

Consultation Forums Report Children's Services Regulation Review

November 2008



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1 Introduction

In September 2008, the NSW Department of Community Services (DoCS) began a major review of the Children's Services Regulation 2004. The review is intended to introduce important reforms to the way in which children's services are regulated in NSW. The regulatory review process is comprehensive and it is anticipated that a re-made Regulation will take effect by mid-2010.

As part of the review process, DoCS contracted RPR Consulting to conduct:

- 16 service provider forums across NSW. Each forum provided participants with an opportunity to gain an understanding of the broad options being considered as part of the review and to discuss their views in small groups as well as in plenary sessions.
- 6 parent focus groups covering different service types were held in rural and urban areas. Parents were provided with a short information sheet and discussed key issues for the review including: staff qualifications, staff ratios, breaches, compliance and the balance between affordability and quality.
- Two online surveys: one longer survey aimed at service providers and one shorter survey aimed at parents. The design of both surveys was informed by responses at the forums and the parent focus groups. The on-line surveys operated between 24 November and 12 December.

These four sources of information have been designed to both provide information to service providers and parents about the review, as well as gain initial responses that will help to shape the development of the draft regulations in 2009.

This report provides a summary of issues raised by participants of the consultation forums. Separate reports are being prepared on the other forms of consultation undertaken for the review.

1.1 About the consultation forums

Sixteen consultation forums were held in thirteen different locations (three forums were held at different times of the day in the same venue in Sydney city). The consultation forums were designed primarily for service providers, although they were attended by other interested people (including some parents, training bodies, peak organisations and DoCS children's services staff).

The forums were held over a three-week period in late October and early November 2008, following a mail out to all providers during September and October. In addition to alerting attention to the forum dates, the publicity also encouraged interested people to download a Discussion Paper about the review. All licensees of children's services were sent a hard copy of the Discussion Paper. The Discussion Paper outlines the process for the review, key issues for the review to consider and possible options to strengthen the regulations. As part of the consultation process, participants were encouraged to bring copies of the Discussion Paper with them to the forums.

People interested in attending the forums were encouraged to register on-line. This enabled the consultants and DoCS to make sure that venues were large enough and to identify any service types that appeared to be under-represented, allowing further encouragement of participation from under-represented services if this was needed.

Table 1 below identifies the number of people pre-registering for each forum, as well as those not showing up on the day and those registering on the day only. In all, 1341 people are estimated to have attended the forums, a very high participation rate by service providers from across the state.

Table 1: Number of registrations and non-attendance by forum¹

Forum	Pre-registrations	Registered & didn't attend	Day registrations	Final number of attendees
Moruya	21	3	3	21
Wagga Wagga*	63	0	17	80
Port Macquarie	32	8	20	44
Newcastle	127	24	20	123
Goulburn	31	3	13	41
Lismore	57	16	24	65
Sydney City Afternoon	165	51	50	164
Sydney City Morning	127	33	29	123
Sydney City Evening	57	18	20	59
Bathurst	24	2	20	42
Dubbo	59	13	15	61
Gosford	84	25	26	85
Liverpool	170	32	34	172
Penrith	145	34	44	155
Armidale	53	3	9	59
Wollongong*	47	0	0	47
No location specified**	3	0	0	0
Total	1265	265	344	1341

* Due to technical problems the number of people who pre-registered and didn't attend and those who registered on the day are indicative only

Participants at the forums included: licensees, staff or home based carers, some staff of training colleges, DoCS staff (usually attending as observers) and a few parents. Those pre-registering were asked to provide information on the service type they were linked with as well as whether it was a community based or private children's service.

Table 2 provides a breakdown of the types of services represented by those pre-registering for the forums (it was not possible given the constraints of the day, to get accurate information about those registering on the day).

¹ All numbers are approximate and indicative only of the number of people who attended the forums.

Table 2: Pre-registrations by service type and business type

Service type	Community based		Private		Total	
	Count	Per cent	Count	Per cent	Count	Per cent
LDC	211	36.3	373	63.7	582	100
Preschool	230	91.6	21	8.4	251	100
Multiple service type	113	83.1	23	16.9	136	100
FDC/home based care	107	87.7	15	12.3	122	100
Occasional care	23	95.8	1	4.2	24	100
Mobile	14	100	0	0	14	100
DoCS staff	39	100	0	0	39	100
Other*	77	81.1	18	18.9	95	100
Total	813	64.3	452	35.7	1265	100

*Other include: ISA; training bodies, including TAFE; other NSW and Commonwealth government departments such as NSW Health, the NCAC and FaHCSIA; OOSHC services, and; peak bodies.

Overall, the pre-registrations indicate that the forums were broadly representative of the children's services sector.

1.2 Purpose of the forums and format

The purpose of the forums was two-fold:

- To provide service providers with clear information about the Regulation Review, including timelines and consultation processes, issues identified to-date and options for change. The forums were seen as a first stage of a longer review process: ensuring that service providers were informed adequately and early in the review process, in order to gain more considered responses as the Regulations are developed.
- To provide participants with the opportunity to discuss the issues with their peers, providing feedback to DoCS at this point so that views of the sector can inform the further development of changes to the Regulations.

Each forum lasted for a total of 2.5 hours.

Format

- The format for the forums sought to ensure that all participants were clear on the issues, by first providing a presentation by DoCS staff that outlined the background to the review and the issues outlined in Discussion Paper. This presentation went for around 40 minutes and participants were provided with copies of the overheads that accompanied the presentation.
- Participants were then asked to form into small groups (venues had moveable chairs to permit small groups forming) and discuss for around 20 minutes, overall benefits and concerns they had with the issues outlined. Spare copies of the Discussion Paper were provided to those that had not brought copies. Each small

group was asked to record on a recording sheet, benefits, concerns and any questions the group had. Participants were instructed to record differences in views where these occurred within the group.

- The facilitator gained feedback from the groups for around 30 to 40 minutes: starting with groups outlining any benefits they had identified and then spending more time on concerns and questions. Where there was a question or a concern was raised that indicated that something had not been understood, the DoCS presenter would respond and/or clarify issues raised.
- Participants were then asked to form into a second round of groups based around specific topics. Topic groups were suggested, reflecting the key chapters of Discussion Paper and the presentation. Participants were encouraged to also nominate additional topic groups if they wished, and in three forums additional groups were formed. Groups discussed for 30 minutes the issues, any suggested approaches for change and recorded any conclusions (and any dissenting views). Each group then provided feedback to the full group on the key points/conclusions to their discussion.

1.3 This report

This report is based on the recorded feedback sheets and on the discussion held within the full groups from all forums. The written feedback sheets were typed up for each forum, grouped into themes and analysed to identify common themes and differences emerging.

The report is divided into sections:

- Section two provides an overview of responses
- Section three provides more detailed responses grouped by topics.

2 Overview of responses from the forums

Just before the forums began, the Minister for Community Services, Linda Burney announced that the government would introduce changes to staff: children ratios (1 staff member for every 4 children under two years), as part of the new regulation in 2010. The Discussion Paper provided some possible options for its introduction and these were discussed at the forums, along with many participants expressing views about the overall announcement.

In addition to this announcement, the day before the final forum was held, the NSW State Mini-Budget was brought down and included the introduction of licensing fees for children's services. The issue of licensing fees had been canvassed in all the forums (as it was briefly outlined as an option in the Discussion Paper), and at the final forum the issue did not overwhelm other discussion.

In the main, the two issues that gained most discussion were those relating to improved staff qualifications and the introduction of a 1: 4 ratio for 0 – 2 year olds in centre based and mobile services. The discussion paper asked questions about whether the 1:4 ratio should also be extended to family day care and home based care this provoked considerable discussion.

The majority of participants in most forums supported the improved ratios for under two year olds, but had concerns about how it could be implemented, fearing it could reduce the number of places available and reduce affordability for parents. A major implementation issue identified in the forums related to space requirements of centres and local government regulations for staff parking. Centres that were designed to meet the minimum current space requirements for under 2's (and parking spaces for staff) were concerned that they would not be able to increase the number of under 2's, and so this would result in a loss of places.

Options for improving staff qualifications was a more divisive issue:

- There was greater support for a minimum qualification level to be set, although there was a concern that existing unqualified staff may be lost that may be better 'suited' for caring, than poorly trained staff with minimum qualifications.
- Some strongly supported a suggestion to have more early childhood teachers (ECT) by reducing the number of children before a teacher is required from the current 30 to 20. Those that supported a higher number of teachers in the sector believed it would improve overall quality and professional recognition of early childhood.
- Some broadly supported increased numbers of ECTs but thought it was impractical, given the disparity in pay and conditions between childcare services and those in preschools run by the Department of Education or by independent schools. In their view, improved numbers of ECTs in children's services was a goal that would need considerable funding changes to occur before this could be achieved.

- Some opposed the suggestion, querying the research that demonstrated that an ECT contributed to better outcomes than a person with an early childhood Diploma. Those opposing the change were also concerned that the number of children before a teacher is required was an arbitrary one, with little evidence to support the change.

Feedback at the forums from report backs from the discussion groups and from the written recording sheets, indicated that issues could be listed as both a benefit and a concern. Often the *broad intent* of an option for change was supported, while concerns were raised about how it could be *implemented*.

Underlying many concerns expressed was the perception of the impacts of cost increases should improvements be introduced. While some participants were strongly of the view that any improvement would have a negative impact on services due to likely cost rises, other participants were more willing to explore ways to lessen cost impacts so that improvements could be introduced.

2.1 Benefits identified

The feedback sheets from each group indicate that 635 benefits were identified through the discussion process. The most commonly identified benefit was the Minister's announcement that a 1:4 staff: child ratio would be introduced with the new Regulation in 2010.

The most commonly identified benefits were:

- introduction of 1:4 ratio (142 or 22.3%)
- introduction of minimum qualifications (76 or 12%)
- five year licensing period/longer licensing (60 or 9.4%)
- requirement for teachers in centres below 30 children (52 or 8.1%)
- introduction of a master license (49 or 7.7%)
- reduced paperwork and clearer, less duplicative regulations (47 or 7.4%).

Many other benefits were also recorded, including: the consultation process for the Review; clarification of which services would be regulated; improved compliance and transparency; more flexibility in group sizes; and the suggestion of first aid/child protection training for all staff.

2.2 Concerns identified

The feedback sheets from each group indicate that 587 concerns were identified through the discussion process. As indicated in the overview, the two main areas of concern related to ratios and qualifications. The five main areas of concern were:

- introduction of 1:4 ratio (80 or 13.4%)

- change to ECT requirements (72 or 12%)
- introduction of a minimum qualification (61 or 10.2%)
- cost of any changes for parents (53 or 8.8%)
- introduction of a licensing fee (32 or 5.3%).

Many other specific concerns were identified such as the quality of current training (particularly for Certificate III), the shortage of qualified staff being available, and concerns related to family day care (such as excursion ratios).

3 Responses on specific topics

The forums allowed participants to meet twice – in general discussion groups to highlight benefits and concerns about what was being proposed and in specific topic groups to discuss issues further. This section has drawn on feedback from both sets of groups, with greater emphasis placed on the discussion groups held on specific topics.

3.1 Introduction of improved ratios for children under two years of age and flexible group sizes

All forums except one, had a topic group that discussed the issue of the introduction of the 1: 4 ratio and the related issue of group sizes.

Supporters of the change

Overall, there was strong in-principle support for improving ratios for under two years, with many in the forums calling for improved ratios for other age groups, particularly for two to three years olds (many noted that their developmental stage would also benefit from higher levels of supervision).

A minority of participants supported the introduction of the 1:4 ratio without qualification, wanting it to be introduced immediately across all services. These participants tended to be those in centres that had already introduced these ratios by spreading the costs across all parents (generally, but not always, community based services).

Supportive, but wanting gradual introduction

Others were supportive of the change but wanted a gradual introduction of the new ratios. These participants tended to be from centres that were worried about the cost impacts on families.

In terms of suggested approaches for phasing in of the ratio, most wanted it first introduced in centres with larger numbers of children in this age group before being phased into smaller centres. Other options suggested in the Discussion Paper received little support.

Supporting introduction only if there is increased government funding

The majority of topic groups held on this issue focused on the cost implications of the improved ratio. Seven groups wanted additional funding from government such as increased CCB or other compensation to change ratios. These groups tended not to trust the calculations undertaken by the economic modellers on the cost implications of the changes. In their view, centres would reduce the number of places available and would not spread costs across all parents in the centre.

A main argument used for the reduction in the number of places related to space requirements. Smaller centres that had only 10 babies are often designed to meet minimum space requirements for those 10. Participants argued that the changed ratio would result in the number of babies reducing to eight, rather than services increasing numbers to 12. To have centres increase the number of places in centres with design constraints, space requirements would need to change and local government regulations for the number of parking spaces would also need to change to accommodate an additional member of staff.

Other issues raised

- There was little support for ratios operating only at specific times of the day, while some raised this approach in the first general session, no topic groups suggested this as the ideal method for introducing the change.
- One interesting suggestion was for centres in disadvantaged areas to have higher staff ratios. This group argued that the research evidence indicates that children from disadvantaged backgrounds are impacted the most by improvements in quality and conversely are impacted negatively when poor quality care is provided. This group suggested that government invest in more staff for centres with a high disadvantage profile (similar to schools). They suggested using the Australian Early Development Index to identify most at risk areas requiring greater investment.
- Only one group suggested that the Queensland approach of lower ratios for young children be used.

Flexibility in group sizes

In eight forums the issue of group size was discussed within topic groups. There were mixed views on relaxing group size requirements for older age groups. While most groups noted that there were benefits in having greater flexibility, they also noted caution about relaxation of prescription in this area. Participants were concerned about being able to adequately supervise children, about the number of children that could be fitted into larger spaces (it was felt that large numbers of children, even with the required number of staff, posed problems for children's well being and developmental learning). As a result some wanted clear capping of maximum sizes.

It was also clear that many found the issue of group size difficult to interpret in the current regulations and that the new regulations needed to be clearer about how ratios and group sizes worked together. There was also support for large groups continuing to be able to come together for short periods (such as a concert or event).

3.2 Qualifications

At all forums, the issues relating to improvement in qualifications was the most hotly discussed topic. In the larger forums there were generally up to three topic groups held on the issue of qualifications, indicating the level of interest by participants in the issue.

The proposals for improvements to qualifications included four separate issues:

- introduction of a minimum qualification for staff directly caring for children
- requiring more staff directly caring for children to have child protection and/or first aid qualifications
- lowering of the numbers of children requiring a trained early childhood teacher from the current 30 to a possible 20 or even 10
- clarifying the role of ECT staff and primary contact staff members (0 -2 years) in centres to have a greater focus on children's outcomes.

Each of these are discussed next.

3.2.1 Minimum qualification for care staff

Not all groups discussed the issue of a minimum qualification, instead focusing more on the issue of ECT in centres.

Support for a minimum qualification for all care staff

Seven forums (all based in rural areas) had broad support for the introduction of a minimum qualification, generally suggested as a Certificate III. In these forums support for a minimum qualification was discussed with an assumption that it would be phased in, that existing staff would be able to gain recognition of prior learning and that casual staff would not be required to have this qualification. These forums supported a minimum qualification because of the need to improve quality of care and to gain greater recognition of the skills required in caring for children (as one forum member put it, “why is it that pretty much any other job from fixing cars to baking bread require a qualification but caring for and educating children doesn’t?”).

Qualified support

In a further four forums (one in Sydney, three in rural areas), there was more qualified support. Support for a minimum qualification was dependent on one or more of the following:

- Training is improved for Certificate III. Many forums raised concerns about the standards of current training providers since qualifications can now be gained outside the TAFE system. Many participants across the forums reported that to address welfare to work options for single parents or the unemployed, Centrelink was encouraging women to do short courses to gain a Certificate III from private colleges. In the participants’ view, these resulted in ‘qualified’ people that had little aptitude, poor knowledge and few skills in caring for children. This has lessened confidence in minimum qualifications as an indicator of quality.
- Casual staff are not required to have a qualification. Three forums were concerned that without this proviso, the operation of centres would be too difficult.
- Staff in-service and other professional development is recognised in assessing qualifications
- Recognition of prior learning is easily available and accessible for existing staff and a reasonable time period is provided to gain the qualification
- Other qualifications are recognised, particularly overseas qualifications of staff trained elsewhere
- ‘grandfathering’ clauses are introduced to allow existing staff with 15 to 20 years of experience to remain employed at that centre without being required to gain a qualification and/or not be required to gain a qualification if approaching retirement age.

No support

In three large Sydney forums there was a rejection of the introduction of minimum qualifications, firstly because of potential cost and secondly because participants were not convinced that a minimum qualification was required. This latter point related to the issue of a lack of confidence in current training, with participants noting that many unqualified staff had greater aptitude, knowledge and skills than those with a Certificate III. These participants were often concerned for specific members of their staff and what would happen to them if a minimum qualification was introduced.

Cost issues largely related to the cost of gaining training or recognition of prior learning, with many pointing out that there was little difference in pay rates between unqualified and minimally qualified staff.

Other issues raised

- Some groups also raised issues relating to minimum qualification requirements for supervision in rooms of different age groups. The two groups that discussed this issue suggested that a Diploma level was required as a minimum qualification, viewing a Certificate III as inadequate as a base level..
- To address the lack of confidence expressed about the Certificate III a few participants suggested that a set of competencies be introduced (including first aid and child protection) that amounted to a minimum qualification.
- Three groups raised the issue of traineeships and apprenticeships as a way of moving towards minimum qualifications.
- A few groups raise an option of setting a percentage of staff that could be unqualified, to allow casual staff to be employed without a qualification.

3.2.2 First aid and child protection training

There was widespread support for all care staff having both up-to-date first aid and child protection training/qualifications. Only a minority of groups raised the issue of cost and access to the training.

In relation to child protection, a few forums suggested the introduction of a Blue Card system such as occurs in Queensland, allowing a register of staff that meet the Working With Children check. This would be a significant cost and time saving for centres.

3.2.3 Requirements for trained early childhood teachers

The issues involved in changing requirements for early childhood teachers were the most contested at the forums. There were mixed views on the issue: even those that supported increased requirements for teachers expressed doubts about the capacity in the sector for implementation. The key issues raised are outlined next.

The research evidence that supports a change

Participants at a number of forums queried the evidence basis for supporting increased requirements for ECT teachers. Even when they gave in-principle support for increasing qualifications they were concerned that the number of 10 or 20 children was arbitrary and not linked to any evidence.

Other participants that were strongly supportive of greater professional qualifications believed that the evidence that linked higher qualifications to children's outcomes was sufficient to suggest that ECT staff should be in each group of children in centre based care. These participants also thought that ECT staff should not be confined to older children, given the research on early brain development. These participants were more likely to link the ECT issue to the broader COAG Agenda and the introduction of universal access to 15 hours of preschool.

The cost implications and the impact on affordability

A key concern for preschools and for long day care centres was the issue of cost and the resulting impact on parents. This was particularly true for centres that are currently not required to have a teacher, including many community-based preschools. Concerns relating to cost were high, with some participants predicting they would have to close, especially as they couldn't expand because of building capacity and/or being located in an area of low demand.

The difficulty of attracting and retaining teachers

Services were particularly concerned with the difficulty of recruitment and retention. All forums reported the difficulty of meeting the current requirements for teaching staff due to shortages of early childhood trained teachers willing to work in the sector. Teachers in children's services receive lower pay, work longer face-to-face hours and have fewer holidays than their counterparts in a school based preschool.

When the issue was raised across all forums, examples were provided of services failing to attract ECT teachers, with many reporting they had to seek permission from the Department to continue operating with less qualified staff or while less qualified staff gained an ECT qualification. Participants also gave anecdotal information about current graduating early childhood teachers, with reports that none intended to work in child care services upon graduation.

Four year versus three year trained teachers

A related issue to recruitment is the increased requirement for gaining an early childhood degree. Universities have moved to four year training (at one forum it was reported that the University of Western Sydney is moving to a five year degree); the Commonwealth government is requiring four year trained teachers to be employed in providing 15 hours of universal preschool education. This was of concern to many participants as there are currently no bridging courses available for three year trained teachers to up-grade qualifications. Grandfather clauses will be needed for current staff with only three year training.

Alternative approaches suggested

Participants attempted to find alternate options for the issues of teaching qualifications. Suggested approaches included:

- recognition of Montessori and overseas qualifications
- bridging courses for three year trained teachers and for primary teachers willing to move into early childhood

- better pathways for diploma qualified staff to upgrade to teacher qualifications, including being able to work and study at the same time. This approach was felt to have merit, if governments subsidised training and wages.
- increased incentives to move into children's services by improved wages and conditions; this may require having more teachers to cover all parts of the day, as individual teachers would work hours equivalent to school teachers. This would need to be subsidised by governments. One suggestion was that all early childhood teachers should be employed by the Department of Education and be placed in centres for equivalent hours to education run preschools.
- sharing of teachers across smaller centres (two centres to share a teacher)
- greater training, support and recognition for diploma trained staff. Some groups held the view that diploma qualified staff with years of experience provided higher quality care than first year out teachers.
- greater flexibility in meeting regulations to not replace a trained teacher on annual leave or sick pay with another teacher.

3.2.4 Clarifying the role of teachers

There was widespread support for clarifying the role of teachers, with most agreeing that teachers should be used to focus on programming, working with and mentoring other less qualified staff and interacting with children. However some participants pointed out that accreditation requirements can work against this role, as mainly teachers are relied upon to document and prepare for accreditation.

3.3 Family day care

All forums had a topic group convened on family day care issues. These were mainly attended by coordinating staff of family day care schemes across NSW, although a small number of carers also attended.

Ratios

The majority of groups thought that while there was merit in setting age ratios, in reality most schemes currently monitored age groups and numbers of children for each carer. They noted a change to the current flexible arrangements that allow each carers situation to be assessed would be an administrative 'nightmare' and that self-regulation had worked well to this point.

While generally supportive of limiting the number of under two year olds, most groups felt some flexibility was required to judge individual circumstances of carers:

- Children with a disability in a group can impact substantially on the number of children of any age that a carer can look after.
- Family day care is ideally placed to care for multiple births and sibling groups; set age ratios might decrease this capacity.

- Family day carers look after school age children, including their own children. This is an important aspect of the flexible care provided and also an income stream for carers. Limiting overall numbers would decrease this capacity.
- The developmental age range within under two category is large, some groups suggested an under 12 months, under 2 and under three ratios, but with flexibility as children became older.
- Experience of a carer is also critical in placement; some groups felt that new carers should have tighter restrictions on the number of very young children and mix of ages that they care for.

A number of groups suggested limiting the number of under twos per carer to two, while maintaining current overall group size limitations of five under six and seven under 12's. Other groups argued that this would limit the supply of under two year old placements (which are in high demand) and instead there should be two children under 18 months and three children under two years.

Excursions

A related issue to ratios was the application of the same ratios across all service types for excursions.

All groups were against the introduction of the same ratios for excursions in FDC. They argued that ratios would effectively leave carers housebound and prevent them from having school-aged children. It would also decrease the number of carers available as many have their own school-aged children and would not be able to drop off and pick them up from school. Many believed that a limitation on excursions would mean that many would leave the sector altogether.

Just as importantly, they argued that effectively preventing excursions would dramatically reduce the quality of care and would also contravene NCAC accreditation standards. Carers would have increased stress and isolation by not being able to utilise local parks and attend playgroups. It would place greater pressure on carers to have larger outdoor spaces to compensate for an inability to use parks; this in turn could limit the range of carers available especially in high-density areas.

Instead the majority of groups were in favour of risk management and the development of risk management plans. Guidelines for risk management plans could also limit excursions to higher risk places without additional adults being present (for instance excursions near water). One group suggested that first aid training and risk assessment training should be mandatory for all carers.

Qualifications

All groups except one were very supportive of a minimum qualification for carers. Groups suggested that this would have a positive impact on care and on the recognition of the skills of carers. A number of schemes reported that they already provide accredited training and undertake workplace assessments to enable carers to gain Certificate III qualifications. Other schemes have developed training modules that are not accredited but which support carers undertaking Certificate III.

Support for a minimum qualification (seen as a Certificate III) was conditional on:

- it would be phased in over time
- recruitment of new carers could occur without a qualification, but with a time period set by which they had to become qualified
- existing carers could become certified using recognition of prior learning systems
- schemes had access to funding to train and support carers, especially CALD and Aboriginal carers and carers in rural areas; this would enable Coordination workers to undertake workplace assessments to assist with this process.

Only one group did not support a minimum qualification, believing that it would be a potential disincentive in recruitment. This group did not believe that a Certificate III would add value to the skills of carers who are generally mothers with a lot of experience. They were also concerned about literacy requirements for some carers that had poor literacy.

Other issues

A few other issues were raised by groups in relation to regulations for FDC:

- the need for all Coordinating staff to have degree qualifications and workplace assessment qualifications (one group)
- the need for greater clarity about weekend and overnight care within the regulations
- the cost of working with children checks for others in a carer's household
- a suggestion that in venue care should be regulated and allowed to increase access for carers who do not have required space and facilities (especially in poorer areas); in venue care could allow local facilities to be used by carers
- there are currently no limits on the number of children between 12 – 16 years who may be present in a family day care setting nor any guidelines of how to manage these ages in the context of FDC.

3.4 The outcomes framework and guidelines for children under two years old

While in the majority of forums topic groups were held on this issue, many struggled to find a clear focus for suggestions as to how the outcomes framework should balance prescription and flexibility. Overall there was support for:

- greater guidance in the Regulations for children aged under two
- bringing the two current sections of the Regulations together under a framework of outcome statements
- maintaining prescription within the Regulations for key components that keep children safe, healthy and developing.

Guidance for under two's

Most groups discussed this issue at greater length, highlighting the current lack of focus within the Regulations on this age group. There was consistency between most groups in what they recorded:

- guidance in this area needs to have an emphasis on attachment, building relationships and interactions between carers and children
- there is a need to ensure that programming occurs in this age group to assess and assist developmental learning
- it needs to recognise the importance of trained staff and reduced ratios, with clear outcomes being articulated that are linked to research
- there also needs to be a focus on two to three year olds, who are often left out of programming.

Outcomes framework

There was broad support for an outcomes framework based on research evidence on what constitutes quality care. Many suggested an outcomes based curriculum, using the national Early Years Learning Framework (EYLF). However there was a concern about duplication with accreditation and what should be put within Regulations versus higher quality aspirational standards. Some argued that there was a need to tie regulations to aspirational document like the EYLF—shifting the focus away from compliance and towards more holistic development of the child.

This approach would allow for greater flexibility and less of a focus on prescription and assessing breaches in isolation. Some suggested more emphasis on how programming, interactions and the environment are reflected in care for children.

Others were cautious of this approach, believing it would add another layer for interpretation and paperwork (in addition to accreditation processes). They were concerned that too broad an approach could lead to difficulty with CSA's having different emphasis and that staff would end up spending more time on documentation rather than on actually doing the care.

One group suggested a greater focus on 'high risk outcomes' although they didn't provide examples of what these might be.

Specificity, prescription and risk

A number of groups raised the need for less prescription in relation to risk, with a greater emphasis on risk assessment and management. This would allow children greater opportunities for safe risk taking and learning than is currently allowed. Examples provided included: current requirements for children's playgrounds being overly prescriptive; regulated rural services not being able to have chickens; need for natural environments that allow children to climb trees and move; emphasis on cleanliness is actually contravening health research on allowing children to build immunity through exposure to every day germs.

Other suggestions for specific inclusion or greater clarity included:

- preventing a staff member working alone
- making clear the role of qualified staff members and the need to work with the children, not to do paperwork or cleaning etc
- addressing the issue of disability by including a clear definition of disability, outlining ratios and where additional staff are needed (and ensuring funding is available to meet these ratios)
- having greater emphasis on cultural diversity and inclusiveness; cultural safety and positive identity as part of children's identity and development to support greater access to children's services by culturally diverse groups
- changing space requirements for under two year olds to allow centres to meet new ratio requirements
- limiting the number of under 12 month old children/ non-mobile babies to 50% of the group size
- ensuring that school readiness programs are included in expectations of curriculum framework
- making sure it is clear what the intent of the regulation is: for instance 'bathing facilities appropriate for the age and size of the child' is very difficult to interpret.

Supporting the outcomes framework

There was also some discussion of the way in which an outcomes framework and the Regulations could be supported. A number of groups wanted to ensure that the way the Regulations were written was in Plain English and accessible to parents – worded in such a way that parents can understand what is required. The outcomes also need to be written in a way that can translate easily to being measured. A group suggested an additional guide that provides examples/criteria as to how the outcomes can be assessed in different contexts/locations and service types. Another group suggested an on-line training program be developed to illustrate the same.

A number of forums raised the issue of the overlap and sometimes conflicting intent between the Regulations and local government requirements for building standards, parking and fire compliance. They urged that the new Regulations should attempt to overcome these current difficulties.

At all forums there was considerable discussion about the role of the Children's Services Advisors (CSAs), with many complaining about a lack of consistency between CSAs and the apparently arbitrary nature of what was focused upon in a visit. They wanted more 'positives' in CSA visits, acknowledgement of what was being achieved not just a focus on minor and trivial details. Many participants across the forums called for greater transparency in the tools that CSAs use to assess services, believing that in the new regulatory environment this assessment tool should be provided to services.

In many forums there was a high level of complaint about the way the Department's officers exercise their responsibilities, including concerns about inconsistent interpretation of the Regulation or not providing services with guidance or advice. These participants called for more flexibility by CSAs in interpretation (as opposed to those that saw flexibility as a negative thing, leading to inconsistency in application of the regulations). They wanted the CSAs to be able to have broader discussions about what works rather than focus primarily on regulatory compliance, taking on a greater advisory role to coach services in best practice. CSAs were in a key role as they saw services across a system, so should be able to use this information to assist services to improve.

3.5 Licensing

All forums held topic groups to discuss licensing, with some of the larger forums having two groups on the issue. Some aspects of what had been proposed were more strongly supported, while others such as licensing fees were mainly rejected.

Licensing fees

With the exception of the last forum, participants were not aware of the Government's decision to introduce a license fee (it was announced as part of the Mini-Budget in November). It is likely that responses to the issue were relatively muted due to this announcement not having occurred.

Many participants queried the reasons for a licensing fee, seeing little relationship between the role of DoCS in regulating and the need to pay a license fee. Fees were seen to add further costs to parents and to shift a community responsibility to parents. A number of participants pointed out that services already paid an accreditation fee and that the duplicative nature of regulations and accreditation was also occurring in this instance.

Some groups were willing to pay a small fee if services gained additional support and assistance from CSAs. However they were cynical that additional services would be provided and instead saw it as a State revenue raising venture.

Period of license

Only one group wished to retain the current three year licensing period, with strong support by other groups for a longer license period of around five years. Groups thought that a longer license period could lead to savings in administration and so saw this a key benefit. A few groups cautioned that a longer license period would need regular monitoring and spot checks by DoCS.

One group suggested that license periods be variable, based on history of compliance. Services that were new or problematic would have shorter license periods, those that were experienced and found to be consistently complying could have longer periods.

Master license

The majority of groups supported the idea of a master license, thinking that it would save on administration considerably. A smaller number of groups supported a master license on condition that it was area based. In these groups' views it is problematic for a licensee to have multiple service types spread over a large geographic area, as their control and knowledge of individual services is compromised. Another group had similar concerns but

suggested there should be an upper limit to the number of services (rather than a limited area) under a master license.

Two groups remained unconvinced that master licenses were a good thing, having concerns that effective control of different service types would be problematic.

Licensing processes

A number of groups wanted licensing information to be sent into the Department three months before the license expired, rather than the current six months. These groups noted that many changes occur in this time and the more current the information is the better. A few suggested greater use of online approaches to reduce paper work.

A few groups were concerned about the move to central licensing, believing that it had increased paperwork due to limited contact and capacity to gain information or clarification at a personal level. Suggestions for improvement included greater use of online registration processes that simply allow updating of information to occur on a regular basis (for instance for when circumstances change such as a change of supervisor). Better information being available on the website was also suggested, including on-line training on licensing requirements and what was found at visits.

Role of duty holders, licensees and authorised supervisors

A few groups raised the need for greater clarity of roles as follows:

- “Concern with the level of responsibility authorised supervisor have when the licensee isn’t aware of their obligations”
- “Duty holder-role is not clear: is it the authorised supervisor or is it the licensee? The Director should be a duty holder, not a voluntary management committee”.
- “Responsibilities for acting supervisor and the licensee need to be defined, including acting supervisors responsibility when not on-site”.

Probity checks and initial licensee establishment

While a number of participants supported reduction of requirements for written references, there were concerns at the current approach to assessment of licensee’s fitness, with some arguing for more rigorous processes that examine the history of the person. Some suggested DoCS should have a training program on the regulations and responsibilities of licensees, with licensees having to pass a competency test before being accepted.

Finally some suggested that probity checks should include fraud.

Other issues

A number of other issues were raised within group discussions on licensing. These often sat outside regulations and were often related to funding, service models and training. Many raised the issue of committees of management models and the viability of services relying on committees of management to undertake the work of running preschools or other services. There was a call for DoCS to have a greater role in training and equipping management committees and/or assisting in their amalgamation. Some called for Government to take over running preschools altogether.

3.6 Compliance and enforcement

All forums held topic groups on compliance and enforcement issues. There was strong support for a greater range of penalties that are linked to the severity of the breach. There was less agreement on how much information on breaches should be made public or provided to parents.

Many groups discussed the role of the Department in compliance, often recording the desire for the role not to be focused only on policing, but also on providing support to improve and comply. This issue came up across many of the discussion groups, particularly in relation to the CSA role. A number of groups wanted acknowledgement of compliance, not just a focus on what was non-complying.

Non-compliance and penalties

There was strong support for more graduated penalties that matched the severity of the non-compliance. Severe non-compliance was considered to be those that pose a risk to child protection and safety, with one group suggesting that poor staff interaction with children should be included within this definition (indicated by disengaged children).

A suggested approach from a range of groups was to develop some form of scale from 1 (lowest) to 10 (highest) that rated each instance of non-compliance in terms of severity; which could then be added up, with scores of xx rating an immediate and high level of penalty such as prosecution, scores of yy having lesser penalties such as fines and the lowest scores having compliance notices. This would deal with services that have multiple, more trivial instances of non-compliance as well as those that have a single breach that poses high risks to children. Clear timeframes for compliance should be developed proportionate to the severity of the non-compliance, with further penalties occurring if there is a failure to comply within the timeframe.

There was a suggestion of a reward system, whereby services with good track records of compliance might have lower license fees and longer licenses; those with a poor record would incur more monitoring, have higher fees and shorter licenses.

Transparency regarding non-compliance and penalties

Views were mixed on how public non-compliance should be made. Some were very concerned that adverse publicity can result in a higher level of punishment, despite rectification of the non-compliance. Those with these concerns wanted parents to be notified only where more severe levels of non-compliance were found; some wanted a consultation process with the service to occur before any notice went out to parents.

Others strongly supported greater transparency to parents, so that more major non-compliance would result in a letter to parents (not minor things such as a broken tile).

Processes for monitoring

A number of groups raised issues about processes associated with monitoring compliance including:

- a grievance process is needed to complain about the conduct of a CSA

- the need to consider problems of rural services in relation to Internet access (if the Internet is used for lodging reports on non-compliance)
- serious breaches need to be investigated at the time they occur
- spot checks need better clarification of processes and how they are reported upon.

Informing parents

Some groups emphasised the need for greater transparency, supporting the suggestion that DoCS puts on its website information at a regional and state level about licensing and services. One group suggested this should include information about staff qualifications and turnover, management of centres and compliance (both positive and negative).

3.7 Other issues

Links between Accreditation and Regulation

Feedback from a range of groups and discussion in the plenary sessions of the forums raised the linkages between national accreditation and state regulation. Many participants found it difficult to distinguish the intent of accreditation and regulation, suggesting that regulation processes and DoCS should provide support for quality improvement rather than a focus on quality assurance. The duplication of the systems was raised as an issue frequently, especially with the suggestion that an outcomes framework should be used in the Regulations. Finally the issue of paperwork and documentation of practice to meet accreditation and the regulations was raised by some as an additional cost and taking away from work with children.

Regulations scope

While no topic groups were convened on this issue, a number of discussion groups did note views on the scope of the regulations. There was consensus on:

- the regulations not being extended to playgroups
- the need for regulations to cover in-venue care, particularly in relation to care provided in Clubs.

Mixed views were recorded in relation to school orientation programs and in-home care, with a few groups noting support for regulating these services and a few rejecting regulation.

Management committees

While the issue of service structures with voluntary management committees is outside the scope of the Regulations, the difficulty presented by the instability of committees was a constant theme throughout the forums. Many groups suggested that DoCS or DET take over the running of preschools. Participants in the consultations highlighted many aspects of the difficulties in using voluntary management committees to operate services, especially small services where the committee is taking on some of the operational management role normally fulfilled by paid staff in larger services. Issues raised relating to the Regulations included:

- the difficulty of Aboriginal preschools in gaining committees that can meet the requirements in relation to personal identity documentation
- the difficulty of updating licenses each time the membership of committees changes.

The consultation process

Participants in many forums thanked the Department for providing a meaningful consultation process at this stage of the Regulation Review. The majority of the feedback about the consultation process was positive. In one forum, some participants complained that they had not received copies of the discussion paper and that the time of the year made it very difficult to attend. In one rural forum, some participants had travelled from the far west of NSW and complained that this had resulted in a negative impact on their services. In future consultation processes it may be useful to provide a web-based presentation and a teleconference option for services in more remote areas.