



Ms Kim Little
Deputy Secretary, Early Childhood Education
Department of Education and Training
2 Treasury Place, Ground Floor
EAST MELBOURNE VIC 3002

Dear Ms Little

REGULATORY IMPACT STATEMENT FOR CHILDREN'S SERVICES REGULATIONS 2020

I would like to thank your staff at the Department of Education and Training (the Department) for working with my team on the preparation of the Regulatory Impact Statement (RIS) for the Children's Services Regulations 2020 (the Regulations). These regulations are proposed to be made under the *Children's Services Act 1996* (the Act).

As you know, under section 10 of the *Subordinate Legislation Act 1994* (the SLA), the Commissioner for Better Regulation is required to provide independent advice on the adequacy of the analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and be proportionate to the proposal's expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 10 February 2020 meets the adequacy requirements of the SLA.

Background

Children's services have evolved over time in order to meet families' needs - from informal care to a broad range of formal education and care services for children above and below school age. Children's services are provided for the benefit of parents and children, are accessed by a broad spectrum of Victorian families, and offered in a wide range of centres and facilities.

All early childhood education and care services in Victoria are subject to regulatory oversight by the Department's Quality Assessment and Regulation Division (QARD). The sector is covered by two regulatory regimes:

- the National Law regime which commenced in 2012 and covers approximately 4200 services in Victoria – those which provide regular, ongoing care. This includes those approved to provide care in long day care, kindergarten, out of school hours and family day care settings; and
- the Victorian regime which is provided for under the Act and its associated regulations (the subject of this RIS). This covers 320 services not covered by the National Law regime that primarily provide irregular care – such as occasional care (e.g. child care services provided by gyms), three-year olds' activity groups, short term services and school holidays care. Effectively, the Victorian regime regulates those services not covered by the National Law regime.

These two regimes establish and maintain minimum standards, as well as aim to mitigate risks to children arising from early childhood education and care services. The RIS notes that young children in care settings are particularly vulnerable, as they are not autonomous and often do not have agency or a voice, and that families expect the services they use to care for their children to meet minimum standards acceptable to the community that protect their children from potential physical and psychological harm and are subject to regulatory oversight.

The RIS notes that research shows the link between high quality education and care and positive outcomes for children who attend such services. Children from disadvantaged backgrounds in particular who participate in high-quality early education and care have been found to be associated with increased participation and retention in later education, positive social behaviours and higher educational achievement. The RIS states that key aspects of quality linked to developmental outcomes include staff qualifications, staff to child ratios, the quality of the educational programs provided to children, and the nature of the interaction between the child and staff member or care giver.

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

The RIS proposes to remake the Victorian regulations, with the objective of addressing the underlying policy issues in the sector (child safety and quality improvement), as well as aligning arrangements with the National Law where appropriate.

Analysis

The RIS compares options against a base case of letting the current regulations lapse. The base case would mean that many current requirements (such as staff to child ratios, information and record-keeping requirements, and fees) would not be mandated in regulation.

Options are assessed against the degree to which they achieve the safety and quality objectives of the Act, and the costs imposed on industry and government. The Department notes that it is often difficult to quantify the costs that options would impose, and therefore have used relative costings or a qualitative assessment where quantification was not possible.

The RIS analyses two options – maintaining the status quo requirements or aligning provisions with the National Regulations. The Department points out that, given terminology changes in the Act, options for the status quo may involve terminology changes. These options are applied to each section of the regulations:

Approval applications

Only the Alignment option is proposed for applications for approvals of providers and services. This enables the prescribing of documents and information required for applications as per the National Regulations. No status quo option is provided in 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.

Service approval categories

The status quo would see the seven current licence types remain. Alignment would see these licence types replaced with two service types – Occasional care services and Limited hours services.

Staffing options

Adopting a status quo option would see current staffing numbers and qualification requirements retained in the regulations. While moving to Alignment would provide similar levels of staff to child ratios and minimum staffing requirements, there would be a mix of regulatory costs and reductions (e.g. some increased staff ratios for some licence categories and allowing educators 'actively working towards' a qualification to be counted in staff to child ratios where previously they have not).

Safety, health and wellbeing of children

The status quo would see existing requirements that promote the safety, health and wellbeing of children remain, such as requiring lawful authorisation to take children on excursions, requirements around attending to children's personal hygiene, access to fresh drinking water, food service and first aid. Alignment would see the existing requirements reintroduced, with changes to what incidents are required to be notified to the Department, greater specificity about how services interact with children (individually and in groups) and a more flexible requirement for first aid training.

Equipment and facilities

The status quo would ensure that services provide adequate equipment and facilities to enable children to be properly cared for, such as adequate space in rooms, shading, outdoor space, and facilities for age-appropriate toileting, nappy changing, sleep and rest, and food preparation. Alignment would see the same requirements as the status quo, with additional requirements for laundry facilities. Limited Hours services are not required to provide outdoor space.

Complaints and serious incidents

Adopting the status quo would mean that a service must deal with and respond to complaints as soon and discreetly as possible, and notify the Secretary of any matter affecting the health, safety or wellbeing of a child or contravention of the Act or Regulations. Alignment would instead require that services notify the Secretary of complaints, serious incidents and any circumstances that pose a risk to the health, safety or wellbeing of children.

Registers and record-keeping (policies, procedures and information)

The status quo would see existing requirements for keeping and maintaining records remade, such as information that services must display, information to be made available for inspection and records to be kept for enrolment, attendance, medication, accidents and staff. Alignment would see the same requirements as the status quo, with additional requirements for providers to rehearse and document emergency procedures, securely store records, keep evidence of prescribed insurance and to review policies annually and update them if necessary.

Fees

The Act requires that a prescribed fee be paid for various applications for a provider or service (such as licensing/approvals, waivers from prescribed requirements and amendments to conditions). Adopting the status quo would see current fees for matters being applied (licence, renewal, approval of premises, etc.). Alignment would see the fee structure simplified to support the approval processes in the amended Act, the discontinuation of some fees (application to vary/impose conditions, fixed term licence fee), the introduction of new fees (annual service fee), and a consistent and/or nil fee for regulatory authority activities that require similar effort regardless of service size or type. The RIS provides case studies for various service types on how fee changes would impact their business.

Exemptions and waivers

The status quo would see the regulations continue to be silent on the matters for which service exemptions may be sought under the Act. Alignment would mean the regulatory requirements that can be waived, the information to be provided with the application, and the applicable fees are prescribed.

The RIS also notes that options for either fully aligning with the National Regulations, or pursuing non-regulatory options are not feasible. Full alignment would see all children's services subject to the same regulatory requirements as under the National Quality Framework. This is not considered practicable given the limited, occasional and *ad hoc* nature of care provided by the children's services being considered in Victoria. The Department considers non-regulatory options, such as a voluntary code of practice or public information campaigns, are not feasible due to them not being able to achieve the stated objectives of improving child safety and quality care consistently by providers sector wide.

Proposal

Based on the assessment above, the RIS proposes alignment for all sections of the regulations. The proposed option would:

- Align the process for provider and service approvals with the NQF (replacing premises approvals and licences)
- Streamline the current 7 licence types into 2 service categories: Occasional Care and Limited Hours
- Strengthen staff to child ratios to align with the NQF
- Introduce the ability for staff 'actively working towards' a qualification, or in the 3 months prior to enrolment in a qualification, to be counted in staff to child ratios as if they already held the relevant qualification
- Require a greater proportion of staff to have or be actively working towards a Diploma level qualification; change the 2 staff minimum requirement to 1 staff member (for most services); require 1 staff member on duty to hold first aid and other relevant training (as opposed to all staff)
- Require outdoor space to be provided by services holding an Occasional Care service approval
- Enable Limited Hours services to provide care for short periods (3 hours per day, 6 hours per week) to operate without diploma qualified staff (but in this case staff must hold a completed Certificate III level qualification).
- Change the fees to be paid by services and how they are structured.

While each regulatory area has been discussed and assessed separately, and in some instances the Status Quo option yields a better score, 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 that 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.

The Department estimates that the proposed regulations will decrease the cost of provision of children's service by approximately \$10 million in Net Present Value terms over 10 years (or 4.19%). Current regulations are estimated to cost industry approximately \$244 million over 10 years, whereas the proposed regulations would impose \$234 million. In addition to reduced cost to industry, the Department argues the regulations will see decreased costs to the regulator and support increased safety and quality of childcare services.

The RIS notes, however, that the impacts of the proposed regulations will vary depending on individual services' circumstances and may see some services' costs increase. It also notes that it has not been possible to fully quantify the expected benefits and costs.

Implementation and Evaluation

The Department aims to facilitate a smooth transition of children's services to the new requirements of the Act and Regulations and will provide a range of communications material (such as bulletins, newsletters, stakeholder forums, direct email and communications) to the early childhood education and care sector and their peak bodies prior to the new regulations commencing in mid-May 2020.

The RIS proposes a staggered transition period in order to give the sector time to adjust to new requirements. New requirements relating to policies and procedures must be met by 1 January 2021, the new annual service fee will be applicable from 1 July 2021, and other new or amended operational requirements (staffing and qualifications) must be met by 1 January 2022. In addition, all existing services' premises approvals and licences will be automatically converted to provider and service approvals, and providers will have 6 months to seek any amendments to that conversion, at no cost to providers.

QARD has committed to continue to undertake monitoring and compliance visits at least once every three years to each service. It is anticipated 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.

In addition to data and information collected via the enquiries line and/or monitoring and compliance visits, QARD undertakes a sector-wide Stakeholder Satisfaction Survey 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.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on (03) 9092 5800.

Yours sincerely



Anna Cronin
Commissioner for Better Regulation