The Regulations provide considerable detail as to how the safety, health and wellbeing of children attending services can and should be protected. They provide guidance to providers about meeting their responsibilities and, as complying with Regulations is mandatory, ensures these protective actions are taken. This means that this option is more effective than the base case, because even if the Department found other means to inform service providers of the appropriate steps to take to protect children, taking these specific protective steps would not be legally required, and investigating and responding to any failure to do so would not necessarily be within the Department’s regulatory authority. These factors mean that children would be at higher risk of harm than under the Status Quo option.

These Regulations are designed specifically to protect the safety, health and wellbeing of children attending care. They have negligible impact on the quality of service or development of the broader sector relative to the base case.

**Option D.2. Alignment**

Under this option, services are required to abide by the same regulatory requirements as outlined in option D.1. Status Quo with one substantive change: only one staff member on the premises is required to currently hold first aid, anaphylaxis management and asthma treatment certifications, as opposed to all staff counted in the staff to child ratios.

This change is designed to reduce regulatory burden on providers. Under this option, approved providers are also required to take reasonable steps to ensure that staff interact with children in ways likely to improve their self-esteem and ability to express themselves, amongst other developmental outcomes, and to provide opportunities for children to build relationships with each other and with service staff. The proposed Regulations also prescribe certain circumstances requiring notification to the Department, including risks to the health, safety and wellbeing of children and instances or allegations of abuse of a child attending the service.

The proposed Regulations are almost as effective as the Status Quo because they impose almost all the same requirements. The change from all staff members holding current first aid and other health certificates to only one on the premises has the potential to be slightly less effective in protecting the safety, health and welfare of children because there may be occasions where that staff member is temporarily unavailable (going to the bathroom, buying lunch, etc.) when an incident occurs. However, most services would already be complying with the current requirement of all staff having had the relevant training, and as most Certificate III or equivalent qualifications include emergency first aid training, the likelihood of no staff present at a service being able to administer basic first aid is quite low. In addition, refresher training is necessary to maintain currency.

On the other hand, the proposed Regulations may be more effective than the Status Quo because they stipulate that services must notify the Department of risks arising to children and any instances of abuse, amongst other circumstances. Although services are required under the Act to notify the Department of any serious incidents, this additional regulatory detail and obligation may prompt swifter and more comprehensive notifications to the Department, allowing for speedier regulatory intervention to protect children from harm, if necessary.

The proposed Regulations may slightly improve the quality of children’s services by providing more detail around what is considered a quality interaction and emphasising the importance of children being given opportunities to build relationships with others, which may have an educational impact on the sector. Creating a positive obligation for approved providers in relation to these elements of service delivery may also lead to improved quality as providers take extra steps to ensure quality interactions and opportunities for relationship-building are provided.

Table 50 provides the scores given to Option D.1 and Option D.2 against the two benefits criteria. Although it is less effective than Option D.1., this option is considered to be more effective than the base case because almost all the same health and welfare requirements are imposed.

Table 50 Safety, health and wellbeing - benefits scores

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ****Criterion**** | ****Description**** | ****Weighting**** | ****Option D.1.**** | ****Option D.2.**** |
| Safety | Effectiveness of the proposed Regulations around health and welfare requirements in protecting the safety, health and wellbeing of children. | 30% | 5.5 | 7 |
| **Total** |  |  | **1.65** | **2.1** |
| Quality | Effectiveness of the proposed Regulations around health and welfare requirements in promoting the educational and developmental outcomes of children and the development of the children’s services sector. | 20% | 0 | 1 |
| **Total** |  |  | **0** | **0.2** |

* + - 1. Equipment and facilities

The Act does not provide for any equipment or facilities-related requirements, meaning that no such obligations would be imposed in the base case. Both Option E.1 Status Quo and Option E.2 Alignment would require services to provide certain equipment and facilities designed to ensure children’s safety is protected and appropriate educational programs can be delivered. Both options are therefore considered to be more effective than the base case.

**E.1. Status Quo**

Under this option, the Regulations include standalone requirements designed to ensure that services provide adequate equipment and facilities to enable children to be properly cared for.

The Regulations currently impose requirements that are not replicated in the Act. This means that, in the base case, there would be no requirement to provide facilities like children’s rooms, child-appropriate toilets and handwashing facilities and outdoor space. While services may nonetheless provide these facilities, in the base case doing so would not be mandatory.

Sufficient indoor and outdoor space, and care-related facilities, assist services to meet children’s hygiene needs and to ensure that children have sufficient room to play and learn, both factors directly relevant to children’s safety, health and wellbeing. Similar to Option D.1 in relation to safety, health and wellbeing regulations, these regulations are more effective in protecting the health and safety of children attending services because they clearly specify to services the operating standards necessary to keep children safe and bring these standards within the Department’s regulatory oversight, enabling enforcement action where necessary to protect children.

Further, providing for facilities for staff to prepare food and rest is likely to contribute to their wellbeing in the workplace, with flow-on benefits to their capacity to look after and protect the children in their care.

These factors mean that the Status Quo option is more effective than the base case in realising the outcomes associated with protecting children’s safety, health and wellbeing.

Most of the requirements imposed under the Status Quo option are designed to further the safety objective of the Act rather than to promote the quality of children’s services. However, the requirements to provide a certain amount of indoor and outdoor space per child, and to ensure that children have access to equipment appropriate for their educational or recreational program, reflect the importance of engaging physical environments and educational programs to children’s learning and development. Unlike some of the other equipment and facilities requirements, outdoor space is not necessarily expected to be provided to children by services in the base case scenario. Providing for these matters in the Regulations means that these standards are compulsory across the sector and the Department can monitor compliance to maintain quality across all children’s services.

The Regulations providing for staff facilities may also, similar to the safety criterion above, better enable staff to provide quality education and care to children through providing an improved working environment.

**E.2. Alignment**

Under this option, the Regulations include the same standalone requirements as outlined in Option E.1., with two changes: Occasional Care services must provide at least 7 square metres of outdoor space per child and services must either have access to laundry facilities or make other laundry arrangements.

Option E.2 is expected to have broadly the same benefits in relation to children’s safety as Option E.1 because most of the requirements under the proposed Regulations in relation to equipment and facilities are the same as those in the current Regulations.

The addition of the laundry requirement could be more effective in protecting the health and welfare of children by specifically imposing a mandatory requirement for soiled nappies, etc., to be dealt with hygienically but, as with many of the requirements discussed above, it is highly likely that services would already have such facilities under the base case.

The increased outdoor space requirement may ensure that children have more space to play and learn in, improving their emotional and physical wellbeing.

Overall, Option E.2 is considered to be slightly more effective in protecting the safety, health and wellbeing of children compared to Option E.1 and much more effective than the base case.

Increasing the amount of outdoor space to be provided for each child may raise the quality of children’s services through ensuring children have access to more space in which to learn and play with their peers.

The Regulations providing for staff facilities may also, similar to the safety criterion above, better enable staff to provide quality education and care to children through providing an improved working environment.

Table 51 provides the scores given to Option E.1 and Option E.2 against the two benefits criteria.

Table 51 Equipment and facilities - benefits score

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ****Criterion**** | ****Description**** | ****Weighting**** | ****Option E.1.**** | ****Option E.2.**** |
| Safety | Effectiveness of the Regulations around equipment and facilities requirements in protecting the safety, health and wellbeing of children. | 30% | 6 | 7 |
| **Total** |  |  | **1.8** | **2.1** |
| Quality | Effectiveness of the Regulations around equipment and facilities requirements in promoting the educational and developmental outcomes of children and the development of the children’s services sector. | 20% | 3 | 4 |
| **Total** |  |  | **0.6** | **0.8** |

* + - 1. Complaints and serious incidents

The Act requires providers to notify the Secretary of complaints in relation to any serious incidents, contraventions of the Act or other prescribed matters, while both regulatory options place time limits on how long services are permitted to delay before completing these notifications. While the obligation to notify the Secretary would remain under the base case, there would not be any timeframe for doing so.

**F.1. Status Quo**

The current Regulations with respect to complaints are more effective under both criteria than the base case. In requiring services to quickly and sensitively deal with, and notify the Secretary of, complaints, they increase the likelihood of any risks to children being dealt with swiftly and appropriately, thus protecting children from danger or further harm, or of any quality-related contravention of the Act being rectified. In the base case, services would still be required to notify the Secretary of complaints but there would be no time period or manner of doing so specified, meaning that there could be delays before the Secretary becomes aware of possible risks to children or substandard quality services, and can intervene to rectify them.

**F.2. Alignment**

The proposed Regulations are somewhat more effective than the base case for the same reasons as Option F.1 because this option also imposes a timeframe on the notification of complaints. There is no requirement under this option for complaints to be dealt with ‘discreetly’, but this is considered to have only negligible consequences for the health and safety of children or the quality of services.

Table 5252 provides the scores given to Option F.1 and Option F.2 against the two benefits criteria.

Table 52 Complaints and serious incidents - benefits scores

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ****Criterion**** | ****Description**** | ****Weighting**** | ****Option F.1.**** | ****Option F.2.**** |
| Safety | Effectiveness of the Regulations around complaints in protecting the safety, health and wellbeing of children. | 30% | 4 | 4 |
| **Total** |  |  | **1.2** | **1.2** |
| Quality | Effectiveness of the Regulations around complaints in promoting the educational and developmental outcomes of children and the development of the children’s services sector. | 20% | 4 | 4 |
| **Total** |  |  | **0.8** | **0.8** |

* + - 1. Registers and record-keeping

The Act requires providers to display the prescribed information and keep the prescribed records for inspection by the Department officers. The Act also requires the Secretary to keep registers of approved providers and services.

Under both options, the Regulations specify the details to be kept in the registers in relation to each provider and service, and prescribe the policies, procedures and information to be kept and/or displayed by services.

**Option G.1. Status Quo**

This option would be mildly more effective than the base case as assessed against both benefits criteria.

The documents to be kept or displayed relate to the service’s ability to protect children from harm and provide quality education and care services – for example, emergency procedures, the service’s licence (or approval) details, and staff rosters. Although, under the base case, services would likely still keep some of these records for practical purposes, their records may not be as comprehensive as those required under the current Regulations, and services may not realise that information about policies and procedures also needs to be displayed.

Option G.1. Status Quo is mildly more effective relative to the base case because it requires services to give detailed consideration to how they manage illnesses or emergencies and develop adequate policies to handle such situations, better preparing services to protect children from potential health and safety risks. Additionally, requiring services to display information relating to educational and recreational programs provides parents or guardians with a ready means of assessing the quality of service provided to their children.

The current Regulations are also more effective than the base case because they ensure that services keep detailed information on hand for inspection by the Department officers, facilitating more efficient regulation and, therefore, better enabling the Department to ensure that services are delivering adequate quality service and protecting children from harm, with the flow-on outcomes discussed in sections 0 and 0.

The guidance provided to the Department in terms of the details to be included in its registers is considered to have negligible benefits in comparison to the base case, as the Department would keep this information as a necessary precondition to fulfilling its regulatory functions even without an obligation to do so.

**Option G.2. Alignment**

The requirements under Option G.2 in relation to registers and record-keeping are almost the same as those imposed under Option G.1 Status Quo, and can therefore be expected to result in close to the same degree of benefits compared to the base case.

The additional requirement of documenting emergency evacuation procedures is more effective than the base case in relation to the health, safety and wellbeing criterion because it would ensure that services and their staff – especially newer staff – are aware of what to do in an emergency in order to protect children. Additionally, ensuring that services’ medical conditions policies cover medical management, risk-minimisation and communication plans for all children diagnosed with a medical condition (not just those with anaphylaxis or asthma) is expected to improve services’ ability to protect the health, safety and wellbeing of children in their care.

Table 53 provides the score given to Option G.1 and Option G.2 against the two benefits criteria.

Table 53 Registers and record-keeping - benefits score

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ****Criterion**** | ****Description**** | ****Weighting**** | ****Option G.1.**** | ****Option G.2.**** |
| Safety | Effectiveness of the Regulations around registers and record-keeping in protecting the safety, health and wellbeing of children. | 30% | 6 | 7 |
| **Total** |  |  | **1.8** | **2.1** |
| Quality | Effectiveness of the Regulations around registers and record-keeping in promoting the educational and developmental outcomes of children and the development of the children’s services sector. | 20% | 4 | 4 |
| **Total** |  |  | **0.8** | **0.8** |

* + - 1. Fees

The Act requires certain applications to be accompanied by the prescribed fee.

Under a Base Case—the absence of regulations and therefore the absence of any specificity pertaining to application requirements or accompanying fees—no fees could be charged. Under both the Status Quo and Alignment options, the prescribed fees are detailed in the Regulations.

Overall the current prescribed fees (**Option H.1 Status Quo**) are not considered to have any significant bearing on the safety of children and quality of services provided to children.

Although the costs associated with initial service set-up may play some role in ensuring that only financially viable businesses enter the children’s services market, the fees collected are negligible in comparison to the costs associated with establishment of a premises, staffing, etc., and are not expected to have a significant impact on the safety and quality criteria.

Similarly, the proposed prescribed fees (**Option H.2 Alignment**) are not expected to have an impact on the safety of children and the quality of services provided to them.

Both options have been scored a zero for the benefits criteria of safety and quality as shown below.

Table 54 Fees - benefits score

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ****Criterion**** | ****Description**** | ****Weighting**** | ****Option H.1.**** | ****Option H.2.**** |
| Safety | Effectiveness of the Regulations around fees in protecting the safety, health and wellbeing of children. | 30% | 0 | 0 |
| **Total** |  |  | **0** | **0** |
| Quality | Effectiveness of the Regulations around fees in promoting the educational and developmental outcomes of children and the development of the children’s services sector. | 20% | 0 | 0 |
| **Total** |  |  | **0** | **0** |

* + - 1. Exemptions or waivers

The Act provides that services can apply for a waiver (indefinite) or temporary waiver from compliance with certain prescribed regulations.

**Option I.1. Status Quo**

Under Option I.1, the Regulations are silent as to waivers or exemptions. Without regulatory guidance, service providers may not be aware of this possibility for compliance flexibility and, rather than working with the Department to find an acceptable outcome in the event of being unable to comply with regulatory requirements or investing time and money in meeting the regulatory requirements, which may be onerous in the service’s circumstance and may lead to operating in a non-compliant manner. As many of the regulations impose standards related to the health and safety of children, and the quality of service to be provided, this could lead to risks to children and/or a reduction in service quality. As a result, Option I.1 is considered to be less effective relative to the base case.

**Option I.2. Alignment**

Under Option I.2, the proposed Regulations prescribe the availability for services to apply for a waiver or temporary waiver (considered on a case by case basis). Staffing and certain aspects of services’ physical environment and facilities are the prescribed regulations for which a service waiver can be applied. The proposed Regulations also list the information that must be provided with such applications, which includes evidence of attempts made to, and reasons why the service cannot, comply with the particular regulation(s).

The prescribed regulations under this option are some of the more onerous or costly in the Regulations and are likely to be those with which smaller or more ad hoc services experience difficulty in complying.

Through specifying which regulations may be the subject of a waiver and including onerous requirements within this compliance flexibility, Option I.2 could encourage services having difficulty complying with the requirements to work with the Department to find an acceptable operating standard considering both the service and the Department’s obligations to protect children from harm and ensure adequate service quality. The requirement that services provide evidence of attempts to comply and the reasons for any inability to do so makes it clear to services that full compliance with the Regulations is expected and waivers will only be granted in exceptional circumstances and only if the Department is satisfied it is appropriate and safe to do so.

For these reasons, Option I.2 is considered to be more effective than both the base case and Option I.1. Table 55 provides the scores given to Option I.1 and Option I.2 against the benefits criteria.

Table 55 Exemptions or waivers - benefits scores

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ****Criterion**** | ****Description**** | ****Weighting**** | ****Option I.1.**** | ****Option I.2.**** |
| Safety | Effectiveness of the Regulations around exemptions or waivers in protecting the safety, health and wellbeing of children. | 30% | -3 | 5 |
| **Total** |  |  | **-0.9** | **1.5** |
| Quality | Effectiveness of the Regulations around exemptions or waivers in promoting the educational and developmental outcomes of children and the development of the children’s services sector. | 20% | -3 | 5 |
| **Total** |  |  | **-0.6** | **1.0** |

# Preferred option

Data provided in Tables 56, 57 and 58 below show the MCA weighted scores across each area of regulation and each option – Status Quo and Alignment – presented in the RIS. Given the Base Case is used as a point of comparison throughout the RIS, it has not been scored, and is therefore excluded from the data tables.

The data indicates that in some regulatory areas, the total score for the Status Quo option marginally exceeds (equipment and facilities) or is the same (complaints) as the Alignment option. For other regulatory areas, the Alignment score far exceeds the Status Quo score.

While each regulatory area has been discussed and assessed separately and in some instances the Status Quo option yields a marginally better or equal score to the Alignment option, maintaining the status quo would not support the policy objective of aligning (where appropriate) with the NQF. Similarly, minor alterations to the status quo or adopting non-regulatory options, would not necessarily be any more cost effective. Given the amendments to the Act compel the Department to revisit the regulatory requirements to support the Act, the Department has taken the view that proposed changes and transitional arrangements would better support policy outcomes and cost savings for the sector and the regulator overall. This is reflected in the overall Alignment option score (see Table 58 – overall total weighted score).

These ‘unders and overs’ point to a number of considerations that must be taken into account when assessing the overall preferred option, such as:

* Direct side by side comparison of current and proposed regulatory options is difficult given regulatory architecture changes in the Amendment Act (e.g. approval processes) and proposed fee structure (e.g. fees attached to different transactions than currently), necessitating different or new specificity in the proposed regulations that support the operation of the Act.
* The diverse and varied nature of the sector in terms of size and type of service offered.

Cost to industry in meeting individual regulatory proposals have been identified and, where appropriate, quantified. Tables 59 and 60 below show overall costs per service and the projected cost to industry over 10 years (net present value).

Given the diversity of the industry, variations of service type and size across the sector and the range of impacts for individuals and organisations, some costs incurred cannot be readily quantifiable, and have therefore been **excluded from costs**. These include:

* applying for approvals
* record keeping
* establishing or reviewing policies and procedures
* providing facilities for children to participate in educational and care programs
* meeting children’s hygiene needs/providing toilets and hand-basins
* indoor and outdoor space requirements
* staff room facilities.

Some of these are presented as **opportunity costs**, the assumption being that these tasks would be completed by staff during their usual working hours and would be reflected within the staffing costs experienced by services rather than an actual cost to industry.

The obligation to provide facilities for children to participate in the service’s educational and care program is not costed for two reasons: the cost would vary too widely considering the broad range of programs and care offered by services; and services would by necessity comply with this requirement through fulfilling their obligation under the Act to provide appropriate educational or recreational programs to children.

While services generally operate out of premises primarily built for early childhood education and care, many that offer limited hours use existing community facilities (e.g. Neighbourhood Houses) that may also be used for another purpose. Similarly, many organisations that offer children’s services do so not as a profit-making venture, rather as an adjunct offering to support their primary business (e.g. fitness or recreation centres).

A summary of the current and proposed regulations with the anticipated cost/benefit/flexibility is provided at Appendix 10.1 and should be viewed in conjunction with the Children’s Services Regulations 2020 exposure draft.

The Victorian Government invites comment and feedback about the RIS and proposed regulations.

Table 56 Total weighted scores by area of regulation

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Area of regulation | Option | Cost to industry | Cost to regulator | Safety | Quality | Total Score |
| **Approval applications\*** | A.1 | Status Quo | 0 | 0 | 0 | 0 | **0** |
| A.2 | Alignment | 1.05 | 0.45 | 1.8 | 1.2 | **4.5** |
| **Service approval type** | B.1 | Status Quo | -0.7 | 0.45 | 0.3 | 0.4 | **0.45** |
| B.2 | Alignment | -0.35 | 0.6 | 0.6 | 0.6 | **1.45** |
| **Staffing** | C.1 | Status Quo | -1.05 | 0.15 | 2.4 | 1.4 | **2.9** |
| C.2 | Alignment | -0.88 | 0.15 | 2.7 | 1.6 | **3.57** |
| **Health, safety and wellbeing** | D.1 | Status Quo | -2.1 | 0 | 1.65 | 0 | **-0.45** |
| D.2 | Alignment | -1.4 | 0 | 2.1 | 0.2 | **0.9** |
| **Equipment and facilities** | E.1 | Status Quo | -1.4 | 0 | 1.8 | 0.8 | **1.2** |
| E.2 | Alignment | -1.75 | 0 | 2.1 | 0.8 | **1.15** |
| **Complaints and serious incidents** | F.1 | Status Quo | 0 | 0.3 | 1.2 | 0.8 | **2.3** |
| F.2 | Alignment | 0 | 0.3 | 1.2 | 0.8 | **2.3** |
| **Registers and record-keeping** | G.1 | Status Quo | 0.35 | 0.45 | 1.8 | 0.8 | **3.4** |
| G.2 | Alignment | 0.35 | 0.45 | 2.1 | 0.8 | **3.7** |
| **Fees** | H.1 | Status Quo | -2.45 | 0.3 | 0 | 0 | **-2.15** |
| H.2 | Alignment | -2.1 | 0.45 | 0 | 0 | **-1.65** |
| **Exemptions or waivers** | I.1 | Status Quo | 0 | -0.15 | -0.9 | -0.6 | **-1.65** |
| I.2 | Alignment | 0.7 | 0.3 | 1.5 | 1 | **3.5** |

*\*No ‘Status Quo’ option was assessed for the approval applications regulations due to the change in terminology and process resulting from amendments to the Act*

Table 57 Total weighted scores by option and area of regulation

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Option | Area of regulation | Cost to industry | Cost to regulator | Safety | Quality | Total Score |
| Status Quo | A.1 | Approval applications | 0 | 0 | 0 | 0 | 0 |
| B.1 | Service types | -0.7 | 0.45 | 0.3 | 0.4 | 0.45 |
| C.1 | Staffing | -1.05 | 0.15 | 2.4 | 1.4 | 2.9 |
| D.1 | Health, safety and wellbeing | -2.1 | 0 | 1.65 | 0 | -0.45 |
| E.1 | Equipment and facilities | -1.4 | 0 | 1.8 | 0.8 | 1.2 |
| F.1 | Complaints and serious incidents | 0 | 0.3 | 1.2 | 0.8 | 2.3 |
| G.1 | Registers and record-keeping | 0.35 | 0.45 | 1.8 | 0.8 | 3.4 |
| H.1 | Fees | -2.45 | 0.3 | 0 | 0 | -2.15 |
| I.1 | Exemptions or waivers | 0 | -0.15 | -0.9 | -0.6 | -1.65 |
| **Total** |  |  | **-7.35** | **1.5** | **8.25** | **3.6** | **6.0** |
| Alignment | A.2 | Approval applications | 1.05 | 0.45 | 1.8 | 1.2 | 4.5 |
| B.2 | Service types | -0.35 | 0.6 | 0.6 | 0.6 | 1.45 |
| C.2 | Staffing | -0.88 | 0.15 | 2.7 | 1.6 | 3.57 |
| D.2 | Health, safety and wellbeing | -1.4 | 0 | 2.1 | 0.2 | 0.9 |
| E.2 | Equipment and facilities | -1.75 | 0 | 2.1 | 0.8 | 1.15 |
| F.2 | Complaints and serious incidents | 0 | 0.3 | 1.2 | 0.8 | 2.3 |
| G.2 | Registers and record-keeping | 0.35 | 0.45 | 2.1 | 0.8 | 3.7 |
| H.2 | Fees | -2.1 | 0.45 | 0 | 0 | -1.65 |
| I.2 | Exemptions or waivers | 0.7 | 0.3 | 1.5 | 1 | 3.5 |
| **Total** |  |  | **-4.38** | **2.7** | **14.1** | **7.0** | **19.42** |

Table 58 Overall total weighted scores by option

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Option | Cost to industry | Cost to regulator | Safety | Quality | Total Score |
| Status Quo | -7.35 | 1.5 | 8.25 | 3.6 | 6.0 |
| Alignment | -4.38 | 2.7 | 14.1 | 7.0 | 19.42 |

Table 59 Overall cost per service

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Current | Proposed | $ Difference | % Difference |
| Initial approvals for new services | $9,694 | $9,694 | $0.00 | 0.00% |
| Ongoing costs | $75,202 | $74,984 | $218.90 | 0.29% |

Table 60 Projected cost to industry over 10 years – NPV\*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Current | Proposed | $ Difference | % Difference |
| Initial approvals for new services | $1,938,888 | $1,938,888 | $0.00 | 0.00% |
| Ongoing costs | $244,387,699 | $234,363,856 | $10,023,843 | 4.19% |

*\*Net Present Value costs calculated at a four per cent real discount rate*

***Preferred Option***

Although the proposed regulations have been presented in regulatory areas, the effects of the various areas need to be considered as a whole with an “on balance” assessment.

Based on the overall total weighted score as shown in Table 58 and on the net present value and percentage shown in Table 60, **Alignment** is the preferred option, over retaining current regulations.

The RIS has identified that the proposed new regulations are expected to **slightly decrease** the cost of the provision of children’s services by approximately $10 million in net present value terms over ten years, representing a **reduction of 4.19 per cent** on the expected cost of service provision if the current regulatory settings continued.

For new market entrants, the cost of setting up a children’s service – in terms of the equipment and facilities required to be purchased – will not change under the alignment option, remaining at an estimated $9,694 per service (see Table 59).

The estimated annual ongoing cost to operate a children’s service is expected to decrease slightly, from $75,202 to $74,984 (see Table 59). Staffing costs comprise the bulk of these ongoing costs. This difference between the two options flows primarily from the reduced requirement for staff first-aid certification and the allowance for staff to be actively working towards qualifications under the alignment option.

The proposed changes include requirements to strengthen standards (such as the alignment of ratios) but also provide more flexibility to providers (educators at occasional care services will be able to ‘actively work towards’ their qualifications). Thus the impact of alignment will vary depending on the particular circumstances of individual services. Larger services or multi-service providers, such as those operating at the limits of the existing ratios and those operating for longer hours, are most likely to be most impacted.

However, transitional and savings provisions in the proposed regulations provide time and options for existing services to adjust to new requirements. Services that are unable to meet increased requirements (e.g. staffing qualifications) can apply for a waiver or could have conditions imposed on their service approval (e.g. restricting the duration of time they may care for children), effectively maintaining the status quo.

A summary of the current and proposed regulations with the anticipated cost/benefit/flexibility is provided at Appendix 10.1 and should be viewed in conjunction with the Children’s Services Regulations 2020 exposure draft.

**Competition assessment**

Any regulatory proposal needs to be scrutinised to assess whether it would have an adverse impact on the ability of firms or individuals to enter and participate in the market. As a matter of good public policy, it is a fundamental principle in Victoria that any new legislation (both primary and subordinate) will not be made that restricts competition unless it can be demonstrated that:

* the benefits of the restriction outweigh the costs, and
* the objectives of the legislation can only be achieved by restricting competition.

A measure is likely to have an impact on competition if any of the questions in the below table can be answered in the affirmative. This analysis considers only those impacts felt within the market for children’s services regulated by the Victorian regime (not service in scope of the NQF).

|  |  |  |
| --- | --- | --- |
| Test question | Assessment | Reason |
| Is the proposed measure likely to affect the market structure of the affected sector(s) – i.e. will it reduce the number of participants in the market, or increase the size of incumbent firms? | No | Although some small services will face increased regulatory burdens under the proposed Regulations, transitional and savings provisions should negate the possibility of their ceasing to operate and exiting the sector. Meanwhile, alignment with the NQF may make it easier for providers to operate across both regimes. This could lead to an increase in competition in the occasional care sector. |
| Will it be more difficult for new firms or individuals to enter the industry after the imposition of the proposed measure? | No | For new providers entering the industry, the proposed regulations impose higher requirements for services regarding staff to child ratios, qualifications and outdoor space. However, applications for waivers and/or the flexibility of the regulator to place conditions on service approvals where requirements cannot be met (but a clear case of service need is established e.g. services in rural areas), serves to mitigate any potential difficulty.Existing providers, particularly those operating under the NQF, will benefit from regulatory alignment, and transitional arrangements will support the adjustment process to new requirements. |
| Will the costs/benefits associated with the proposed measure affect some firms or individuals substantially more than others (e.g. small firms, part-time participants in occupations etc.)? | No | The costs associated with the proposed requirements for qualified staff and outdoor space may affect small and large providers in similar ways.Both small and large providers may have to hire new staff, agree to support staff to upskill to a higher qualification, or restrict the number of places offered to children to meet the ratio requirements.The benefits of better alignment with the NQF will be felt more by multi-service providers, who may operate services under both regimes.Transitional and savings provisions have been designed to ameliorate these effects, where possible.This applies to all existing children’s services. |
| Will the proposed measure restrict the ability of businesses to choose the price, quality, range or location of their products? | Yes | The space requirements for new services will limit new providers’ ability to operate services in locations lacking the requisite outdoor space. |
| Will the proposed measure lead to higher ongoing costs for new entrants that existing firms do not have to meet? | No | Almost all the proposed regulatory changes will ultimately apply to existing service providers as well as new entrants. Although the requirement to provide outdoor space will apply to some existing services, the costs associated with that provision for new service operators are addressed by the proposed condition allowing existing providers to meet the requirement through access to a community space or limiting their operating hours.  |
| Is the ability or incentive to innovate or develop new products or services likely to be affected by the proposed measure? | No | The proposed regulations do not impose restrictions on the ability to innovate.  |

The proposed Regulations are not expected to have significant impacts on competition in the children’s services sector. Although some increased requirements – staffing and outdoor space – may make it harder for new providers to enter the market, these changes are incremental and do not pose a burden considerably greater than the existing requirements. Additionally, existing providers already operating under the NQF will benefit from the alignment where previously they were operating under two regimes, and other existing services will be supported to adapt to new requirements.

Increased requirements will not need to be met until 1 January 2022, and savings provisions for other requirements should enable existing services to continue operating without incurring significant additional costs if the proposed Regulations are made. However, there may be some services which either cannot or do not wish to continue operating in the face of new or increased costs; such services leaving the market may have a slight negative impact on market competition. This would be heightened if the services are located in rural or other areas without many other occasional care services.

The Department expects the transitional period and provisions, along with the added flexibilities in the proposed Regulations – such as the ability for staff ‘actively working towards’ a qualification to be counted in staff to child ratios – to ensure that no service is forced to close under the proposed Regulations. It should be noted in this context, many occasional care services operate as an adjunct to another business or facility, such as a leisure centre or Neighbourhood House, and do not expect to make a profit from operating a children’s service even under the existing regulatory regime.

**Small business impacts**

The Australian Bureau of Statistics (ABS) defines a small business as a business employing fewer than 20 people, and the Australian Taxation Office (ATO) defines small business as an entity (individual, partnership, company or trust) that is carrying on a business and has less than $2 million in aggregated turnover. Note that a business that has less than $2 million in turnover may have 20 employees or more while a business with fewer than 20 employees may have turnover that exceeds $2 million per annum.[[68]](#footnote-68)

In Victoria, small businesses make up approximately 97% of the State’s total businesses.

As illustrated in Figure 3 in section 3.1, children’s services are operated by a range of different management organisations, from private not-for-profit organisations through to local government.

It is difficult to determine the business size of a children’s service as it is often run as an adjunct service to another business (e.g. a gym or leisure centre) or as one of a range of service offerings within a community facility (e.g. a Neighbourhood House). According to the ABS and ATO definitions, the entire gym or Neighbourhood House may well exceed either the $2 million annual turnover or 20 employee threshold. However, the amount of profit gained directly through the children’s service or number of staff employed in the service is more likely to fall under the thresholds. The Department is aware that gyms often run the children’s service aspect of their business at a loss, using it primarily to attract membership to the primary business, while local councils frequently subsidise the cost of occasional care provided at Neighbourhood Houses and other such facilities.

A recent sample (provided by Neighbourhood Houses Victoria) indicated that 95% of providers had a turnover of less than $2 million in 2017 and 52.5% have less than 15 employees. For the purpose of the following analysis of the impacts of the preferred option on small business, it is assumed that 90% of children’s service providers are small businesses.

It is Victorian Government policy to specifically consider the impact of proposed regulations on small business in a RIS. Small businesses may experience disproportionate effects from regulatory requirements for a range of reasons, including limited resources to interpret compliance requirements, or to keep pace with regulatory changes and the cumulative effect of different requirements.

An assessment of the small business impacts should consider matters such as:

* Variation in the compliance burden
* Whether any compliance flexibility options have been considered that will assist small businesses to meet the requirements of the proposed measure
* The likely extent of compliance by small versus large business
* The distribution of benefits arising from the proposed measure
* The relative impacts of penalties for non-compliance.

The burden of complying with the proposed Regulations will vary depending on the size and resources of the service provider. Larger providers who may be better situated to ensure staff are appropriately qualified and rostered on in the correct ratios will experience a smaller compliance burden than smaller providers, who may need to employ an additional staff member to meet the new requirements. However, it is expected that transitional provisions and the new provision allowing staff to be ‘actively working towards’ the required qualification will ease the compliance burden for these smaller providers, who may be able to retain existing staff if they enrol in a course during the transitional period, such that they would be actively working towards the qualification by the time the new requirement comes into force. Notably, both the Certificate III and Diploma of Early Childhood Education and Care will be free to study from January 2020 under the Victorian government’s free TAFE courses policy.[[69]](#footnote-69)

Currently, only services holding the ‘standard’ licence type are required to provide outdoor space for children, with at least 7 square metres to be accessible per child. All other licence types are not required to provide any outdoor space.

Under the proposed Regulations, outdoor space would not be required for the new ‘Limited Hours’ service approval type (that is, services providing education and care for each child up to 3 hours per day for a maximum of 6 hours per week). However, all services holding the new ‘Occasional Care’ service approval type will be required to provide 7 square metres of outdoor space per child, including those services which previously did not have to meet an outdoor space requirement. This requirement will create a compliance burden for smaller providers which may not have the resources to renovate or move their premises if necessary for compliance. However, the proposed conditions allowing for access to a community space or limited service duration create a compliance flexibility which will assist providers to meet the new requirement.

Benefits associated with reduced administrative burdens will flow to providers who already operate services under the NQF, as terminology and application processes will align with the national system. However, the shift from fixed term licence approvals to perpetual approvals will have administrative benefits for all providers, including small businesses, who will no longer need to complete periodic paperwork applications. Feedback provided by the sector in relation to the 2019 amendments to the Act consistently supported alignment for this reason (see section 8 on consultation for further detail).

All providers are expected to benefit from alignment with the NQF in that parents will be assured that their children will receive the same safety, health and wellbeing outcomes by attending a children’s service as opposed to a service regulated by the national regime. This can be expected to assist small businesses in competing with larger providers. This expected benefit was articulated by a range of service providers consulted in relation to the 2019 Act amendments, with one theme of the feedback being the benefits of parents understanding that these services offer more than ‘just babysitting’.

The impacts of fees imposed by the proposed Regulations will have a greater impact on smaller businesses, given the smaller pool of resources these providers have to draw on to meet fees. Fees under the proposed Regulations are lower than those incurred by services operating under the NQF but, in many cases, are higher than those currently imposed by the existing Regulations. While some fees newly impose a modest cost on existing services, such as the annual service fee for very small services where previously there was a nil requirement, the overall effect is balanced by the lesser administrative requirements and simpler processes under the proposed regulations.

***Impact of penalties***

Given the children’s services sector currently has a 90% rate of compliance with current regulatory requirements, the relative impact of penalties for non-compliance in the proposed regulations is expected to be minimal.

The two regulatory regimes currently take different approaches to financial penalties for offences:

* Under the current CS Act (which uses the penalty unit approach), there is a single maximum penalty for both individuals and bodies corporate.
* Under the National Law there are different maximum penalties for individuals and bodies corporate. The corporate multiplier is five times the individual amount (e.g. $2000 individual, $10,000 other), which is consistent with the approach in the *Sentencing Act 1991* (Vic).
* The penalty unit is inflation adjusted annually, whereas the monetary penalties in the NQF are fixed and have not been adjusted since the national scheme commenced.

Generally, the maximum penalties under the CS Act and proposed regulations lie midway between the equivalent individual and corporate penalties in the NQF.

The considerations that have been applied to setting the proposed maximum penalties are:

* To align as closely as possible to the NQF maximum amount
* The corporate multiplier has not been taken into account as the National Regulations only provide for single maximum penalties
* To round the number of penalty units to a multiple of 5 (as per the *Sentencing Act 1991*)
* To round downwards where necessary to ensure the new penalty is no higher than the equivalent NQF penalty, and allow some room for growth due to inflation adjustment of the penalty unit.

The policy decision was that the offences and penalties in the CS Act and Regulations are to be aligned as closely as possible with the equivalent offences and penalties in the NQF. In most cases, the proposed maximum penalties will be substantially lower, noting that the court has discretion to award penalties that are lower than the maximum.

The regulatory power to issue compliance notices or compliance directions as an enforcement action for non-compliance is provided for in the amended Act and is supported by regulations.

In setting a penalty unit as close as possible to the equivalent NQF amount, allowance will be made for future inflation adjustment of the penalty unit. The penalty units that apply in Victoria are inflation adjusted annually, therefore, it can be expected that the penalty amounts will steadily increase, whereas the level of penalties under the NQF can be assumed to remain unchanged for the foreseeable future.

# Consultation

The proposed Regulations are planned to commence in May 2020, before the current Regulations expire.

In preparing this RIS, the Department has undertaken targeted engagement with key stakeholders and the sector in both the development of the *Children’s Services Amendment Act 1996* (as part of the 2019 NQF Review process) and to canvas the key areas of regulatory alignment likely to impact the sector at an operational level, to determine the issues or concerns that needed to be addressed in the proposed Regulations, and to inform transitional arrangements and implementation plans.

**Consultation activity**

* NQF Review and Children’s Services Law Reform consultations took place in May and June 2019.
* Children’s Services Law Reform information sessions took place in October and November 2019.
* RIS public consultations on the proposed Children’s Services Regulations will take place in February 2020.

The Department website was updated to notify the Victorian early childhood education and care sector of the Children’s Services Act and Regulations reform project (Children’s Service Law Reform). This information included broad material on the proposed law reform and a detailed summary on the proposed changes (including what is not changing) aimed at aligning the Children’s Services Act with the National Law. The website also contained details on how the sector could get involved in the consultation on proposed changes.

All Victorian providers of children’s services were advised via email of the opportunity to participate in consultation sessions on the proposed changes. The information on the proposed reform was also included in the Early Childhood Update that is emailed to the sector, in monthly QARD newsletters, as well as the Department’s social media platforms.

There were 15 face-to-face consultation sessions, held across metropolitan and regional Victoria, during May to June 2019. People representing a range of service types and stakeholders attended the sessions and engaged well with the issues.

* 8 sessions held in May 2019: Melbourne CBD (x2); Warrnambool; Ballarat; Werribee (x2); Bendigo; and Moe
* 7 sessions held in June 2019: Ringwood (x2); Geelong; Dandenong (x2); Benalla; and Wodonga.

Attendees at the consultation sessions were invited to complete a feedback form, and 44 forms were received. No new issues were raised in consultations.

The following key stakeholders, peak bodies and multi-service providers were consulted via meetings and forums:

|  |  |  |
| --- | --- | --- |
| Internal Governance Groups | Stakeholders and Peak Bodies | Multi-Service Providers |
| Early Childhood Steering CommitteeEarly Childhood Development Advisory GroupEarly Childhood Education Reform Stakeholder GroupQARD Early Childhood Education and Care Regulatory Reference GroupVictorian Children’s Council | Community Child Care Association Early Learning Association Australia Neighbourhood Houses VictoriaMunicipal Association of VictoriaOccasional Child Care AustraliaEarly Childhood Australia (Vic Branch)United Voice – Victorian BranchAustralian Education Union Australian Childcare Alliance Victoria Victorian Aboriginal Education Association Inc.Playgroup Victoria | Victorian YMCA Community Programming Pty LtdGoodlife Operations Pty LtdBelgravia Health & Leisure Group Pty Ltd ATF Belgravia Leisure Unit TrustUniting (Victoria and Tasmania) LimitedOakleigh Occasional Care Co-operativeMallee Track Health and Community Service |

Written submissions closed on 14 June 2019. No written submissions were received.

Neighbourhood Houses Victoria (NHV) hosted 10 information sessions (open to all children’s services) on the Children’s Services Law Reform.

* 5 sessions held in September/October 2019: Preston; Blackburn South; South Kingsville; Wallan; and Benalla
* 5 sessions held in November 2019: Narre Warren; Wyndham Vale; Ballarat; Moe (video conference); and Lara (Geelong).

Forthcoming public consultation sessions on the RIS and proposed Regulations will be held in February 2020 with further details provided via the Engage Victoria website at <https://engage.vic.gov.au/childrens-services-regulations-2020>.

**Summary of issues raised**

Departmental officers presented at these sessions, providing an overview of the Children’s Services Law Reform proposal and assisting attendees to understand how the reform will impact them and their service.

Sessions were well-attended with the main areas of interest being:

* changes to roles/responsibilities (terminology)
* licensing arrangements
* use of approved learning frameworks
* transitional arrangements for services needing to meet increased requirements
* educator to child ratios
* qualification requirements
* changes to fees.

Sector feedback from all consultations to date indicated broad support of the proposal to align the CS Act and CS Regulations with the NQF (where appropriate), particularly as the national scheme has resulted in improved quality service provision and represents best practice principles. Stakeholders also noted that it would be easier for providers operating under both regimes to comply with a consistent set of requirements.

While many providers indicated they were already using a learning framework, some individuals expressed concern that they may not have the capability to apply the approved learning frameworks to educational programming in occasional care services. The Department will update the existing guidance material and provide support for implementation in 2020, including a 1300 telephone help service (further addressed in Implementation section of this RIS).

**RIS public consultation**

Organisations and individuals with an interest in the proposed Regulations are invited to review, consider and provide comment on the options presented in this RIS. All feedback will be considered and will assist the Victorian Government in making final decisions about the new Children’s Services Regulations.

To participate in the public consultation process, please review section 1.5 Invitation to comment of this document or visit the Engage Victoria website at <https://engage.vic.gov.au/childrens-services-regulations-2020>.

# Implementation, Enforcement and Evaluation

The following section outlines the implementation, enforcement and evaluation approach to changes to the Children’s Services (Amendment) Act and Regulations to align it with the NQF, where appropriate. The Amendment Act received Royal Assent on 6 November 2019; however, changes to the Act will come into effect in May 2020, coinciding with the remaking of the Regulations.

As noted in section 1.3, the functions and powers of the regulatory authority are delegated to the Quality Assessment and Regulation Division (QARD) to administer and enforce the regulatory regime. QARD will undertake the implementation of the proposed Regulations.

**Implementation**

The implementation plan aims to facilitate the smooth transition of children’s services to the new requirements of the Act and Regulations; minimise the impact on providers, services, and families who use services; and ensure that services are compliant with the new regulatory requirements.

Changes will be communicated to the following stakeholders (as per section 8.2 above):

* CS Act service providers and staff
* Relevant providers under the National Quality Framework
* Peak bodies
* Families using children’s services
* QARD central and regional staff, including authorised officers
* the Department policy and program staff who deal with children’s services (e.g. kindergarten reform, kindergarten participation, workforce).

Consistent messaging will be provided to the early childhood education and care sector, supported by appropriate communications material:

* Early childhood bulletins and newsletters
* Presentations at stakeholder forums
* Letters and direct email
* the Department website content
* Direct communication with QARD staff as part of monitoring and compliance activity.

Stakeholders will be informed about changes to the Regulations via the following communication channels:

* Direct letter to service providers/licence holders
* Website and social media
* Updates to guidance materials and fact sheets
* Training.

Table 61 outlines the milestones and activities:

Table 61 Proposed Regulations implementation milestones

|  |  |
| --- | --- |
| Date | Activity |
| February 2020 | Release Regulatory Impact Statement (RIS) for remaking the Children’s Service RegulationsInform providers and stakeholders via direct mail and online newsletter/bulletin channels |
| February 2020 | Conduct RIS public consultation process – online and face-to-face sessions |
| March 2020 | Consider RIS submissions and feedbackRevise regulatory procedures and guidance materialUpdate public facing communication channels (e.g. website, fact sheets, etc.)Develop training content for regulatory staff, providers and services |
| April 2020 | New CS Regulations made by Governor in CouncilPublish revised guidanceMeet with stakeholders and service providers as required |
| 18 May 2020 | *Children’s Services Amendment Act 2019* and new Regulations commenceTransitional provisions phased in over a two-year period |
| May – July 2020 | Conduct further information sessions and training on specific changes to the requirements with internal and external stakeholders, as required |

**Transition period**

Grandfathering (savings), transitional provisions and the introduction of application of service waivers in the proposed regulations will give services time to adjust to the new requirements. Specifically, the following transitional provisions will be included:

* New services must meet all requirements as at **17 May 2020**.
* New requirements in relation to policies and procedures must be met by **1 January 2021**.
* Other new or amended operational requirements (staffing and qualifications) must be met by **1 January 2022**.
* New annual service fee payment will be applicable from **1 July 2021**
* All existing services’ premises approvals and licences will be converted to provider and service approvals, and will have 6 months to make any amendments to that conversion, at no cost to businesses.

**Enforcement**

As the regulatory authority for Victoria, the Secretary of the Department of Education and Training has delegated this responsibility to staff members of the Quality Assessment and Regulation Division (QARD).

The children’s services regulatory regime provides QARD with the legal mandate, processes and procedures to carry out its regulatory role. QARD adopts a risk-based approach to its regulatory work, using a range of strategies to assess risk and determine the timing and scope of action, such as:

* Assessing services’ compliance through visits
* Additional monitoring of non-compliant services
* Investigating serious incidents and complaints
* Taking enforcement action where there is serious or ongoing non-compliance.

These strategies and associated processes and procedures will be reviewed to ensure consistency with the Children’s Services Amendment Act 2019 and Regulations, and form the avenue through which regulatory changes will be enforced.

Children’s services will be notified in writing of expected changes.

Enquiries can be made via the help line 1300 307 415. Calls will be directed appropriately.

For further information about the children’s services law reform, email cs.law.reform@edumail.vic.gov.au

**Evaluation**

Once made, the Regulations will sunset in 2029, marking the next occasion regulations are due for formal review and remaking via a RIS process.

As children’s services are subject to regulatory oversight with the commitment by the regulatory authority to undertake monitoring and compliance visits at least once every three years to each service, it is anticipate that any adverse consequences or issues regarding regulatory changes, will be revealed during these visits.

Ongoing engagement with the sector and stakeholders via regular meetings and forums will also inform the regulator of the effectiveness of regulations and/or any issues arising that require attention.

Transitional provisions for existing services to meet and/or adjust to new requirements are provided for in the regulations, and services that require transitional support will be closely monitored via formal communications channels (as detailed in section 0 Implementation).

In addition to data and information collected via the enquiries line and/or monitoring and compliance visits, a sector-wide Stakeholder Satisfaction Survey is released by QARD in October/November annually that collects data pertaining to the sector’s overall satisfaction with the Regulator’s provision of compliance assistance and guidance, and the sector’s experience of regulatory practice. Results are published in the QARD Annual Report.

Furthermore, data on traffic to the QARD website to view and/or download information and guidance material about revised processes, procedures and requirements resulting from amendments to the Act and regulations, will provide ongoing insight into the value and efficiency of new Regulations.

Currently, systems that support Children’s Services are predominantly manual or paper-based. There is a commitment to move to an online system similar to that of the National Quality Agenda Information Technology System (NQA ITS)[[70]](#footnote-70) in the two years (approximately) that follow the new Regulations taking effect, that will enhance data collection in general on the children’s services sector.

# Appendices

* 10.1 Comparison table of current and proposed Children’s Services Regulations
* 10.2 Questions for consultation
* 10.3 Key amendments to the Children’s Services Act 2019
* 10.4 Methodology and assumptions
* 10.5a Children’s Services Regulations 2009 – Current Fee Structure
* 10.5b Children’s Services Regulations 2020 – Proposed Fee Structure

## 10.1 Comparison table of current and proposed Children’s Services Regulations

| Area of Regulation | Current Regulation  | Proposed Regulation and Reference | Proposed Regulation Cost/Benefit/Flexibility |
| --- | --- | --- | --- |
| Approval application process | One premises approval and one licence per serviceInitial licence application followed by licence renewal on fixed term for 1, 3 or 5 years | Two types of approvals - provider approval and service approvalInformation to be included on application are set out in [**Part 2 – Provider Approvals**]Information to be included in application for service approvals and information about proposed children’s service premises are set out in [**Part 2 – Service Approvals**] | Flexibility of one provider approval, which can be used to operate multiple services.Provider approvals are perpetual and service approvals are subject to payment of an annual fee on invoice.Application for licence renewal and licence renewal fee are no longer required. |
| Service approval: Prescribed types | Seven licence types:* Standard service
* Limited hours type 1
* Limited hours type 2
* Short term type 1
* Short term type 2
* Integrated service
 | The two prescribed types of children’s services [**Regulation 7**] are:* **Limited Hours** - Services that care for each child for not more than 3 hours per day, for up to 6 hours per week *(Could include former Limited Hours type 1 and Short term type 2 licence types)*
 | Streamlining of seven licence types to two service approval types.For Limited Hours services, extension of period a child can be educated and cared for from 2 hours to 3 hours per day. |
| * **Occasional Care** - All other services would be fall under this service approval *(Could include former Standard, Limited Hours type 2, Short term type 1, and school holiday care licence types)*
 | There will be no limit to the hours children can be educated and cared for. |
| Change in terminology  | Example of the terminology used in current regulations in relation to staff are:* Staff member is any person employed at a service who is educating and caring for children and is not a volunteer and must hold at least a Certificate III qualification
* Volunteer is any person caring for or educating children in a voluntary or honorary capacity
 | There are changes in the terminology used for the different key personnel (to reflect the Amendment Act and NQF), but the roles are fundamentally the sameFor example, terminology for staff member is any person employed at a service except a nominated supervisor | Aligning terminology with the NQF will benefit the sector by having consistent terminology between children’s services and education and care services.The terminology of the NQF also recognises staff as ‘educators’ and their role of providing education and care. |
| Qualification level of staff | **Certificate III**All staff members must hold at least a certificate III level qualification | For services with a Limited Hours service approval:* All educators must have at least an approved certificate III level education and care qualification [**Regulation 92, Definition of *approved certificate III level education and care qualification* in Regulation 5**]
 | Only educators required to meet the relevant ratio requirements need a qualification.Limited Hours services are:* required to maintain the status quo with educators to have at least a certificate III level education and care qualification.
* not required to employ a diploma qualified educator or early childhood teacher.
 |
|  |  | For services with an Occasional Care service approval:* All educators required to meet the relevant staff to child ratios (calculated across the service) must have or be ‘actively working towards’ at least an approved certificate III level education and care qualification [**Regulations 8, 91, 93**]
* Educators who have not yet commenced study can be counted in ratios during a probationary period of three months prior to their enrolment in at least a certificate III level education and care qualification [**Subregulation 91(2)**]
 | Only educators required to meet the relevant ratio requirements need a qualification.Enables educators (including volunteers and students) who are ‘actively working towards’ an approved certificate III level education and care qualification to be counted in staff to child ratios. |
|  | **Diploma*** For children under 3 years old, at least 1 in 3 staff members must hold a diploma level qualification or above
* For children aged 3 years old and over, at least 1 in 2 staff members must hold a diploma level qualification or above
* Services holding a Limited Hours type 1 and Short-term type 2 licence do not have to engage diploma qualified staff
 | For services with an Occasional Care service approval:* At least 50% of educators required to meet the relevant ratio requirements (calculated across the service) must have or be ‘actively working towards’ at least an approved diploma level qualification [**Regulation 91**]
 | Takes into account educators that are ‘actively working towards’ a required qualification. Only educators required to meet the relevant ratio requirements need a qualification.There is no requirement to employ a diploma qualified educator or early childhood teacher for Limited Hours services. |
|  | **Early childhood teacher*** Early childhood teachers hold at least a degree level qualification
* Services holding a Standard licence approved to care for fewer than 25 children must have access to at least one early childhood teacher for at least 20% of the time the service is operating
* Services holding a Standard licence approved to care for 25 or more children must ensure an early childhood teacher for at least the lesser of 50% of the operating hours or 20 hours a week
 | For Occasional Care services providing care to any child for more than 30 hours per week on average over any given four week period:* Must have an early childhood teacher in attendance for at least 50% of the time the service is operating or 20 hours per week (whichever is lower) [**Regulation 93**]
 | Only services providing care for any child for more than 30 hours per week need to meet early childhood teacher requirements. |
|  | N/A | For all services, the staff record must include details about the volunteer/student, as well as details of participation in the children’s service, given educators ‘actively working towards’ a qualification can be counted as staff [**Regulation 97 & 100**] | This clarifies requirements for a staff record for volunteers and students.Volunteers and students may also be counted towards the educator to child ratios. |
| Staff-to-child ratios | School holidays care services licensed to care for no more than 15 children and located in a rural or remote area must ensure that a staff member is on duty whenever children are in attendance, and that one other adult is at or near the premises and able to attend immediately.All other services must ensure that at least two staff members are on duty whenever children are in attendance. | All services must ensure that at least one educator is on duty whenever children are in attendance [**Regulation 90**] | Clearer responsibility and less onerous minimum staff requirements. |
|  | Standard licence:* 1 staff for every 4 children, under 3 years old
* 1 qualified staff for every 12 children, under 3 years old
* 1 staff for every 15 children, 3 years old and over
* 1 qualified staff for every 30 children

Other licences:* 1:5 for under 3 year old children
* 1:15 for children 3 years old and over
 | All services are required to have at least 1 educator and must have:* 1 educator to 4 children, aged from birth to under 36 months [**Subregulation 90(1)(a)**]
* 1 educator to 11 children, aged 36 months and over (not including children over preschool age) [**Subregulation 90(1)(b)**]
* 1 educator to 15 children, over preschool age [**Subregulation 90(1)(c)**]
 | Simplified and clearer arrangement of staff to child ratios for the different ages of children.Transitional provisions will allow services until 2022 to meet higher ratios.  |
|  | N/A | All services will have the ability to include additional children in an emergency situation, where their attendance (for not more than 2 consecutive days) will not be counted towards meeting educator to child ratio or space requirements [**Subregulation 90 (4) & (5)**]All services will need to notify the Regulatory Authority of the attendance of the child or children in emergency situation [**Regulation 118(2)(d)**] | Services will not be required to meet educator to child ratios or space requirements at the service for a child (or children) in an emergency situation. Services will need to notify the Regulatory Authority of the attendance of the child or children in such situations. |
| Safety, health and wellbeing of children | Service providers are required to have emergency procedures in place and regularly practised by staff members, volunteers and children | All services must ensure that a risk assessment is conducted to identify potential emergencies relevant to the service. The emergency and evacuation procedures must be rehearsed every 3 months by the staff members, volunteers and children, and the emergency and evacuation policy and procedures must be documented [**Regulation 66**] | Risk assessment now required to identify any potential risks to the service. Emergency and evacuation procedures will need to be rehearsed every 3 months. |
|  | All staff members counted in staff to child ratios or as part of the minimum staff number requirement must have first aid and anaphylaxis management training, adrenaline auto-injection device and CPR training | All services must ensure that at least 1 educator on the premises has an approved first aid qualification, anaphylaxis management and emergency asthma management training [**Regulation 95**] | Less onerous requirement for approved first aid training as only one staff member needs to be in attendance who has a first aid qualification, anaphylaxis and asthma management training.  |
|  | In addition to first aid training, all services must have an anaphylaxis management policy and risk minimalisation plan (developed in consultation with parents) that set out the practices and procedures in managing children who have been diagnosed as at risk of anaphylaxis. Each child with anaphylaxis requires an anaphylaxis management plan | All services must have a medical conditions policy which sets out practices in relation to the management of all medical conditions, including anaphylaxis [**Regulation 59**]Each child with a medical condition requires a medical management plan and a risk management plan | Medical conditions policy extends to management of all medical conditions, not just a focus on anaphylaxis management. Additional requirements for medical and risk management plans for children with medical conditions.  |
|  | N/A | All services must ensure that nominated supervisors and staff at the service are advised of the existence and application of child protection law and any obligations that apply under the law [**Regulation 53**] | Stronger focus on awareness of child protection law and any obligations that apply under the law. |
|  | N/A | All services must deliver an educational program that contributes to specified outcomes for children [**Regulation 42**]All services also need to take reasonable steps to provide education and care to children in a way that encourages the children to develop respectful and positive relationships with each other and with staff members of, and volunteers at, the service [**Regulation 104 & 105**] | Services already are required to provide a program: 1. that is based on the developmental needs, interests and experiences of each child; and
2. that is designed to take into account the individual differences of those children; and
3. that enhances each child's development.

The additional requirements provides more emphasis on ways for children to interact and develop respectful and positive relationships with each other and with staff and volunteers at the service. |
| Equipment and facilities | Services must provide two children’s rooms where children under 3 years old are cared for | The space requirements for indoor space do not specify that services must provide a second room for children under 36 months [**Regulation 76**] | A second room is no longer required for services caring for children under 36 months. |
|  | Services holding a Standard licence must provide outdoor space which has a useable area of at least 7 square metres per childServices (excluding a school holidays care service) must ensure that any outdoor space is enclosed by a fence at least 1.5m high and a child cannot go through, over or under the fence or barrier or any gate or fitting | No requirements to provide outdoor space for Limited Hours services. | Limited Hours services are not required to provide outdoor space. |
| Requirements for fencing or barrier is outcome-based as these structures must be of a height and design that children preschool age or under cannot go through, over or under. This requirement does not apply to services that provide care to children over preschool age [**Regulation 73**]Occasional Care services must provide outdoor space which meets similar requirements (7 square metres) under current regulations [**Regulations 77, 82 & 83**]This outdoor space requirement does not apply to an occasional care service that:* Used to hold a Limited Hours type 2 licence and
* Do not provide education and care for more than 5 hours a day or 15 hours a week to any child [**Regulation 77**]
 | New Occasional Care services must meet outdoor space requirements.Existing occasional care services that are unable to meet increased requirements for outdoor space will not be required to meet that requirement, effectively maintaining the status quo for those services. |
|  | N/A | Other new requirements for facilities such as ventilation and maintained temperature, nappy changing bench and premises designed to facilitate supervision are in place [**Regulation 79 & 81**] | Existing services that do not meet the additional requirements will not be made to meet these requirements. |
| Notification, complaints and serious incidents  | Services must deal with and respond to complaints as soon and discreetly as possible The Regulations also provide that services must notify the Secretary of any complaint that relates to the health, safety or wellbeing of a child or a contravention of the Act or RegulationsThe Secretary must be notified of a serious incident by telephone within 24 hours, followed up in writing | The meaning of a serious incident is defined in the Regulations [**Regulation 10**]Approved providers must take reasonable steps to ensure that serious incidents and complaints are adequately addressed and notified to the Regulatory Authority within prescribed time frames. All services must also notify the Regulatory Authority [**Regulation 118**]:* any changes to the status of the approved provider which will affect the ongoing operation of the service
* any circumstances that poses a risk to the health, safety or wellbeing of children (such as any incident or allegations of physical or sexual abuse of a child or children)
* attendance of any additional child (or children) in emergency situations

Services must provide the Regulatory Authority of relevant information within a specified time frame [**Regulation 119**] | Services must notify the Regulatory Authority of certain information that affects the operation of the service, as well as any circumstances that poses a risk to the health, safety or wellbeing of children.There is no longer a requirement to contact the Regulatory Authority by phone and in writing.One notification in writing is required to notify certain information to the Regulatory Authority. |
| Information, policies, procedures and record-keeping  | Information, policies and procedures to be made available at the service are:* admission requirements and enrolment procedures
* arrangements for the payment of fees
* the policy of the service with respect to the employment of qualified staff
* the educational or recreational programs provided for children cared for or educated by the service
* the policy of the service with respect to behaviour management
* arrangements for the delivery and collection of children
* procedures for dealing with illness and emergency care
* procedures for dealing with infectious disease
* provision for dealing with complaints
* the anaphylaxis management policy
 | Information to be kept on records and made available will be the same. There will be some changes to terminology and additional information required but they are minor in effectIn addition to current requirements, services must have policies and procedures [**Regulation 112-115**] in relation to:* health and safety
* medical conditions
* staffing
* interactions with children
* governance and management of service including confidentiality
* acceptance and refusal of authorisations

In addition to current information kept available for inspection, all services must have evidence of current insurance (if applicable) made available for inspection by the Regulatory Authority [**Regulation 114, 121**]Records and other documents must be kept for a certain time [**Regulation 123**] | Clearer set of required information to be made available by all services.Additional policies and procedures will be required to cover areas such as interactions with children (which under current regulation is related to behaviour management).Services will need to keep current insurance policy (if applicable) on premises for inspection.Records and documents will be required to be kept for a certain time. |
| Fees | Fees payable for licensing and premises approvalsDifferentiated fees according to the number of approved places offered by a service in the following five brackets: 0 to 15; 16 to 30; 31 to 60; 61 to 120 and 121 or more approved placesFees vary according to licence typeLicence renewal fees apply based on the term of the licence e.g. 1, 3 or 5 yearsNil licence renewal fee payable for very small servicesFees apply to application for the approval of new nominees, varying/revoking/imposing conditions and restrictions on application, and obtaining extracts of the children’s services registerLate payment fees apply | The prescribed fees payable are set out in Schedule 1 of the proposed regulations [**Regulation 135**] Differentiated fees according to the number of approved places offered by a service in the following four brackets: 1 to 15; 16 to 30; 1 to 60 and 61 or more approved placesAnnual service fee payable on invoice by 30 June of each year (replacing the current licence renewal fee) [**Regulation 30**]The late payment fee (applicable to a late annual service fee) remains [**Regulation 136**]Fees payable for applications relating to waivers from prescribed requirements, and service transfers between approved providers | Simpler fee regime, consistent with the NQF. Fees for approvals only apply to new providers and services – existing licensees and services are unaffected.Fixed term licence renewal fee replaced with annual service fee payable on invoice.The nil fee option is removed for very small services (which will pay a nominal fee)Fees relating to notification of nominees varying/revoking/imposing conditions and restrictions on application, and obtaining extracts of the children’s services register are discontinued.New fees for applications for waivers and service transfers.Department maintains a regulatory discretion to waive fees in appropriate circumstances. |
| Service waivers | N/AThe CS Act provides that the Minister can declare a service exempt from any of the Act’s requirements. There is no service waivers under the current regulations. | Services may apply to have some prescribed requirements waived [**Regulations 37 & 38**]Services may also apply a temporary waiver [**Regulation 40 & 41**] | Flexibility to apply for a waiver of certain prescribed requirements that a service is unable to comply with, and thus avoid non-compliance. |

## 10.2 Questions for consultation

Information about consultation sessions and how to submit comments is found online at
**Engage Victoria** <https://engage.vic.gov.au/childrens-services-regulations-2020>

Public comment is invited on the RIS overall, and the main regulatory proposals presented.

The Engage Victoria website contains a short survey of some of the following questions for your consideration and comment:

* Do you support the reduction of seven (7) licence types to two (2) service approval types?
* Do you support the requirement for outdoor space for new services?
* Do you support the alignment of staffing requirements with the NQF?
* Are estimated time assumptions for tasks such as record-keeping and the development of additional policies and procedures, reasonable or accurate?
* Do you support the proposed fee structure?
* Do you support the saving provisions for existing services?
* Do you think the transitional arrangements are reasonable?
* Should the preferred option be adopted, what support would your workforce or organisation need to meet the proposed requirements?

Written submissions are welcome and can be uploaded at Engage Victoria or posted to:

* Children’s Services Regulations 2020
Department of Education and Training
Level 20, 80 Collins Street
Melbourne 3000.

All submissions must be marked **‘Children’s Services Regulations 2020’** and be received by **midnight Tuesday 17 March 2020**.

All submissions received will be considered and will inform the development of the final Children’s Services Regulations 2020.

A summary report of comments received will be published to the Department of Education and Training website.

## 10.3 Key amendments to the Children’s Services Act

The [Children’s Services Amendment Act 2019](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/908E61D640905C79CA2584AA000DC0B5/%24FILE/19-037aa%20authorised.pdf), is the first step in the process of aligning to the NQF (where appropriate). Some of the key requirements of the Law include:

* objectives and guiding principles
* terminology and roles of key personnel
* provider and service approval processes
* compliance, monitoring and enforcement approaches
* Educational programming.

The Amendment Act does not take effect until May 2020—in tandem with the making of new Regulations.

Links to the Amendment Act and Regulations will be made available on the Department website at <https://www.education.vic.gov.au/childhood/providers/regulation/Pages/csareform.aspx>

**Objectives**

* To ensure the safety, health and wellbeing of children attending children’s services.
* To improve the educational and developmental outcomes for children attending children’s services.
* To promote continuous improvement in the provision of quality children’s services.

The objectives focus on quality outcomes and safety, health and wellbeing of children. The NQF has more objectives than the three listed above, but only the **relevant** ones have been included in the Amendment Act (i.e. the Amendment Act does not include objectives that apply to the shared system of national integration).

These objectives already apply in NQF settings where there is short term, irregular attendance i.e. they apply in a proportionate way in OSHC and vacation care services, therefore they can equally apply to limited hours and occasional care settings.

**Guiding principles**

* The rights and best interests of the child are paramount
* Children are successful, competent and capable learners
* Principles of equity, inclusion and diversity underlie the law
* Australia’s Aboriginal and Torres Strait Islander cultures are valued
* The role of parents and families is respected and supported
* Best practice is expected in the provision of children’s services.

The guiding principles in the Amendment Act are **identical** to the guiding principles of the NQF and, like the objectives, they are all relevant and proportionate to the occasional care context.

**Terminology and roles of key personnel**

The diagram below shows the new terminology to be used for the different roles for key personnel, but the roles are fundamentally the same. The Amendment Act retains the term “children’s service”, whereas services under the NQF are called “education and care services”.

|  |  |  |
| --- | --- | --- |
| Under the CS Act |  | Under the NQF and in the Amendment Act |
| Licensee | Approved provider |
| Licence | Service approval |
| Primary nominee | Nominated supervisor |
| Approved / accepted nominee | Person in day-to-day charge |
| Responsible person | Person with management or control |
| *The term “Proprietor” is redundant in the Amendment Act* |

Under the CS Act, the licensee, a responsible person or a nominee has to be present at the service.

Under the NQF, a responsible person must be present at each centre-based service at all times children are being educated and cared for by the service. This can be the person with management or control, a nominated supervisor, or a person in day-to-day charge.

Fundamentally, the roles are the same, however move explicit requirements in the NQF will apply to due diligence to be undertaken by approved providers in appointing people to these roles.

As with the beginning of the NQF, the law change will transition the roles automatically. For **existing services** and their key personnel, there will no requirement to make new applications to operate the service or to be assessed as fit and proper. However, once the change takes effect, providers can decide to appoint people to different roles if needed.

Similarly, the terminology used to describe the employees and teaching staff of a children’s service will adopt the terminology of the NQF. The previous terms “employee, staff member, qualified staff member and teaching staff member” will be **replaced** with the following:

|  |
| --- |
| Under the NQF and/or in the Amendment Act/proposed Regulations |
| Staff member | Person employed by the service, which could be an administrative person, a cleaner, or other person or staff at the service |
| Educator | Includes all previously defined staff members (i.e. at least Certificate III) and could also include previously defined qualified staff (i.e. with Diploma) |
| Early childhood teacher | Includes some previously defined qualified staff (i.e. Diploma) and all previously defined teaching staff (i.e. approved early childhood teaching qualification or above) |

Adopting the term ‘educator’ to describe all persons educating and caring for children that are working towards or holding a minimum Certificate III qualification, acknowledges the professionalism of the sector and reinforces the important education and care provided in services that offer short-term, ad hoc care.

**Provider approvals**

Fit and proper person requirements are similar, but more comprehensive, requiring explicit consideration of the applicant’s past conduct under other relevant laws.

All existing responsible persons and nominees, i.e. people who already need to be fit and proper, will be **taken to be fit and proper** under the Amendment Act. People who are members of executive committees will not need to re-apply to be assessed as fit and proper if they are already fit and proper.

Currently, a licensee must make a separate licence application to operate each service. An approved provider will be able to operate multiple services under the Amendment Act, under a single provider approval.

Existing approved providers under the NQF will be eligible to operate a children’s service under the Amendment Act without needing to obtain a separate provider approval.

**Service approvals**

Currently, there is a two-step process for approval of service premises. This has been replaced in the Amendment Act with a **one-step integrated process**. The single application, aligned with the process in the National Law, reduces red tape and time for the applicant and enables the regulatory authority to consider all relevant matters about the service premises together.

|  |  |  |
| --- | --- | --- |
| Two-step premises approval |  | One-step integrated process |

The current fixed-term licences of one, three or five years’ duration, which must be renewed on application and payment of a fee, will be replaced with **perpetual service approvals**, with an **annual fee payable on invoice**, which reduces red tape as a provider no longer needs to re-apply for a licence—saving time and resources in collecting relevant information/paperwork to process an application. Service approvals can be suspended or cancelled at any time by the regulatory authority.

|  |  |  |
| --- | --- | --- |
| Fixed-term licence |  | Perpetual service approval |

Subject to approval and possible intervention by the regulatory authority as in the National Law, service approvals are **transferrable** between approved providers and end when surrendered or cancelled—providing greater market flexibility for approved providers.

**Approved Associated Children’s Services (AACS)**

The AACS model enables an approved provider to operate a service under the NQF and a service under the CS Act at the same location, under a single NQF service approval. The concept was devised when the NQF was introduced to overcome the need for a provider to obtain service approvals under two regulatory regimes).

Approved providers under the NQF who currently hold a service approval and operate an AACS will be able to operate the entire service under the NQF service approval (with appropriate service conditions and/or waivers, if required), so that both the existing NQF approved service and the AACS become regulated under the NQF; or apply for a separate service approval under the Amendment Act, which relates only to their AACS.

**AACSs will be phased out by 2022**. In the interim, approved providers under the NQF will be able to operate separate services under both regulatory regimes, and enjoy the same flexibility as under the AACS model, such as reciprocal recognition of supervisors.

The Department will work with affected providers individually to establish appropriate transitional arrangements for each AACS.

***Compliance and enforcement***

Enforcement action is rarely required in the children’s services sector (or under the NQF). The approach to compliance, monitoring and enforcement under the NQF gives the regulatory authority a more comprehensive suite of powers and a greater range of compliance and enforcement options than is currently available under the CS Act.

Alignment will give the regulatory authority the necessary powers to enforce a more nuanced variety of tools, such as the option to use an **enforceable undertaking** (an alternative to prosecution), which helps bring a provider into compliance by reducing the time, expense and uncertainty of court proceedings – for both the provider and the regulatory authority.

**Prohibition notices**

Under the NQF, people who pose an unacceptable risk of harm to children can be barred from working in the sector. There is a lower threshold for nominated supervisors – who can be barred if they are not a fit and proper person.

Prohibition notices help keep people out to the sector who should not be there – preventing them moving around services. They are a helpful way of addressing individual conduct in a regime where there are fewer direct liability offences for individual educators. Prohibited status information will be available to potential employers, thereby ensuring the safety, health and wellbeing of children.

The regulatory authority notifies Justice, CCYP about prohibition notices, but it is up to them to take action under their own legislation (e.g. of person prohibited from providing FDC due to partner being charged with sexual assault, but who would not lose WWCC as FDC educator not charged with anything).

There are fewer direct liability offences for individual educators in the NQF. Under the CS Act, individual staff are liable for offences around supervision, harm and hazard. Under the NQF, individual educators are only liable for inappropriate discipline offences. Nominated supervisors are liable for inadequate supervision offence.

**Offences and penalties**

Offences in the Amendment Act are aligned as closely as possible to the equivalent offences in the National Law.

Under the CS Act, each offence carries a single maximum penalty that applies to both individuals and corporate bodies, expressed in penalty units. Under the National Law, offences carry different maximum penalties for individuals and corporate bodies, expressed in dollar amounts. Generally, the maximum penalties under the CS Act lie midway between the equivalent individual and corporate penalties in the National Law.

In the Amendment Act, penalties and offences are aligned as closely as possible with the penalties and offences in the NQF, while retaining the Victoria penalty unit approach. For example, the current offence under the CS Act of inadequately supervising children carries a maximum penalty of 120 penalty units (around $19,826). The equivalent offence under the National Law carries a maximum penalty of $10,000 for individuals and $50,000 for corporate bodies.

\*For Financial Year 2019-2020, 1 penalty unit = $165.22

**Educational program**

The requirement for an educational program will be similar, but strengthened through becoming more explicit that the program must be based on an approved learning framework.

|  |  |  |
| --- | --- | --- |
| Under the CS ActAn educational or recreational program based on the developmental needs, interests and experiences of each child that is designed to take into account the individual differences of those children, and that enhances each child’s development. |  | Under the NQFA program must be based on an approved learning framework that is delivered in a manner that accords with the approved learning framework, is based on the developmental needs, interests and experiences of each child, and which is designed to take into account the individual difference of each child. |

The **approved learning frameworks** are the same frameworks as in the NQF:

* Victorian Early Years Learning and Development Framework (VEYLDF)
* Belonging, Being and Becoming: The Early Years Learning Framework for Australia (EYLF)
* My Time, Our Place: Framework for School Age Care in Australia (MTOP).

The program will continue to be required and will need to be tailored to reflect the nature of the education and care being provided and the period of time that the children attend the service or if a particular child has additional needs.

The Department will provide information, training and resources to support services develop programs appropriate to their service. Educators’ guides[[71]](#footnote-71) are currently available to support the approved learning frameworks, including resources to support the VEYLDF.

## 10.4 Methodology and assumptions

This appendix sets out how the expected costs of each area of regulation were calculated and includes tables setting out the assumptions that were used in the costings and the sources they were drawn from.

**6.2.1.1. Approval applications**

The costs associated with completing the approval application process under Option A.2. Alignment were calculated by multiplying the time assumed to complete each application task by the hourly cost of the staff member expected to complete the task. It is assumed that a Director level staff member would complete the approval application, so the calculations use the Children’s Service Award Level 6.1 hourly wage. All staff costs include an additional 20% to reflect overheads.

The same methodology was used to calculate the cost of completing applications to vary or suspend approvals.

**6.2.1.3. Staffing**

The overall staffing costs are based on calculations of the average daily number of children attending a service, drawn from Department data about the average maximum number of approved places at each service type and the average attendance rate (see assumptions table below).

Attendance rates can vary considerably from day to day and from service to service; for the purpose of these calculations a sample of data drawn from DET monitoring and compliance visits was used to create an average attendance rate.

The average split between over and under 3-year-olds from the DET data was applied and then assessed against the-staff to-child ratios to ascertain the average number of staff required on a given day (this varied between different types of service owing to differing staff/child ratios).

For costing Option H.1. Status Quo, each type of service (LH2, LH1 and SL) annual staffing costs were costed as follows. The average number and type of staff required was multiplied by the hourly staff cost, the service’s maximum weekly hours of operation (an average drawn from DET data) and 52 to give the annual staffing costs per service.

For costing Option H.2. Alignment, the hourly staff cost was split 50:50 between the minimum Award wage for a fully qualified staff member and the minimum Award wage for a staff member who has not obtained the qualification but performs the same duties as a qualified staff member. This change reflects the allowance under the proposed Regulations for staff to be ‘actively working towards’ their qualification. So, for example, to calculate the hourly cost of a Certificate III staff member under the proposed Regulations, the cost was split between the Award wage for a Level 3.1 staff member (a worker holding a Certificate III) and a Level 2.1 staff member (a worker with no qualification but with experience).

The total cost to industry as a whole were calculated using the following formula. The 2 school holidays care services were included in the LH2 calculations, as explained in the RIS.

This cost was projected over 10 years by taking the annual staffing costs and adding a fraction of the total annual costs for each type of service proportionate to the number of new services expected to enter the market each year (20).

*(repeated)*

**6.2.1.5. Safety, health and wellbeing of children**

The cost of meeting **administrative requirements relating to excursions** was costed by multiplying the time assumed to be required to complete the task by the hourly staff cost a Certificate III qualified staff member.

The cost to the industry per year was calculated through multiplying the cost for each service type by the total number of that type of service (i.e. small and medium), and this was projected forward over 10 years using the same methodology as for staffing costs.

The cost of **first aid training** per service (of each type: LH2, LH1 and SL) was calculated by multiplying the cost of first aid training by the number of staff required to be trained. For Option E.1. Status Quo, the number of staff required was calculated using the average LH2, LH1 and SL service based on DET data and used throughout all relevant costings. For Option E.2. Alignment, only one staff member needs to hold current first-aid training. The cost to all services was calculated by multiplying the cost per service by the total number of services of each type. The total first aid kit costing per type of service was calculated by multiplying the cost of a first aid kit by the number of services. Note that because first aid certification and first aid kits both last 3 years, in the total cost to industry over 10 years calculations in section 6.2.1.10, these costs are only included once every three years (as opposed to other, annual costs).

**6.2.1.7. Record-keeping**

The cost per service of their **initial establishment of policies and procedures** and the **annual review and update of policies and procedures** was calculated by multiplying the time assumption for each service type by the hourly staff cost of a Diploma qualified staff member.

The annual cost for all new services to establish policies and procedures was calculated by multiplying this establishment cost by the number of new services expected to enter the sector each year (in the proportion of service type that currently exists).

The total cost of new services establishing policies and procedures over 10 years was calculated by multiplying the total annual cost of all new services completing this task by 10 (as the same number of new services is assumed to enter the sector each year).

**Costing assumptions – units and sources**

***General assumptions***

|  |  |  |
| --- | --- | --- |
| Category | Assumption | Source |
| Timing | Model start date July 2020; Model end date July 2030 | Global assumption |
| Discount Rate | Real @ 4% | Better Regulation Victoria |

***Number of services***

|  |  |  |
| --- | --- | --- |
| Category | Unit | # |
| Approved places | 1-15 | 68 |
| 16-30 | 208 |
| 31-60 | 59 |
| 61-120 | 5 |
| 121 or more | 1 |
| Services | New per year | 20 |
| Small | 188 |
| Medium | 132 |
| Licences | Limited Hours Type 2 – LH2 | 247 |
| Limited Hours Type 1 – LH1 | 46 |
| Standard | 29 |

*Source: DET Data*

***Staffing costs***

|  |  |  |
| --- | --- | --- |
| Qualification | Award Level | $ Award wage + 20% on costs p/hr |
| Actively working towards Certificate III | Level 2.1 | $24.84 |
| Certificate III | Level 3.1 | $27.24 |
| Actively working towards Diploma | Level 4A | $29.06 |
| Diploma | Level 4.1 | $32.09 |
| Degree/Director | Level 6.1 | $38.69 |

*Source: Children’s Services Award 2010*

***Time in hours***

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Category | Service size | Base Case | Status Quo | Alignment |
| Excursion risk assessment | All services | n/a | 0.7 | 0.7 |
| Excursion authorisation | Small | n/a | 1.3 | 1.3 |
| Medium | n/a | 1.0 | 1.0 |
| Provider approval application | Small | 2.0 | n/a | 1.7 |
| Medium | 2.4 | n/a | 2.1 |
| Service approval application | Small | 1.7 | n/a | 1.4 |
| Medium | 2.8 | n/a | 2.5 |
| Application to vary/suspend | Small | 0.4 | n/a | 0.3 |
| Medium | 0.6 | n/a | 0.5 |

*Source: NQF Regulatory Burden Report 2013-14*

***Equipment***

|  |  |  |
| --- | --- | --- |
| Category | Unit | $ Cost |
| First-aid kit | Per kit | $124.96 |
| First-aid training | Per staff member | $144.00 |
| Fridge | 1 | $749.99 |
| Microwave | 1 | $169.00 |
| Sink and taps | 1 | $239.00 |
| Stretcher bedframe | 1 | $87.55 |
| Bed mat | 1 | $73.20 |
| Cot | 1 | $129.00 |
| Children’s bedding set | 1 | $35.50 |
| Baby bath | 1 | $79.95 |

*Source: Average taken from a selection of Australian outlets or providers*

## 10.5a Children’s Services Regulations 2009 – Current Fee Structure



Service level data as at December 2019, indicates that there are no services currently holding a Short term licence (type 1 or 2) and the integrated service licence has been captured in the School Holiday Care licence data, therefore fees related to these licence types are **not shown** above.

The dollar values reflected are based on the **fee unit value of $14.81** provided for the July 2019 to June 2020 financial year.

Further information about current children’s services fees and penalties can be found at <https://www.education.vic.gov.au/childhood/providers/regulation/Pages/vcs.aspx#link2>

## 10.5b Children’s Services Regulations 2020 – Proposed Fee Structure



The dollar values reflected are based on the **fee unit value of $14.81** provided for the July 2019 to June 2020 financial year.

1. *Subordinate Legislation Act 1994* (Vic), s 10. [↑](#footnote-ref-1)
2. Budget Based Funded (**BBF**) refers to services that received direct funding under a Commonwealth Government former funding program. These services are generally located in indigenous communities, regional and remote areas where the market would otherwise be unviable. Often these services are the sole providers of early childhood education and care in their community. The BBF program ceased on 30 June 2018, prior to the commencement of the Commonwealth Government’s Community Child Care Funding Restricted (**CCCFR**) program. Former BBF services remain out of scope of the NQF. There are around 30 such services operating in Victoria. [↑](#footnote-ref-2)
3. See *Child Care Services Act 2007* (WA); Child Care Services Regulations 2007(WA) and Child Care Services (Child Care) Regulations 2006 (WA). [↑](#footnote-ref-3)
4. Statement of Expectations and Response 2019 <https://www.education.vic.gov.au/about/department/legislation/Pages/ecsoe.aspx> [↑](#footnote-ref-4)
5. Australian Law Reform Commission, *Child Care for Kids* (1994). [↑](#footnote-ref-5)
6. The relevant application of the Child Safe Standards is to organisations and businesses that provide any services specifically for children; provide any facilities specifically for use by children who are under the entity’s supervision. Class Two organisations for the purposes of the Child Safe Standards include gym or play facilities for children and professional babysitting services. [↑](#footnote-ref-6)
7. Forster, 2007; Phillips, 1988; McQuail et al; 2003 [↑](#footnote-ref-7)
8. See, e.g., the studies outlined in Council of Australian Governments, *Investing in the Early Years – A National Early Childhood Development Strategy* (July 2009), app. 1 ‘The evidence base’ and Australian Children’s Education & Care Quality Authority, *National Partnership Annual Performance Report: National Quality Agenda* (December 2017). [↑](#footnote-ref-8)
9. <https://www.education.vic.gov.au/about/research/Pages/E4kids.aspx> [↑](#footnote-ref-9)
10. Early Childhood Australia, ‘Evidence Brief on Staff to Child Ratios and Educator Qualification Requirements of the *National Quality Framework* (2013); NICHD Early Childhood Research Network, ‘Characteristics and quality of child care for toddlers and preschoolers’ (2000) 4(3) *Applied Developmental Science* 116. [↑](#footnote-ref-10)
11. Early Childhood Australia, ‘Evidence Brief on Staff to Child Ratios and Educator Qualification Requirements of the *National Quality Framework* (2013); C Howes, ‘Children’s experiences in center-based childcare as a function of teacher background and adult:child ratio’ (1997) 43(3) *Merrill-Palmer Quarterly* 404; D Phillips et al, ‘Within and beyond the classroom door: assessing quality in childcare centres’ (2000) 15(4) *Early Childhood Research Quarterly* 475; D L Vandell and B Wolfe, ‘Child care quality: does it matter and does it need to be improved?’ (2000) Washington, DC: Office of the Assistant Secretary for Planning and Evaluation: US Department of Health and Human Services. [↑](#footnote-ref-11)
12. Munton, T., Mooney, A., Moss, P., Petrie, P., Clark, A. & Woolner, J. (2000). Research on Ratios, Group Size and Staff Qualifications and Training in the Early Years and Childcare Settings, Thomas Coram Research Unit, University of London, Research Report RR320 [↑](#footnote-ref-12)
13. American Academy of Paediatrics, 2005; Burchinal et al; 2002; NCEDL, 2000; Sylva et al; 2004. (p. 4) [↑](#footnote-ref-13)
14. NQF Annual Performance Report 2017 [↑](#footnote-ref-14)
15. Forster, 2007; Phillips, 1988; McQuail et al; 2003 [↑](#footnote-ref-15)
16. QARD Annual Report 2018, pg. 11 [↑](#footnote-ref-16)
17. The 2019 NQF Review is again considering whether BBF services that provide long day care and kindergarten should be brought within scope of the NQF. [↑](#footnote-ref-17)
18. *Children’s Services Act, 1996*, s 3(1). [↑](#footnote-ref-18)
19. COAG Consultation RIS, November 2014, p. 11 [↑](#footnote-ref-19)
20. The Act, s 10. [↑](#footnote-ref-20)
21. The Act, s 42. [↑](#footnote-ref-21)
22. The Act, s 99. [↑](#footnote-ref-22)
23. The Act, ss 11 and 43. [↑](#footnote-ref-23)
24. The Act, s 109. [↑](#footnote-ref-24)
25. The Act, s 105. [↑](#footnote-ref-25)
26. The Act, s 102. [↑](#footnote-ref-26)
27. The Act, s 109. [↑](#footnote-ref-27)
28. The Act, s 112. [↑](#footnote-ref-28)
29. The Act, s 115. [↑](#footnote-ref-29)
30. The Act, ss 113 and 114. [↑](#footnote-ref-30)
31. The Act, ss 163 and 164. [↑](#footnote-ref-31)
32. The Act, s 115. [↑](#footnote-ref-32)
33. The Regulations, r 28. Note that the Regulations refers to the equivalent provision of the pre-amendments Act. [↑](#footnote-ref-33)
34. The Act, s 114(2). [↑](#footnote-ref-34)
35. See the Act, ss 39 and 40. [↑](#footnote-ref-35)
36. **Educators are considered ‘actively working towards’ a Certificate III level qualification if they are:**

	* **Enrolled in the course and have started study,**
	* **Making satisfactory progress towards completion, AND**
	* **Meeting requirements to maintain enrolment.****Educators are considered ‘actively working towards’ a Diploma level qualification if they:**

	* **Meet all of the AWT requirements for a Cert III above, AND**
	* **Hold an approved Certificate III level qualification, OR**
	* **Have completed the approved Cert III units, OR**
	* **Have completed 30% of the units in an approved ECT qualification.** [↑](#footnote-ref-36)
37. The Regulations, r 78. [↑](#footnote-ref-37)
38. While the proposed Regulations prescribe the fee to be paid with an application for the extension of a temporary waiver, they do not prescribe any information to be included in such applications. [↑](#footnote-ref-38)
39. See Deloitte Access Economics, ‘Measuring the administrative burden of the NQF’ in ACECQA, Report on the National Quality Framework and Regulatory Burden (2013), 13. [↑](#footnote-ref-39)
40. This assumption is based on departmental data. [↑](#footnote-ref-40)
41. QARD Annual Report 2018; Appendix Table 1, p 48 [↑](#footnote-ref-41)
42. The Act, s 50. [↑](#footnote-ref-42)
43. If there were any Short-term type 1 or Short-term type 2 providers currently operating, their staff to child ratios would also be increased under the Alignment option. [↑](#footnote-ref-43)
44. ‘Actively Working Towards’. [↑](#footnote-ref-44)
45. At least 50% of required educators must hold, or be AWT, at least an approved Diploma level education and care qualification (NR r126(1)(a)) [↑](#footnote-ref-45)
46. All other required educators must hold, or be AWT, at least an approved Certificate III level education and care qualification (NR r126(1)(b) and r356(2)) [↑](#footnote-ref-46)
47. Refer to current CS Regulations r60 [↑](#footnote-ref-47)
48. Proposed regulations require an Early Childhood Teacher (ECT) Degree qualification if the service provides more than 30 hours of education and care per week to a child [↑](#footnote-ref-48)
49. *Tobacco Act 1987* (Vic). [↑](#footnote-ref-49)
50. According to St John’s Ambulance service, <https://www.sja.ca/English/Safety-Tips-and-Resources/Pages/Workplace%20Safety/Products/First\_Aid\_Kits.aspx>. [↑](#footnote-ref-50)
51. Costs based on an average of publicly available sources. [↑](#footnote-ref-51)
52. Building Code of Australia, Table F2.3, Class 9b. [↑](#footnote-ref-52)
53. The requirement would also extend to Short-term type 1 services, but there are no providers currently operating under this type of licence. [↑](#footnote-ref-53)
54. Note that the NQF Regulatory Burden report assumed a Director-level (degree qualified) employee would prepare the policies. Currently, only services holding a Standard licence require a Degree-level early childhood teacher be employed. As Standard services only comprise 8% of the sector, a Diploma-level employee has been used for the calculations instead. Services employing a Degree-level individual to undertake these tasks, may incur higher costs. [↑](#footnote-ref-54)
55. Cost Recovery Guidelines (incorporating the information formerly published in the *Guidelines for Setting Fees and User-Charges Imposed by Departments and Central Government Agencies*), DTF January 2013, p7 [↑](#footnote-ref-55)
56. Australian Children’s Education and Care Authority, *Guide to the National Quality Framework: Chapter Two – Applications and Approvals*, p. 58 <https://www.acecqa.gov.au/sites/default/files/2018-10/Guide-to-the-NQF-2-Applications-Approvals.pdf> [↑](#footnote-ref-56)
57. <https://www.workingwithchildren.vic.gov.au/individuals/applicants/how-to-apply>; <https://www.workingwithchildren.vic.gov.au/individuals/current-cardholders/renew-my-card>; accessed 27/12/19 [↑](#footnote-ref-57)
58. <https://www.police.vic.gov.au/national-police-records-checks>; accessed 27/12/19 [↑](#footnote-ref-58)
59. Statement of Expectations and Response 2019 <https://www.education.vic.gov.au/about/department/legislation/Pages/ecsoe.aspx> [↑](#footnote-ref-59)
60. QARD Teams comprise of: Service Administration and Support Unit (SASU); Business System and Review Unit (BSRU); Consistent Practice and Support Unit (CPSU); Monitoring and Compliance Unit (MCU); Operations Branch; Investigations Unit. [↑](#footnote-ref-60)
61. Australian Institute of Family Studies, *A Critical Review of the Early Childhood Literature* (October 2016), 1. [↑](#footnote-ref-61)
62. See ACECQA, *National Partnership Annual Performance Report: National Quality Agenda* (December 2017) ch 7. [↑](#footnote-ref-62)
63. OECD *Starting Strong V: Transitions from Early Childhood Education and Care to Primary Education* (2017) cited in ACECQA, *National Partnership Annual Performance Report: National Quality Agenda* (December 2017), 80. [↑](#footnote-ref-63)
64. OECD, *Engaging Young Children: Lessons from Research about Quality in Early Childhood Education and Care* (2017), 22. [↑](#footnote-ref-64)
65. See the Act, ss 37 (provider approvals) and 83 (service approvals). [↑](#footnote-ref-65)
66. See the Act, ss 37(3) and 83(4). [↑](#footnote-ref-66)
67. The Act, s 50. [↑](#footnote-ref-67)
68. <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1516/Quick_Guides/Data> [↑](#footnote-ref-68)
69. Victorian Government, ‘Free TAFE for lots of jobs’ (website) <https://www.vic.gov.au/free-tafe> accessed 30 September 2019. [↑](#footnote-ref-69)
70. A web-based system to assist state and territory regulatory authorities and ACECQA to manage the approval, monitoring and quality assessment of children’s education and care services. The system also enables services, providers and educators to submit application and notification forms online to regulatory authorities and ACECQA. [↑](#footnote-ref-70)
71. <https://www.education.vic.gov.au/Documents/childhood/providers/regulation/limitedhrsserv.pdf> [↑](#footnote-ref-71)