

**NSW Department of Community
Services**

Children's Services Regulation 2002
Regulatory Impact Statement
Final Report

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Executive Summary

From 1994 to 1998, a review of the *Children (Care and Protection) Act 1987* was conducted. As a consequence of this review, other reports and changing circumstances, the *Children (Care and Protection) Act 1987* was replaced by the *Children and Young Persons (Care and Protection) Act 1998*.¹

Chapter 12 of the Act deals with children's services has not yet been proclaimed to commence. The Children's Services Regulation 2002 is proposed to replace the existing Centre Based and Mobile Child Care Services Regulation (No 2) 1996 and the Family Day Care and Home Based Child Care Regulation 1996.

The Children's Services Regulation 2002 includes provisions for the licensing of children's services, information for parents, child numbers, staffing standards, standards of facilities to be provided and administrative procedures and policies.

In accordance with the requirements of the *Subordinate Legislation Act 1989*, a Regulatory Impact Statement is required to assess the potential costs and benefits associated with the proposed regulatory model, as well as any alternative options that may be capable of meeting the legislative objectives.

Specifically, Schedule 2 to the *Subordinate Legislation Act* requires that a Regulatory Impact Statement be prepared which includes the following matters:

- (a) *A statement of the objectives sought to be achieved and the reasons for them.*
- (b) *An identification of the alternative options by which those objectives can be achieved (whether wholly or substantially).*
- (c) *An assessment of the costs and benefits of the proposed statutory rule, including the costs and benefits relating to resource allocation, administration and compliance.*
- (d) *An assessment of the costs and benefits of each alternative option to the making of the statutory rule (including the option of not proceeding with any action), including the costs and benefits relating to resource allocation, administration and compliance.*
- (e) *An assessment as to which of the alternative options involves the greatest net benefit or least net costs to the community.*
- (f) *A statement of the consultation program to be undertaken.*

The NSW Department of Community Services has engaged PricewaterhouseCoopers to prepare a Regulatory Impact Statement of the Children's Services Regulation 2002.

Due to the time constraints involved, this report is largely a "desktop" analysis. In consultation with the Department of Community Services, PricewaterhouseCoopers has undertaken some limited preliminary discussions with peak industry bodies to essentially capture "first impressions" of the proposed changes. Details are set out in Appendix C.

¹ Proclamation has been staged of the provisions of the Act – see section 3.9 for further details.

While this process has been useful in informing the Regulatory Impact Statement it does not represent the full extent of the consultation program planned. The core consultation process is to be conducted upon the official release of the Children's Services Regulation and the Regulatory Impact Statement in early 2003. Details are provided in Appendix B.

The objectives of Chapter 12 of the *Children and Young Persons (Care and Protection) Act* are to:

- (a) ensure the safety, welfare and well-being of children in children's services, and
- (b) promote certain standards for those services, and
- (c) ensure, as far as possible, that all persons working in children's services are suitable for such work.

PricewaterhouseCoopers has identified five alternative options by which the stated objectives of the proposed statutory rule could be achieved, these being:

- statutory regulation;
- co-regulation;
- self regulation;
- negative licensing; and
- to rely on other regulation and industry standards.

In summary, the alternatives to statutory regulation set out above all provide similar benefits in terms of savings that may be gained from the elimination or reduction of compliance, administrative, monitoring and enforcement costs. In addition, they all provide degrees of flexibility, which may not be associated with a statutory rule.

However, each of the alternative options is lacking in transparency, accountability and enforcement provisions, and is likely to have poor acceptance by the consumers, the sector and other stakeholders. They also result in a significant increase in the risk of harm to children in children's services. On balance, PricewaterhouseCoopers considers that the costs associated with each of the alternative options significantly outweigh any potential benefits.

It has been demonstrated that a statutory regulatory regime will have particular benefits that are not common to other alternative options. These benefits include:

- enforceability via legislation;
- ensuring a consistent level of quality care is provided by service providers and the provision of a benchmark to which service providers may refer;
- stakeholder acceptance; and
- a licensing process which is transparent.

The consultation process with the sector, which took place in 2000 resulted in almost total support for regulation of the sector. Most peak bodies and stakeholders submitted that statutory regulation was the only practical way to ensure minimum standards of care, protection and safety in children's services.

There may be particular costs associated with a statutory regulatory regime that are not necessarily associated with other alternative options. In summary, these costs could include:

- compliance costs for service providers;

- additional administrative, monitoring and enforcement costs incurred by DoCS;
- economic efficiency costs associated with potential barriers to new sector entrants;
- the possibility that some providers may not go beyond the minimum standards required; and
- a perception of a lack of flexibility which may discourage innovative practices.

It is accepted that the regulatory regime must ensure the safety, welfare and well being of children in children's services. On balance, PricewaterhouseCoopers considers that the benefits significantly outweigh the costs associated with the proposed regime. PricewaterhouseCoopers finds the proposed statutory licensing regime to be the most appropriate model of regulation.

A number of specific changes have been proposed to the statutory arrangements as set out in the Children's Services Regulation. The proposed changes include a number of relaxations with respect to:

- use of mobile phones for service providers;
- requirements for nappy change services only where children wear nappies;
- age appropriate barriers on stairs only where necessary;
- child restraints only required in vehicles seating less than 9 persons;
- mixing school aged and younger children in before and after school care;
- elimination of the flyscreen requirement; and
- easing of the softfall requirement for family day care.

These relaxations are not significant changes to the overall regulatory framework however they are expected to provide increased flexibility and reduced costs without a discernible impact on the quality of services provided.

The majority of changes proposed under the Children's Services Regulation relate to increased requirements. A number of these changes may have a material "financial" cost impact on service providers. Consequently the changes may impact on the availability of places and ultimately on children and parents who wish to use those services. These issues include:

- the location of craft sinks not being adjacent to nappy change facilities or toilets;
- a reduction in the staff : child ratio from 1:5 to 1:4 for children under 2 years of age; and
- application of the youngest child's age when determining staff:child ratios in mixed age groups.

These last two changes may benefit children's development over the long term, as brain research has linked smaller class sizes with better learning outcomes for children. However, it is not clear that these proposals will have a net public benefit if the result is fewer places or less flexible drop off and pick up times. The consultation process which is scheduled for February 2003 will provide a forum for more detailed consideration of the impact of the proposals.

The Children's Services Regulation includes a number of other specific proposals, which have been discussed in further detail (in addition to those above) in the body of the report.

1 Introduction

1.1 Background

The NSW Department of Community Services (DoCS) is currently preparing a new consolidated regulation — the *Children's Services Regulation 2002* (the draft Regulation) — to replace the *Centre Based And Mobile Child Care Services Regulation (No 2) 1996* and the *Family Day Care and Home Based Child Care Regulation 1996* (the 1996 Regulations) made under the *Children (Care and Protection) Act 1987*. The 1996 Regulations are due for repeal under the *Subordinate Legislation Act 1989* on 1 September 2003.

The *Subordinate Legislation Act* is designed to ensure any regulations made by government are necessary for the benefit of the community. To do this, the Act requires the regular review of subordinate legislation (that is, any regulation, by-laws, ordinances or rules, which are made under the authority of an Act of Parliament). The Act provides for the staged repeal of regulation on 1 September on the fifth anniversary of their making.² The regulations may be remade with minor or major amendments, allowed to lapse or have their repeal postponed.

An exemption from the automatic repeal provision was obtained for the 1996 Regulations up to September 2003.³ Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998* (the Act) deals with children's services, it has not yet been introduced.⁴

The draft Regulation includes provisions, which deal with the licensing of children's services; child numbers and staffing standards; facilities and equipment, including space requirements; practice and administrative requirements, including information for parents and probity checks. The draft Regulation must meet the requirements of the *Subordinate Legislation Act*, which includes preparation of a Regulatory Impact Statement (RIS) and seeking public comments on the draft Regulation.

A RIS contains options considered and an assessment of the relative costs and benefits of these options, with the objective of ensuring that the economic and social costs of any regulation are fully considered and that the option chosen produces the greatest net benefit to the community.

PricewaterhouseCoopers (the Assessment Team) was engaged by DoCS to prepare a RIS for the draft Regulation in accordance with the requirements of the *Subordinate Legislation Act*.

² Section 10 of the *Subordinate Legislation Act 1989*

³ Section 11 of the *Subordinate Legislation Act 1989*

⁴ Proclamation has been staged of the provisions of the Act – see section 3.9 for further details.

Schedule 2 to the *Subordinate Legislation Act* requires that a RIS be prepared which includes the following matters:

- *a statement of the objectives sought to be achieved and the reasons for them;*
- *an identification of the alternative options by which those objectives can be achieved (whether wholly or substantially);*
- *an assessment of the costs and benefits of the proposed statutory rule, including the costs and benefits relating to resource allocation, administration and compliance;*
- *an assessment of the costs and benefits of each alternative option to the making of the statutory rule (including the option of not proceeding with any action), including the costs and benefits relating to resource allocation, administration and compliance;*
- *an assessment as to which of the alternative options involves the greatest net benefit or least net costs to the community; and*
- *a statement of the consultation program to be undertaken.*

Schedule 2 of the *Subordinate Legislation Act* also specifies that both indirect and direct social and economic costs are to be considered and where possible the costs and benefits should be quantified. Although some of the administrative and compliance costs can be measured quantitatively, many of the social and economic costs of statutory regulation and alternative regulation models for the children's services sector are difficult to quantify. There are many situations in which particular costs and benefits can only be considered qualitatively.

DoCS has also requested that the Assessment Team prepare the RIS in accordance with the principles for legislative reviews set out in the National Competition Policy (NCP).

In April 1995, the Commonwealth, State and Territory governments agreed to implement the NCP. In practical terms this represented a commitment by all Australian governments to adopt a consistent approach to improving the competitiveness of the Australian economy. Part of the Agreement to Implement the National Competition Policy between the Commonwealth, States and Territories includes incentive payments from the Commonwealth to the States and Territories, with payment depending upon suitable progress being made in terms of implementation.

As part of the process, the governments signed the Competition Principles Agreement (CPA). Under the CPA, the governments committed themselves to undertaking a number of competition reform processes. These include:

- prices oversight of government business enterprises;
- competitive neutrality between government and private businesses;
- structural reform of public monopolies;
- legislation review; and
- third party access to services provided by significant infrastructure facilities.

The legislative review component of the CPA commits governments to review and, where appropriate, reform all legislation (including subordinate legislation such as regulation) that restricts competition.

The guiding principle of NCP reviews is that legislation should not restrict competition unless it can be demonstrated that:

- (a) the benefits of the restriction to the community as a whole outweigh the costs; and*
- (b) the objectives of the legislation can only be achieved by restricting competition.⁵*

The process of legislative review does not imply that the pursuit of competition should take precedence over public policy objectives. Restrictions on competition commonly exist in legislation in order to achieve aims that are of public benefit. Legislative review provides an opportunity for these restrictions to be revisited and to determine whether they are still the most appropriate means of achieving the intended aims.

This occurs through the examination of public benefits as part of the legislative review process and the other processes arising under the CPA. Subclause 1(3) of the CPA requires that, in assessing public benefit, a broad range of matters be taken into account where relevant, including:

- ecologically sustainable development;
- social welfare and equity;
- occupational health and safety (OH&S);
- industrial relations;
- access and equity;
- economic and regional development;
- consumer interests;
- business competitiveness; and
- the efficient allocation of resources.

Many of these matters are relevant in the case of the draft Regulation.

The CPA provides guidance as to appropriate terms of reference for a review.

An NCP review is to:

- (a) clarify the objectives of the legislation;*
- (b) identify the nature of the restriction on competition;*
- (c) analyse the likely effect of any identified restriction on competition on the economy generally;*
- (d) assess and balance the costs and benefits of the restrictions; and*
- (e) consider alternative means for achieving the same results including non-legislative approaches.⁶*

⁵ Clause 5(1), Competition Principles Agreement.

⁶ Clause 5(9), Competition Principles Agreement.

NCP reviews should also identify any issues of market failure which need to be, or are being, addressed by the legislation, and consider whether the effects of the legislation contravene the competitive conduct rules in Part IV of the *Trade Practices Act 1974* and the NSW Competition Code. The review should also consider regulatory schemes in other Australian jurisdictions. This is dealt with in detail in Appendix A.

1.2 The Assessment Team's task

The objective of a RIS is to assess the appropriateness of a particular regulatory model — in this case a statutory model — and any other alternative options which may potentially achieve the objectives of the regulation (wholly or substantially). As such, this assessment is primarily focussed upon the proposed statutory model of regulation, rather than the specific provisions contained in the draft Regulation.

Public consultation is to be conducted in 2003 after the release of the draft Regulation and the RIS. This consultation process, which aims to obtain stakeholder comment, is detailed in Appendix B.

1.3 Outline of the RIS

The remainder of this RIS is set out as follows.

Chapter 2 identifies **alternative regulatory options** by which the objectives of the legislation could be achieved, and assesses the costs and benefits of those alternatives.

Chapter 3 provides an overview of: **the children's services sector**; the cost structure of service providers; a competitive profile; details of profitability; and the existing regulatory framework in NSW and other jurisdictions.

Chapter 4 assesses the **costs and benefits of the draft Regulation**, including any restrictive impacts of the draft Regulation on competition.

Chapter 5 assesses which of the alternative options (including the draft Regulation) results in the greatest net public benefit, and presents **conclusions and recommendations**.

2 Identification and Assessment of Alternatives

As noted previously, the *Subordinate Legislation Act* requires that preparation of a RIS includes the identification of the alternative options by which the legislative objectives can be achieved, and an assessment of the costs and benefits of those options. NCP legislative reviews are also required to consider alternative means for achieving the objectives of the regulation, including non-legislative approaches.

Identifying and assessing alternative options helps to ensure that regulation of children's services promotes desired outcomes in relation to the safety, care and developmental needs of children in children's services, and allows for a comprehensive analysis of the costs and benefits of the draft Regulation.

In any given situation, determining the most appropriate regulatory model requires consideration of a wide range of factors. The most effective model often involves the blending of the best elements from a range of regulatory options. As a guide, an effective regulatory model should:

- recognise the diversity of the practice, behaviours and commercial activities to be regulated in any situation;
- provide for transparency and consistency in decision making by those administering the strategies;
- be adaptable to unforeseen developments;
- be flexible and responsive to evolving practice and community values;
- be based upon well defined and sustainable principles;
- be able to address the matters requiring regulation;
- invoke a response or penalty that is commensurate with the materiality of the risk to humans or the environment that non-compliance generates; and
- not impose costs that outweigh the benefits of the regulatory model.

In essence, any regulatory model adopted should ensure that the safety, care and developmental needs of children in children's services are met at a reasonable cost to the community. It should do this through ensuring that the model adopted represents the best regulatory option and is no more than is needed to achieve the regulatory objectives. It should also be recognised that different regulatory models impose different costs and benefits on the particular parties involved.

The Assessment Team has identified a number of alternative options for meeting the legislative objectives:

- statutory regulation;
- co-regulation;
- self regulation;
- negative licensing; and
- to rely on other regulation and industry standards.

The following discussion outlines the alternatives and explores the potential costs and benefits of each. It is not possible to measure quantitatively the benefits and costs of the alternatives due to a lack of data and uncertainty about the exact form that each alternative might take. Therefore, the assessment of benefits and costs is of a qualitative nature.

2.1 Alternative 1: Statutory regulation

The need for statutory regulation rests upon it being demonstrated that non-statutory regulatory regimes are not as effective or are unable to provide the greatest net benefit or least net cost to the community. Statutory regulation should only be applied where it can be demonstrated that there are risks from non-compliance from an outcomes based approach. For example, there could be a real risk of personal injury or even death to a child or young person through the operation of sub-standard service providers.

Although a statutory regulatory regime is more prescriptive than other regulatory options, a statutory regime does not necessarily have to be mutually exclusive of other options. With a statutory regime it is possible to incorporate elements of non-statutory options to enhance regulatory flexibility.

Major potential benefits of a statutory regulatory regime include:

- approvals, authorisations and other regulatory controls provided by way of statute can facilitate transparent independent models of regulation, with the sole purpose of maintaining operational standards unaffected by commercial considerations;
- a statutory based regulatory regime addresses information asymmetry issues by providing a universal measure by which service providers can be evaluated and, in conjunction with the community, provides assurances as to the benchmark being applied;
- a statutory regime attempts to balance the information asymmetry between service providers and consumers. The use of a statutory regime to ensure a consistent minimum standard of care is adhered to provides consumers with an assurance about the standards that can be expected;
- a statutory based regime is enforceable as provisions for penalties and sanctions prohibiting a person from operating provide incentive mechanisms for service providers to comply with the regime. Hence an enforceable system can aid in the maintenance of standards that may otherwise be determined in a retrospective and potentially costly manner through litigation. A statutory regime provides mechanisms which address potential issues of concern before they occur, rather than addressing them on an as needs basis;
- although statutory regimes are capable of creating an environment in which provision can be made for performance based standards as an alternative to prescriptive minimum standards, they ensure that operators are able to meet a defined minimum before being permitted to provide services. This element provides the public and clients with assurance and confidence of the standards that can be expected from service providers; and
- a statutory based regime is proactive rather than reactive, as it aims to ensure that provisions are in place to provide for the care and protection of children, rather than relying upon options that may only be applied upon an adverse event involving a child. As inappropriate service providers are addressed before problems emerge, costs associated with investigation, enforcement and disciplinary actions are reduced.

Major potential costs of a statutory regulatory regime include:

- regulation via statutory controls restricts entry to the children's services sector through the imposition of requirements and standards which service providers are required to meet and as such may impede competition;

- statutory regulatory regimes impose additional costs on service providers that they may not otherwise incur under other regimes. Such costs may include additional costs in the form of compliance and administrative costs;
- statutory regulation may be unresponsive and inflexible. It has the potential to inhibit the evolution of innovative forms of service delivery which do not readily fit into a statutory framework which can be incapable of readily adapting to changing values and practices;
- consumer willingness to accept the minimum standards of service providers (without investigation) may create a 'moral hazard', creating long term dependence on government; and
- increasing financial barriers to entry and restrictions on conduct will marginalise financial viability for a given fee level unless increased government assistance is provided.

2.2 Alternative 2: Co-regulation

Co-regulation involves the sharing of the regulatory role between government and the children's services sector. The spectrum could range from government endorsement of self-regulatory arrangements, which provide for the safety, care and developmental needs of children in children's services, and which are developed by the sector. At the other end of the spectrum the government could provide selected peak bodies, or other parties with legislative backing, to enforce various requirements where the sector lacks adequate scope to ensure compliance.

Some stakeholders were of the view that co-regulation is not an appropriate model for regulation of the children's services sector. They argued this was due to the wide range of views held by those in the sector and the significant risk of harm to children should inadequate arrangements for the regulation of standards in children's services be in place. However, other stakeholders recognised that while introduction of such a model at the current time is likely to be premature, there may be scope to move toward such a regulatory model over time.

While the potential benefits and costs of such an alternative would depend on the model of co-regulation adopted, the benefits of co-regulation include:

- greater sectoral control and flexibility to develop arrangements which more closely meet the specific needs of providers of children's services;
- that arrangements for standards for the provision of children's services are enforceable by law (where government provides legislative backing); and
- administrative cost savings to DoCS.

Co-regulation can also incur additional costs, including:

- the development of standards that are inadequate to ensure that the safety, care and developmental needs of children in children's services are met. Inadequate standards may result from a conflict of interest whereby the bodies responsible for developing and administering regulatory arrangements may give undue weight to the interests of children's services providers rather than those of children;
- increased costs to the sector of developing and administering regulatory arrangements;
- a lack of universality of standards for the provision of children's services. While co-regulation may be a viable future alternative to regulation, such a move may not yet be practical. The sector does not currently appear to have in place a body with the capacity to operate as co-regulator for the whole of the sector, and this may result in the development of different arrangements for different service types;

- there is likely to be poor acceptance of such arrangements by the sector and the community at the present time; and
- possible reduced transparency of arrangements for standards for the provision of children's services.

2.3 Alternative 3: Self regulation

Voluntary self regulation by the sector is similar to co-regulation, in that it involves the development and administration by the sector of arrangements providing for the safety, care and developmental needs of children in children's services, such as codes of ethics and performance standards. However, there is no legislative backing by government of the sectoral body/ies to enforce various requirements. Service providers would comply with codes and standards on a voluntary basis.

Compliance with codes and standards is encouraged via mechanisms such as allowing compliant service providers to promote themselves as being a member of the association or body which has developed and implemented codes and standards. Thus, membership can act as a signal of quality to consumers of children's services. The sectoral body would establish mechanisms for the investigation and resolution of breaches of codes and standards. However, the only sanction available would be denial of continued membership of the body.

The role of DoCS would be limited to investigation of reports of abuse or neglect under the general protection and advocacy provisions of the Act.

A key requirement determining the success of self regulation is that those within the sector must possess a sufficient degree of commonality to ensure appropriate arrangements are developed and to implement sanctions to deter non-compliance. During consultations, many stakeholders expressed concern that there was not sufficient commonality of interests among services providers in the sector to ensure appropriate arrangements are developed, implemented and enforced. Stakeholders were also of the view that the significance of the harm that may be done to children in children's services in the absence of appropriate standards means that self regulation is not a viable alternative to statutory regulation.

The benefits of self regulation of children's services may include:

- greater sectoral control and flexibility to develop arrangements which more closely meet the specific needs of children's services providers;
- elimination of regulatory costs involved in licensing of services by DoCS, including administration, monitoring and enforcement costs;
- reduced costs to the sector of complying with regulations, including administrative costs (to the extent that self regulation imposes less costly requirements on service providers). This may promote more efficient resource allocation by services and allow service providers to allocate additional resources to other aspects of their service, such as increasing service quality; and
- greater flexibility and incentives for the sector to develop innovative arrangements for the provision of children's services, and scope to differentiate between providers on the basis of the level of service provided, thus promoting competition in the sector.

The costs of self regulation may include:

- the development of standards that are inadequate to ensure that the safety, care and developmental needs of children in children's services are met. Inadequate standards may result from a conflict of interest whereby the bodies responsible for developing and administering regulatory arrangements may give undue weight to the interests of children's services providers rather than those of children. This is an important consideration given the potential risk of harm to children if appropriate arrangements are not in place;
- increased costs to the sector of developing, administering and enforcing arrangements;
- costs of investigation of reports of abuse or neglect under the general protection and advocacy provisions of the Act may increase;
- arrangements to ensure the safety, care and developmental needs of children in children's services would not be enforceable by law, and service providers who do not voluntarily comply with codes and standards or who are subject to complaints investigation could continue to offer services;
- the sector does not currently appear to have in place one body which would be acceptable to all parts of the sector as a regulatory body and which would have the capacity to develop self regulatory arrangements for the whole of the sector. The development of different arrangements for different service types may result in a lack of universality of standards for the provision of children's services, increased costs, and confusion for consumers;
- there is likely to be poor acceptance of self regulatory arrangements by the sector and the community;
- significant education of consumers and service providers would be required as this option is a significant move away from current arrangements;
- consumers may incur greater transactions costs in determining the quality of services;
- there would be no mechanism to prevent unsuitable persons entering the sector or continuing to operate once their unsuitability has been established; and
- transparency and accountability of arrangements for standards for the provision of children's services may be reduced.

2.4 Alternative 4: Negative licensing

Negative licensing would allow a service provider to provide children's services until excluded from doing so, without the need to hold a licence. Exclusion occurs when complaints made by consumers or other parties about the quality of service are found to be justified. Complaints can be made to an appropriate body, such as the Ombudsman. In essence, under a negative licensing regime, those who are *not* able to provide children's services are identified, rather than those who *are* licensed to provide services.

Benefits associated with negative licensing may include:

- lower compliance costs (including administrative costs) for service providers as providers are not required to meet licensing requirements. This may promote more efficient resource allocation by services and allow service providers to allocate additional resources to other aspects of their service, such as increasing service quality;

- lower administrative costs for DoCS, as the costs associated with a negative licensing regime are likely to be lower than those of a positive licensing regime;
- reduced barriers to entry to the market as licensing is not a prerequisite to providing a service, as well as due to reduced compliance costs;
- revocation of approval to operate a service is enforceable by law;
- the threat of revoking approval may provide an incentive to ensure service quality is maintained; and
- greater flexibility for service providers to develop innovative arrangements and adopt different standards to meet individual circumstances, such as those associated with geographical, cultural or service type differences. Increased scope for differentiation between providers on the basis of the level of service provided may promote competition in the sector.

Costs associated with negative licensing may include:

- as negative licensing is retrospective in nature, revoking approval to operate a service upon complaints being made, the number of service providers offering services of an inappropriate standard may initially be higher than under a positive licensing regime;
- some sub-standard service providers may be able to operate undetected or act inappropriately before they are detected. This is potentially a significant cost given the risk of harm to children in children's services;
- Departmental monitoring and enforcement costs may need to be increased to ensure that children's services of an appropriate standard are being provided;
- there is likely to be poor acceptance of such arrangements by the sector and the community;
- significant education of consumers and service providers would be required as this option is a significant move away from current arrangements;
- consumers may incur greater transactions costs in determining the quality of services;
- there would be no mechanism to prevent unsuitable persons entering the sector; and
- transparency and accountability of arrangements for standards for the provision of children's services may be reduced.

2.5 Alternative 5: Other regulation and industry standards

This alternative would see no specific regulation providing for the safety, care and developmental needs of children in children's services. Reliance would be placed on the general protection and advocacy provisions of the Act, other regulations such as building and occupational health and safety and consumer protection legislation and existing industry standards such as the Quality Improvement and Accreditation System and Australian Early Childhood Association Code of Ethics. Where other arrangements did not require that certain standards be met, the market would determine the standard, such as the number and standard of services provided, staffing levels and qualifications, maintenance of records and provision of information to parents.

The benefits of such an approach may include:

- regulatory costs incurred by DoCS in administering, monitoring and enforcing the regulation would be eliminated;

- the removal of some policy and legislative drafting costs;
- reduced compliance costs for service providers which may promote more efficient resource allocation by services and allow service providers to allocate additional resources to other aspects of their service, such as increasing service quality;
- flexibility for service providers to develop innovative arrangements and adopt different standards to meet individual circumstances, such as those associated with geographical, cultural or service type differences;
- increased scope for differentiation between providers on the basis of the level of service provided may promote competition in the sector; and
- enhanced competition due to the elimination of barriers to entry for potential operators that may exist under a licensing regime.

Costs associated with this option may include:

- increased scope for inappropriate standards in the provision of children's services, with associated risks to the safety, care and developmental needs of children in children's services;
- a lack of a mechanism to prevent unsuitable persons entering the sector;
- lack of transparency and accountability of the standards of provision of children's services;
- costs of litigation. Under this model, litigation with its with associated costs, may be the only feasible option for addressing complaints. This imposes direct financial and personal costs on those directly involved in any court proceedings and further costs to the community in general through the provision of public legal services. Further, such a retrospective approach is inconsistent with the contemporary proactive approaches to the care and protection of children which requires that children receive adequate care and protection as is necessary for their well-being and safety;
- costs of investigation of reports of abuse or neglect under the general protection and advocacy provisions of the Act may increase;
- there is likely to be poor acceptance of such arrangements by the sector and the community;
- significant education of consumers and service providers would be required as this option is a significant move away from current arrangements;
- consumers may incur greater transactions costs in determining the quality of services; and
- transparency and accountability of arrangements for standards for the provision of children's services may be reduced.

3 The Children's Services Sector

This chapter provides an introduction to children's services, an overview of the children's services sector in NSW, outlines the cost structure, competitive profile and profitability of service providers along with the current and proposed regulatory scheme in NSW and other jurisdictions.

3.1 Introduction

In today's society, children's services play a critical role. The current array of services have evolved over a long period of time from informal child minding and day nurseries to a broad

range of services providing formal care and education of children from an early age. Services are provided for the benefit of children and parents for a range of purposes, including provision of development opportunities, childcare for work and training related purposes, respite purposes and occasional care.

Children's services may be provided in a purpose-built facility, from a vehicle, or from adapted or domestic premises. They may be provided by government departments, local government councils, non-government agencies or private organisations. Services may or may not charge fees, and may or may not be run for profit.

Types of children's services include:

- **centre-based services:**
 - pre-schools — provide sessional services for up to 6 hours per day during school terms, up to 42 weeks per year, for 3 to 5 year olds;
 - long day care — provide services for at least 8 hours per day, 48–52 weeks per year, for children from birth to 5 years;
 - occasional care — provides irregular part-time care for children from birth to 5 years; and
 - outside school hours care — provides services for school aged children outside school hours, during term and vacation periods.
- **home-based services:**
 - family day care — provides services in the home of a family day care provider who is registered and supported by a coordination unit, for regular or irregular hours, up to 52 weeks per year for children from birth to 12 years; and
 - private home-based care — provides services in the home of a licensed independent care provider (the individual person is licensed by DoCS, not the scheme), for regular or irregular hours, up to 52 weeks per year for children from birth to 12 years.
- **mobile services**
 - provide regular occasional services brought to target locations for children from birth to 5 years.

There are over 3,800 childcare services in NSW, with varying forms of management — some are privately owned, some are managed by parent committees as not-for-profit community-based centres and others are operated by government departments and by local government.

Organisations with a role in the childcare sector in NSW include:

- DoCS;
- other NSW Government Departments such as Education and Training and Health;
- the Commonwealth Government;
- local government; and
- organisations representing service providers and parents.

⁷ Department of Community Services January 2001, *Childcare*, Fact Sheet 6.

3.2 The role of DoCS

In October 2000 the Minister for Community Services launched the NSW Government's Early Childhood Services Policy. The policy states the objectives of the government's involvement in early childhood services.

DoCS is the major NSW Government agency with responsibility for early childhood services. The objectives articulated in the government's Early Childhood Services policy are also DoCS objectives.

These objectives are:

- to recognise the well being and particular needs of children as individuals and as a distinct social group in society;
- to foster children's intellectual, physical, emotional and social development as the core element in service provision;
- for services to operate according to contemporary community standards and standards of good practice and research;
- to keep parents and service providers well informed about the conduct and benefits of children's services;
- to have a capacity for parental involvement in children's services;
- for providers and staff to have access to relevant and appropriate support and resources;
- to assist children who are socially disadvantaged or who have additional special needs with priority access to services;
- to improve the service system to be more responsive to the diverse needs of children and families including cultural and linguistic values;
- to support parents with their work and family commitments and in their parenting role;
- to link children's services to health, family support and education systems;
- to support community based services; and
- for a fair sharing of resources.

DoCS meets these objectives through:

- having regulated standards for service operation that incorporate contemporary views and research evidence on child development and safety and monitoring compliance to these standards;
- developing and disseminating resources to inform service providers and parents, such as the NSW Curriculum Framework and the Parent's Guide on Child Care, and providing training and/or advice on such matters;
- providing financial assistance to community-based services and tying this assistance to the delivery of stated outputs and outcomes in DoCS' funding contract with services; and
- leading and participating in planning, evaluation and research activities.

DoCS funding budget for the Children's Services Program for 2002/03 is \$94.5 million. From this budget:

- \$57.6 million is allocated to 810 community-based pre-schools. This amount includes: \$12.9 million to help reduce fees for families earning under \$40,794 per annum, (9,465 places are subsidised for this purpose); and \$44.7 million for the provision of an education program at 23,970 places;

- \$10.554 million is allocated to the Supporting Children with Additional Needs scheme to provide support for Aboriginal children, children with a disability, children with challenging behaviour and children from a culturally and linguistically diverse background who attend pre-school, occasional care and vacation care services;
- \$13.1 million is provided to 426 community based long day care services, of which approximately \$7 million of this funding is provided for an education program for children aged 3 to 6 years in 10,265 child care places and approximately \$6 million is provided to support children aged 0 to 3 years in 8,333 child care places;
- \$3.945 million is allocated to 142 occasional child care services to support 1,329 places for children aged 0 to 3 years and 1,159 places for children aged 3 to 6 years. This funding includes approximately \$607,000 in Commonwealth funding administered by DoCS for Neighbourhood Model Occasional Care;
- \$5 million is allocated to 92 additional services that include supported playgroups, toy libraries, local government child care workers, local resource and support services and peak groups; and
- \$2.433 million is allocated to approximately 292 vacation care services for school age children during school holidays.

To help in achieving the aims and objectives of the government's policy, DoCS funding is provided to eligible organisations to assist with the delivery of early childhood services so that:

- children, particularly those from families on low incomes and other disadvantaged backgrounds and/or who have additional special needs, or who live in isolated communities, are able to access good quality children's services;
- the long term social, educational and economic outcomes for children from disadvantaged backgrounds, and/or who have additional special needs, are enhanced;
- communities have the necessary service infrastructure to meet the needs of their citizens;
- parents and children are able to access a mix of services that are appropriate to their diverse needs, that are offered in convenient locations, operate during the hours required, operate at the required standard and at a reasonable cost; and
- service environments are conducive to children receiving care that is developmentally, socially and culturally appropriate and assist and encourage them to reach their potential.

All types of organisations such as community groups, local councils, charitable and religious organisations, are able to apply for DoCS funding. For organisations to be eligible to receive funding, they are required to demonstrate that they are able to meet the following criteria:

- the organisation is incorporated;
- the organisation is financially sound;
- all funds available to the organisation for the service must be used for the provision of the service;
- the organisation enables parents using the service to be regularly and directly involved in the management, policy setting and the planning and operations of the service;
- the organisation has a sound knowledge and understanding of the requirements of operating a children's service, especially in relation to providing a quality early childhood education program and/or age appropriate developmental activities and environment for children;
- the organisation employs appropriately qualified staff and regularly conducts staff training;

- the organisation uses the Australian Early Childhood Association's Code of Ethics as a guide for practice;
- the organisation regularly reviews the performance of the service and evaluates the responsiveness of the type of service provided in terms of meeting local needs; and
- the organisation complies with all relevant State, Commonwealth and local legislation and the intent of the NSW Government's Early Childhood Services Policy; and is willing to enter into DoCS' Service Agreement and comply with the conditions of funding.

The service provided by the organisation is required to:

- be available to all children and families in the general community;
- not exclude children nor be exclusive to particular groups of children, with exception to age groups particular to the licensing conditions of the service or to population groups within the meaning of the Anti Discrimination Act 1977;
- provide individually tailored age appropriate developmental programs that encourage and benefit each child's intellectual, emotional, physical and social development;
- provide a healthy and safe environment for children;
- respond to the demographics and needs of children, families and communities within the local community;
- give priority of access to children and families:
 - of Aboriginal and Torres Strait Islander descent,
 - from diverse cultural backgrounds,
 - with a disability,
 - on low incomes;
- accept children at risk referred by DoCS and/or referred by other recognised welfare organisations; and
- establish a relationship/network with the local school system on transition to school and with local family support, health and related community services.

Funding is allocated on an annual basis to an organisation as a contribution to the costs of providing a service for the purposes indicated in DoCS Service Agreement. Funding is assessed annually and its continuation is contingent on the performance of the organisation and the service in meeting the objectives and conditions for which the funding was provided and on any changes to DoCS' funding and planning priorities.

Organisations that receive funding from DoCS are required to:

- provide an annual report on the activities of the funded service including how the service met its objectives for the year. The report also includes the provision of data on the profile of the children and families using the service;
- provide an annual budget and a workplan on the objectives the service aims to achieve during the coming funding year, which is assessed against government and department policy and planning objectives and priorities; and
- provide an annual audited statement on income and expenditure for the service including a balance sheet.

Funding is not automatically available on demand. Organisations in receipt of funding continue to receive funding on an annual basis so long as they meet DoCS conditions of funding and accountability requirements and the policy objectives of the Children's Services Program.

New funding can become available in one of two ways. Firstly, the government, through the development of its annual budget, may decide that a funding priority relates to the Children's Services Program. An example of this could be to increase the supply of vacation care places during school holidays for disadvantaged children in rural communities.

DoCS budget would receive extra funds from the State budget to implement this initiative. In doing so, DoCS would apply its needs based planning methodology to determine the share of funds that each area would receive and would then undertake a process to generate expressions of interest from prospective organisations to provide the required service. This process could include community consultations to involve the local community in the development of appropriate service responses that would best suit local needs.

A second way that funding can become available is where an existing funded service may close. These monies then become available for re-allocation to meet program and local priorities.

An organisation may submit an expression of interest for funding to DoCS at any time. However, this practice is not normally encouraged, as it can be resource intensive for organisations to develop a proposal and have an expectation it will be funded, when no funding is available.

When new funding is available, the normal practice is for DoCS to publicly advertise for expressions of interest for the funding. This may occur following the holding of community consultations. Depending on the amount of funding available, the type of initiative and whether it is a statewide or a local funding initiative, DoCS may write to organisations to inform them about the availability of funding.

Licence Monitoring and Compliance

Although DoCS is not a direct provider of children's services, it licenses and monitors over 3,000 childcare services to ensure they comply with the provisions of the Act.

DoCS has a statutory responsibility to provide for the protection and assistance of families, children and individuals who because of age, disability or social dislocation may be exploited or require protection from exploitation. The legislative framework is based on the recognition of the vulnerability of these client groups. Further, DoCS has a responsibility to ensure the development of quality services which meet the needs of its service users. Government regulation of some types of non-government and commercial services, which specifically cater for vulnerable groups, is aimed at preventing the abuse, neglect or exploitation of service users.

NSW licensing laws for children's services set minimum standards which services must meet before they commence operating. Further requirements ensure that services continue to meet appropriate standards and children are not put at risk. Current standards relate to the physical amenity of the buildings in which the service operates, health and safety considerations, staffing requirements, curriculum or programming issues and administrative functions.

While alternatives to regulation such as self regulation may be attractive in a number of respects, they do not provide a legislative mechanism for protecting service users or dealing with services which do not comply. By establishing minimum standards of service through regulation, the government has acknowledged that some service users do not have the ability to negotiate their rights or to “shop around” for an alternative service provider because of age, disability, life situation or non availability of alternative services.

DoCS employs 72 Children’s Services Advisors (CSAs) to monitor services. They fully inspect services before a three year licence is granted and make announced or unannounced visits during the licence period. DoCS can take legal action against licence holders for breaching licence requirements. During 2001/02 prosecutions were launched against 7 centres for 63 breaches.⁸ The prosecutions mainly involve inadequate staff numbers, children in attendance over licensed numbers, unsafe equipment and missing records.

In monitoring children’s services, DoCS has also considered the broader social and policy context in which childcare can assist in the prevention of problems in families. DoCS uses childcare as a strategy to prevent child abuse before it occurs by providing support to families. DoCS considers that the provision of childcare is an important social service and in addition to providing supervision to children whilst parents are at work, may assist families by:

- giving parents a break from parenting, which in turn may help to relieve stress;
- providing children with additional programs and resources that may not be available in the family home, thereby assisting the child’s development and helping children to start school on a level playing field; and
- assisting in the early detection of, and providing support for, behavioural and learning problems.

3.3 The development of the children’s services sector⁹

Until the end of the nineteenth century formal children’s services were essentially non-existent. The closest service resembling the provision of children’s services was the existence of a few fee-paying kindergartens, usually attached to private schools for the daughters of wealthy families. Children from working class and poor families had few options and it was not uncommon for them to be sent to school with their older siblings, despite the fact that there were no classes or curriculum for them. It was not uncommon for children to be left unsupervised while their parents worked.

While a formal kindergarten system had been established in NSW by 1895 with the formation of the Kindergarten Union of New South Wales, it was not until the early twentieth century that a formal system of day care emerged. Whilst kindergartens focused on the child’s education and socialisation, day nurseries were primarily concerned with providing support to working mothers. Day nurseries were open for longer hours than kindergartens and were initially staffed by nurses, whilst kindergartens were staffed by teachers.

⁸ There have also been some noteworthy prosecutions in previous years. For example, in 1997 a child suffered 2nd degree sunburn due to inadequate shade at the service. Also in 1997, a child lost an eye after an accident at an unapproved additional building on the premises. In 2001 prosecutions were launched against 2 centres for leaving children unattended in closed centres.

⁹ Adapted from the OECD Thematic Review of Early Childhood Education and Care Policy – Australian Background Report (2000), prepared by Frances Press and Professor Alan Hayes, Institute of Early Childhood, Macquarie University, Sydney.

Until 1938, the establishment and administration of both kindergartens and day nurseries largely occurred with little government intervention and support. However in 1938 the Commonwealth Government became involved in the provision of early childhood facilities through the funding of one demonstration child education and health centre in each capital city in Australia. The centres were named the Lady Gowrie Child Centres and were primarily concerned with providing services to children from underprivileged families.

Following World War II and the rise in the Australian Total Fertility Rate to 3.6 children per woman from 1948 to 1961 (the “baby boom” years), middle class families began to demand the provision of pre-schools within their local suburbs. These pre-schools were often managed by local parents with very little regulation. It was not until the 1960’s that the some of the State governments across Australia became involved in the provision of pre-school services. However during this period the provision of pre-school services in New South Wales and Victoria continued to be provided by voluntary agencies.

During the 1960’s and 1970’s, as more women began to work, there was a push for more child minding services with longer and more flexible opening hours than pre-schools. Other factors influencing the need for increased childcare facilities included research into the number of children left without adequate supervision and the needs of industry, particularly the manufacturing sector. During this period women were less expensive to employ than men and were hence an attractive employment option for many industries.

Consequentially the Commonwealth Government became involved and began to take the provision of childcare more seriously as a policy matter. In 1973 the *Child Care Act 1973* was introduced and expanded the Commonwealth Government’s funding of childcare provision beyond the Lady Gowrie Child Centres for the first time since 1938. The policy objective of the Commonwealth Government was the provision of good quality care to meet children’s developmental needs at a cost parents could afford.

Initially funding was provided for both nurses and pre-school teaches. However, as time passed the focus of providing childcare moved toward supporting working parents, which was reflected in changes to the funding of childcare.

During the 1980’s the provision of childcare was regarded by the Commonwealth Government as a component of the social wage. In agreement with the various union movements, the Government agreed to increase the provision of childcare services in exchange for wage restraint. The result was an increase in new services, direct funding for childcare services and fee subsidies for parents who sent their children to non-profit service providers.

During this period of expansion, the number of children in care increased and the time spent by children in care also increased. Consequentially by the end of the 1980’s, many early childhood professional groups, parents, unions and others began to shift their attention to the quality of the child’s experience in childcare, rather than just providing a service for parents.

These groups began to lobby the Commonwealth Government for the introduction of a national accreditation system. During this period the government also extended the availability of subsidies to those parents using for-profit childcare services. This caused some concern and coupled with the lobbying by interests, the Quality Improvement Accreditation System for long

day care centres was introduced in 1994. Amongst other things, eligibility for a fee subsidy is dependent upon centres participating in the accreditation program.

3.4 Current profile of the NSW children's services sector

It is difficult to provide an accurate profile of the children's services sector in NSW due to the somewhat fragmented nature of available data. Data sources include Departmental publications, the Commonwealth Census of Child Care Services (CCCCS),¹⁰ and the *Report on Government Services 2001* produced by the Steering Committee for the Review of Commonwealth/State Service Provision (SCRCSSP).¹¹

The CCCC is conducted by the Commonwealth Department of Family and Community Services to collect information on the characteristics of children, parents and staff in Commonwealth funded childcare services. The *Report on Government Services 2001* records data for services supported by the Commonwealth, State and Territory Governments. Data on local government activities is only recorded where Commonwealth, State and Territory funding was involved.

The following provides a profile of the number and type of children's services in NSW, children attending services, staff in services and funding of services.

Services

In 2000/2001, 3,073 children's services were licensed by DoCS, the majority of which were centre-based. The number of services licensed by DoCS from 1998/99 to 2000/01, by service type is presented in the table below.

Table 3.1 Licensed children's services by service type

Service type	1998/99		1999/00		2000/01	
	Number	%	Number	%	Number	%
Family day care	114	4%	118	4%	110	4%
Home based	331	11%	293	9%	250	8%
Mobile preschools	12	1%	12	1%	11	1%
Centre based services	1,362	43%	1,394	44%	1,363	44%
Funded centre based services (Incl. 760 preschools)	1,281	41%	1,314	41%	1,290	42%
Funded mobile preschools	51	2%	49	2%	49	2%
Total	3,151	100%	3,180	100%	3,073	100%

Source: DOCS Annual Report 2000/01.

In 2001/02, the share of children's services licences continued the trend from above in that it is dominated by centre based providers, representing an estimated 2,670 of 3,201 total licences. There are about 1600 long day care services and 890 preschool services licensed in NSW.

¹⁰ Family and Community Services 2000, 1999 Census of Child Care Services, Canberra.

¹¹ SCRCSSP 2001, Report on Government Services 2001, AusInfo, Canberra.

Children attending services

The number of children enrolled by service type is presented in the table below.

Table 3.2 Children attending NSW children's services by type, 1999

Service type	Number	Proportion
Private LDC	72,088	41%
Community based LDC	28,183	16%
FDC	23,510	13%
Outside School Hours Care	29,060	17%
Vacation care	17,852	10%
Occasional Care	2,710	2%
Mobiles and Toy libraries	795	0%
Other	858	1%
Total	175,056	100%

Source: CCCCS 1999

Notes: Excludes children attending the 890 preschools in NSW which are not funded by the Commonwealth.

Data measures occurrences of care and will include double counting where children attended more than one service.

LDC = Long Day Care; FDC = Family Day Care

Of the 175,000 children attending Commonwealth funded services, over 40% utilise private long day care centres. When combined with community based centres this proportion increases to almost 60%. The next largest providers are out of school hours care with 17% representation.

The table below details the use of formal child care services by age, up to 4 years old. Over the age of 5 years, the proportion of children using some form of formal child care services declines significantly as they are more likely to be enrolled in school.

Table 3.3 Use of Formal Child Care, by age

Age	Utilisation of child care services
Under 1 years old	7.6%
1 year old	22%
2 years old	35.5%
3 years old	56.3%
4 years old	62.1%

Source: ABS, March 1996

In 1999/00, 44% of children in the population aged 0–5 years, and 25% of children in the population aged 0–12 years, attended Commonwealth or State government funded and/or provided childcare in NSW (SCRCSSP). In 1999/00 in NSW, 140,300 children aged 0–5 years and 192,600 children aged 0–12 years attended children's services included in the CCCCS (SCRCSSP).

The table below details the licensed places available by age group bracket for 2001/02.

Table 3.4 Licensed places available by age group 2001/02

Services	0-2yrs	2 to 3yrs	3 to 6yrs	6 to 12yrs	Total
Centre based services	11,569	29,929	77,070	1,490	120,058
Mobile services	124	258	1,064	28	1,474
Family Day Care & Home based Services	11,972	12,240	13,475	4,669	42,356
Total	23,665	42,427	91,609	6,187	163,888

Source: Department of Community Services

Notes: Measured by maximum daily licence capacity

The distribution of the overall number of licensed places available by service type reflects the proportion of licensed centres. Interestingly, in some age brackets the overall proportion does not hold constant:

- family day care and home based services are over-represented against the average in all age group brackets other than 3 to 6 year olds;
- in the 0-2 year bracket (where children are most vulnerable to potential harm) the share of licensed places is roughly equivalent between family and home based services and centre based services;
- the 2 to 3 year bracket illustrates a sharp decline in the share of family and home based services;
- the older age groups of 6 to 12 year olds are dominated by family and home based services.

Special Needs & NESB Children

The proportion of childcare attendees from special needs groups in 1999 was 15% from non-English speaking backgrounds (NESB), slightly over 1% from indigenous backgrounds, 17% from a single parent family, 2% with a disability and 22% from rural and remote areas (SCRCSSP). The data below only represents children attending Commonwealth funded services and not NSW pre schools.

Table 3.5 Average hours per week attended at service in the CCCCS (per child)

Service type	1997	1999
Centre based LDC	18.2	18.1
FDC	19.3	19.3
Vacation care ^a	2.7	2.9
Before school hours care	5.2	5.6
After school hours care	7.2	7.8
Occasional care	6.7	8.0
Other care	15.3	17.2

Source: SCRCSSP

Notes: Excludes preschools. ^a Average days of attendance.

In 1999, 69% of children using childcare had both parents in the workforce, and 31% had at least one parent not in the workforce. For children attending preschool, 47% had both parents in the workforce, and 53% had at least one parent not in the workforce (SCRCSSP).

Staff

The number of paid staff and care givers is presented in the table below by service type. The data below only represents children attending Commonwealth funded services and not NSW pre schools.

Table 3.6 Paid staff and FDC care givers by service type, 1999

Service type	Number	Proportion
Private LDC	7 929	37%
Community based LDC	4 513	21%
FDC – staff only	549	3%
FDC – care givers	3 505	17%
Outside School Hours Care	2 152	10%
Vacation care	2 041	10%
Occasional Care	268	1%
Mobiles and Toy libraries	29	0%
Other	176	1%
Total	21 162	100%

Source: CCCCS 1999

Notes: Excludes preschools.

An estimated 21,162 staff are employed in the children's services industry. Private long day care, community based long day care and family day care are significant employers. Current statistics show that 54.5% of staff (4,891) in childcare services have a relevant qualification. In preschools, 56.3% (2,384) have a relevant qualification. In total 55.05% of staff, or 7,275 out of 13,216 have a relevant qualification.¹² Most staff without a relevant formal qualification have the equivalent of 3 years full time work experience. Figures for staff in services included in the CCCCS for 1999/00 show that only 8.5% of staff overall have neither a relevant formal qualification nor 3 years full time work experience.

Funding

The table below presents average fees for various forms of children's services.

Table 3.7 Average fees paid for services in the CCCCS (\$)

Service type	1997	1999	2000
Centre based LDC ^a	161.00	172.00	177.00
FDC ^a	139.00	149.00	na
Vacation care ^a	60.00	78.00	na
Before school hours care ^b	4.57	5.95	na
After school hours care ^b	6.48	8.79	na
Occasional care ^c	na	4.15	na

Source: SCRCSSP

Notes: ^a Average weekly fee. ^b Average sessional fee. ^c Average hourly fee.

¹² Source: Department of Community Services

Centre based services attract the greatest fees for those services levied per week. After school hours care attracts the highest hourly fee.

The table below details the NSW and Commonwealth Government's recurrent expenditure on Children's Services.

Table 3.8 Government recurrent expenditure on children's services, 1999/00 (\$'000)

Expenditure type	Commonwealth	NSW
Administrative expenditure	158,321	10,298
Other expenditure on service provision	142,354	77,273
Expenditure on assets	18,075	1,254
Financial support to families	759,851	10,687
Total	1,078,601	99,512

Source: SCRCSSP

The Commonwealth Government provides the majority of funds for children's services. The various funding programs for all levels of government are presented in the table below.

Table 3.9 Expenditure on formal child care in Australia, 2000/01

Funding Type	\$m contribution	Proportion
Commonwealth		
Childcare Benefit	989	37%
Childcare Rebate	50	2%
Support for childcare	165	6%
Other	40	2%
Sub total	1,244	47%
All State / Local Governments	100	4%
Fees (net of subsidy)	1,326	50%
Total	2,670	100%

Source: IBIS World Pty Ltd

Commonwealth Government programs contribute 47% of the funding for children's services. Private fees make a slightly higher contribution of 50%. The combined contributions of State and local governments represented only 4% of total funding.

3.5 Industry Profitability & Competitive Drivers

This section of the report presents information relating to the financial structure, competitive structure and profitability of service providers in the industry of children's services.

The competitive drivers and pressures facing the industry represent important contextual information which is likely to determine the responses of service providers to proposed changes to the regulation, i.e. what impact will given changes in financial barriers to entry have in the context of existing barriers and profitability levels etc.

Due to data constraints, the majority of information presented relates to long day child care centres at a national level. This group reflects the majority of children's services providers and many (though not all) of the same inferences can be extrapolated for most types of service providers and across most State and Territory jurisdictions.¹³ The main difference in NSW to other jurisdictions is that in NSW, pre school services are licensed against the same regulatory standard as long day care is, which is not the case in other States and Territories. While Victoria regulates preschools and childcare, the other States' preschool services are provided by Education Departments. In NSW there is a tradition of treating all centre based services with equity and consistency. Consequently, parents are assured that whatever form of licensed care is chosen, an equal minimum standard applies.

Industry prospects

There is some debate over future prospects for industry performance. Factors arguing in favour of strong future growth include:

- unmet demand for services in many areas;
- continued government subsidisation;
- high utilisation rates; and
- reduced reliance on informal care options provided by extended family members.

The table below details forecast growth in turnover and the number of service provider establishments in the children's services industry.

Table 3.10 Australian Industry Performance

Financial year	Growth Rates	
	Real Turnover	Establishments
1996/97	6.1%	1.3%
1997/98	6.9%	1.9%
1998/99	2.0%	-0.6%
1999/00	1.5%	-1.3%
2000/01	5.6%	-1.3%

Source : IBIS World Pty Ltd

The Australian service provider industry has experienced consistent positive growth in turnover (sales or revenue) over the five financial years to 2000/01. Over this period, the number of establishments has experienced some modest declines suggesting a consolidation in the number of industry providers.

¹³ The information presented in this section of the report has been adapted from material produced by IBIS World Pty Ltd, *08710 – Child Care Services in Australia*, 30 May 2002.

Demand Drivers

The key determinants of demand for children's services and therefore the basis on which competition is likely to occur, includes:

- cost of services (affected by government subsidies and FBT-free employer provided child care);¹⁴
- affordability, as determined by disposable household incomes;
- availability and comparative cost of alternative informal child care arrangements including family members and nannies;
- workforce participation rate for parents, particularly mothers aged between 25 and 34 years of age;
- incidence of single parent families;
- population of children aged under 12 years, of these 77% are accounted for by children under 5 years of age;
- supply of places for children in services in the context of a backlog of unmet demand; and
- availability of services at flexible times of day (particularly for shift workers or those who work overtime).

Service providers compete on the basis of the following key price and non-price factors:

- services and the perceived quality of care – superior qualifications of staff, staff : child ratios, facilities, aesthetic surrounds and quality of their pre school program;
- fee levels and the availability of Commonwealth rebates and subsidies;
- tax effective employer provided services offered as part of salary packaging arrangements;
- flexibility of session times and opening hours;
- convenience of location near work places or residences; and
- niche services where there is unmet demand including babies, under 3 year olds, children with special needs and families with unusual time requirements.

Competitive structure

There are a large number of small providers for children's services. Only 7 non-government children's services organisations had more than 200 employees in 1996.¹⁵ The largest four private operators in Australia account for less than 10% of total industry turnover.

Private long day care centres are a very common format for children's services. These centres are typically owned by sole proprietors or partnerships who generally only operate one centre. Family day care is similarly small in scale reflecting the fact that these services are operated from private residences.

Financial barriers to entry to the industry can be considered low by commercial standards but high in the historical context of smaller community groups and sole proprietors. The average

¹⁴ The Economic Planning Advisory Committee inquiry into the childcare industry recommended in July 1996 that the FBT exemption for employer provided child care be abolished. The Commonwealth Government has yet to respond to these recommendations, however if introduced would represent a significant negative impact on demand.

¹⁵ ABS, 8696.0, June 1996

amount spent on establishing a child care centre has increased from around \$0.5 million to \$1 million over the past two to three years.¹⁶

In Queensland, the growing involvement of the private sector has funded the capacity for high standards of buildings and equipment but at the same time started to crowd out (or result in the acquisition of) smaller players due to the financial barriers to entry required to offer an equivalent service. Approximately \$50,000 to \$60,000 is spent on upgrading facilities following an acquisition by one of the larger industry players.¹⁷

The principal costs involved in establishing a long day children's services facility relate to:

- the cost of purchasing or building centre accommodation, facilities and equipment;
- cost and time required to obtain local Council approval;
- cost and time required to become licensed by DoCS;
- cost and time required to receive "accreditation" from the Commonwealth Government (in order to be eligible for Commonwealth Child Care Benefits).

Significant economies of scale exist in the industry and arguably a minimum of 35 enrolments is required as a critical mass for operations, but preferably in the order of 40 to 45 or more. It may take some time for new entrants to establish this number, depending on the research undertaken about the geographic area, before purchasing land.

Community based centres typically average around 32 places as compared to 39 places for commercial and employer sponsored centres. This is because many centres have maintained their numbers at 29 or below – the number at which they are not required to employ a trained teacher. Nevertheless consultations indicated that many centres not required to have trained teachers, do employ them or have more than the required number of trained staff.

The cost structure of centre-based services is heavily biased towards labour rather than capital costs of production. The table below details the relative components of the cost structure for service providers.

¹⁶ John Stensholt, *Business Review Weekly*, "Child-care sums make listings look simple", 10 October 2002.

¹⁷ John Stensholt, *Business Review Weekly*, "Just over a decade ago Eddy Groves guessed government subsidised child care was recession proof", 16 May 2002.

Table 3.11 Operating Cost Structure (Australian Average)

Revenue / Cost Item	Amount
Total Income	\$302,447
Less Overheads as %'s of Total Income:	
Accounting & Legal Fees	1.06%
Consumable Items & Educational Resources	3.06%
All Insurance	1.13%
Interest, Bank Charges etc	4.07%
Food & Drink	3.02%
Rent of Premises	4.31%
Other Occupancy Costs	2.25%
Other Depreciation, Lease and HP	2.88%
Repairs, Maintenance, Hire of Plant & Equipment	2.44%
Staff Oncosts	4.00%
Telephone & Fax	0.78%
Employees' Wages & Salaries	46.94%
Vehicle Operating Costs	1.65%
All Other Expenses	2.69%
Total Overheads	80.29%
Net Profit (Before owners salaries and benefits)	19.71%
Net Profit Margin after owners' notional salary wage of \$15 per hour	2.23%

Source: FRMC Benchmarking Pty Ltd

Wages and other labour costs accounted for 50% of total costs for industry providers. By contrast asset related costs and interest expenses represented only 10% of total turnover or around one fifth of labour related costs.

Profitability

Prices Surveillance Authority surveys (May 1993) suggested that an average Australian children's service provider made a weekly loss of \$248. The weekly average result can be broken down as follows:

- government sponsored centres lost an average of \$1,045;
- non-profit centres lost \$783; and
- private for-profit centres returned \$1,239 in profit.

Profitability performance can vary significantly by State reflecting the impact of differing government regulation and their impacts on equipment requirements, staffing levels and the cost of work practices. Other key drivers include the utilisation rate and maximum number capacity of the centre. Significant economies of scale have been noted to exist.

Occupancy rates in the order of 70% are required for profitable performance, however national average occupancy rates of around 67% reflect the fact that many (particularly community based) centres were not profitable. (In this context it is noted that the management committees of community based services turn over on an annual basis). Although the figures quoted reflect the average national performance at that point in time, it should be recognised that there are many

profitable NSW community based services. This is also consistent with anecdotal reports of occupancy levels of 90-100% and the existence of waiting lists for many services.

The table below details profitability performance by size, as measured by total turnover range. The financial benchmarks indicate the importance of achieving a critical mass of enrolments and the impact of higher quality and higher fee status on profitability.

Table 3.12 Profitability by Size (Australian Average)

Performance Indicator by turnover range	Average	<\$175,000	\$175,000 to \$350,000	>\$350,000
Total Income	\$302,447	\$127,300	\$265,327	\$492,819
Total Overheads	80.29%	69.47%	82.37%	87.67%
Net Profit (Before owners salaries and benefits)	19.71%	30.53%	17.63%	12.33%
Net Profit Margin after owners' notional salary wage of \$15 per hour	2.23%	-1.27%	-0.22%	7.75%
Maximum enrolments	48	29	46	66
Subsidies Received as a % of Total Income	49%	58%	45%	42%
Income per child enrolled	\$7,185	\$5,701	\$6,922	\$8,713
Total personnel	7.70	3.18	6.46	12.89
Children per staff member	6.33	8.28	6.27	4.68
Children per qualified pre-school worker	9.79	10.67	10.8	8.15
Income per staff	\$41,423	\$44,226	\$41,765	\$38,626

Source: FRMC Benchmarking Pty Ltd

The new private entrants to the industry typically operate larger centres allowing them to spread costs across more children. These issues are more profound in Queensland and Victoria where larger corporate providers are more common than in NSW.

At a national level, average maximum enrolments increase significantly from 29 to 46 children for small to medium operations, up to 66 children for the larger (typically private) providers. The higher total turnover achieved from larger enrolments is correlated with higher net profit after imputed owner salaries.

One of the larger private providers, ABC Learning Centres (Queensland), highlights brand and reputation for quality (through training and motivation of staff) as differentiating factors with policy and procedures otherwise the same.¹⁸ The financial statistics above seem to match this statement, to some extent, with an apparent correlation between profitability, overheads and staffing levels (as reflected in higher staff to child ratios).

As profitability increased, the role of subsidies as a proportion of total income declines, indicating a higher proportion of private fees (evidenced by higher income per child results).

¹⁸ Brian Robins, *The Sydney Morning Herald*, "Play dough", 12 October 2002.

This suggests that consumers of children's services can afford to pay some additional amount for private providers. The resulting lower income per staff is sustainable as the fixed costs of service provision are defrayed over a larger base. In particular, the costs of notional owner salaries are diluted. The financial benchmarks above actually indicate that larger firms achieve lower percentage of turnover profits before notional owner salaries, however in larger turnover enterprises the fixed amount of owner salaries is able to be spread over a larger base resulting in higher final net returns.

Economies of scale appear to be important from the perspective of achieving the "critical mass" necessary to make larger private services profitable. However, simply increasing the number of children per staff (to reduce cost per child and increase income per staff member) is not indicated by the financial benchmarks as a strategy which is correlated with higher average profitability.

The pricing and service quality of providers will naturally remain capped at the affordability dictated by the income of the parent able to return to work.

Other key success factors include prime site locations in fast growing population centres or the central business districts of capital cities to provide close to home or close to work services respectively.¹⁹

While these financial statistics reflect national indicators, the conclusions they suggest for the market for children's services could arguably be extrapolated to NSW.

Emergence of Corporate Providers

The children's services industry has been historically characterised by a large number of small providers and the 100 year old non-profit Kindergarten Union had been the dominant industry player.

The more recent emergence of larger providers has seen the start of a consolidation phase in provider numbers as they attempt to develop economies of scale and power in the market place.²⁰ The strategy of the larger providers appears to have been effective with strong reported earnings performance.

Some of the largest corporate service providers in the Australian industry, all of whom specialise in long day child care, are:

- Peppercorn;
- the A.B.C Learning Centres Ltd;
- Child Care Centres Australia; and
- Future One,

Peppercorn is Australia's largest provider of children's services with 178 centres (including 8 in NSW) followed by ABC with 94 centres.²¹

¹⁹ John Stensholt, *Business Review Weekly*, "Child-care sums make listings look simple", 10 October 2002.

²⁰ The impact of their acquisition strategies has been reflected in increases in average centre sale prices. As a result, the implied average value of filled child care places has risen significantly from \$2,000 to \$5,000.

²¹ Stephen Wisenthal, *The Australian Financial Review*, "Child-care Centres: A Growing Family", 15 October 2002.

ABC was founded in Brisbane and has major interests in the Queensland and Victorian markets. In April 2002 it entered the NSW market through the acquisition of six centres trading as “Magic Kids”. ABC is listed on the Australian Stock Exchange (ASX) and was the first children’s services provider to do so.

Child Care Centres Australia has also recently listed on the ASX at the beginning of October 2002 with 30 centres and plans for rapid expansion in the Queensland and NSW markets.

The larger providers in NSW come from the community based sector and are the preschool sector Kindergarten Union (140 centres and 1,100 staff) and the Sydney Day Nursery (24 centres and 563 staff [including casuals]).²²

The emergence of for-profit corporate providers has provoked media comment over issues of safety, welfare and well being on the back of reportedly low pay, chronic staff shortages and high staff turnover.²³ Providers such as ABC Learning Centres suggest a different profile with negligible turnover among the senior staff of their 1,800 employees, with turnover for younger employees in the range of 5-10%.²⁴

Sydney Day Nurseries are reported to have indicated concerns that due to the difficulty of turning a profit in the industry, newer players will be forced to cut corners to keep boosting the bottom line. The group also expressed concerns that the community centres will be squeezed out by the emergence of for-profit motivated providers.²⁵

Larger providers are less prevalent in the NSW market than in Queensland and Victoria. The cost of property to establish centres in Sydney is considered too high cost by many private providers as compared to equivalent possible revenues in regional areas. Centres in NSW typically have smaller enrolments of 25 to 40 places while private centres target larger enrolments of 60 or more. They also tend to avoid more costly nursery services for children under 2 years or children with special needs.²⁶

3.6 Social Benefits of Quality Child Care

There is a significant body of research supporting improved social outcomes for children as a result of access to “quality” child care. Economic benefits have also been attributed in the form of improved productivity and other matters.

Quality child care can arguably be measured in terms of both structural and process issues:²⁷

- structural quality generally refers to variables that can be regulated, including staff-child ratio, group size and the education and training of adult caregivers; and
- process quality refers to the provision of developmentally appropriate activities and to warm, nurturing and sensitive care giving within the child care arrangement.

²² Brian Robins, *The Sydney Morning Herald*, “Play dough”, 12 October 2002.

²³ Brian Robins, *The Sydney Morning Herald*, “Play dough”, 12 October 2002.

²⁴ Stephen Wisenthal, *The Australian Financial Review*, “More than Playdough for ABC Founder”, 7 September 2002.

²⁵ Brian Robins, *The Sydney Morning Herald*, “Play dough”, 12 October 2002.

²⁶ Brian Robins, *The Sydney Morning Herald*, “Play dough”, 12 October 2002.

²⁷ Howes, Carollec, “Child Outcomes of Child Care Programs”, Chapter 3 of *Issues in Child Care*

The two measures are likely to be inter-dependent in their impacts, i.e. a lower staff : child ratio is likely to provide for more intensive care giving. Some commentators have suggested that the most important ingredient in the quality of child care is probably the teacher.²⁸

Social benefits attributed to quality child care include: intellectual and social readiness for school (these effects were still measurable in the second grade);²⁹ better language skills; more considerate and sociable behaviour;³⁰ higher IQ; more secure maternal attachment relationships; and³¹ socio-emotional and cognitive ratings.³²

3.7 Current regulation of children's services in NSW

The safety and wellbeing of children in children's services is of crucial importance to the community, and an important responsibility of governments. The provision of children's services in NSW is regulated by the Office of Childcare (OCC). The OCC was established by DoCS to enhance the provision of quality children's services in NSW. The OCC is also responsible for the policy, planning and funding functions of the NSW children's services program.

While DoCS does not provide childcare, it still has a role in the licensing and monitoring of children's services to ensure that they comply with the requirements of the *Children (Care and Protection) Act 1987* and the 1996 Regulations.

DoCS employs 72 Children's Services Advisors (CSAs) to monitor the services provided by the children's services sector. They are responsible for inspecting service providers prior to a three year licence being granted. CSAs also have an ongoing monitoring role once a licence is granted and may make announced or unannounced visits to service providers. In the case that a service provider has breached their licence obligations, DoCS may take legal action against the licence holder.

These regulations provide for the following:

- the licensing of centre based, mobile childcare services, family day care and home based childcare services;
- administration procedures;
- the keeping of various records and registers;
- child/staff ratios;
- minimum education requirements for staff;
- emergency childcare arrangements; and
- building and property specifications.

It is interesting to note that a recent study by Macquarie University sociologist, Paul Henman, found Sydney the second cheapest city for a working couple to raise a child. The analysis

²⁸ Howes, Carollee, "Child Outcomes of Child Care Programs", Chapter 3 of *Issues in Child Care*, page 35.

²⁹ Williamson, D, "New Study finds effects of child care quality linger into the second grade", UNC-CH News Services, 8 June 1999

³⁰ McCartney et al. (1985) "Day Care as intervention: Comparisons of varying quality programs", *Journal of Applied Developmental Psychology*, Volume 6, pages 247-260

³¹ Burchinal et al. (1986) "Does early day care affect infant-mother attachment levels?" and "Day care effects on poverty in children", papers presented at the annual meeting of the American Psychological Association annual meeting, Washington DC

³² Anderson (1989) "Effects of public day care: A longitudinal study", *Child Development*, pages 857-866.

considered the total costs of raising a child (including child care which accounted for approximately one third of total costs and were cheaper than those in Melbourne) along with other expenditures.³³

3.8 Regulation of children's services in other jurisdictions

The following provides a brief overview of the regulatory schemes in other jurisdictions. The detailed cost benefit analysis in section 4.5 contains some specific information on how individual items from the draft Regulation are addressed in these jurisdictions. A comprehensive comparative table of provisions for each State and Territory, current as at October 2001, appears in Appendix A.

Queensland

In Queensland, child care centres must be licensed to operate by Department of Families, Queensland. Community Resource Officers from the Department of Families carry out licensing checks every two years and are responsible for monitoring ongoing compliance. Services are required to be licensed under the *Queensland Child Care Act and Regulation (1991)* in order to register with the Commonwealth for approval to be eligible for the Child Care Benefit.

The Act and Regulation specify the minimum quality standards that need to be met in order to be licensed, including:

- staff training and qualifications;
- group size and adult to child ratios;
- parent rights and responsibilities;
- health and safety matters;
- physical environments; and
- licensee functions and responsibilities.

The licence application process involves the following:

- an application for licence, accompanied by the prescribed fee;
- provision of appropriate documentation (criminal history disclosures and checks, plans in the case of a new child care centre); and
- completion of a licence report on the proposed service taking into account the ability of the licensee to provide a safe and suitable service including facilities, staffing and other operational aspects. Licences are issued for a period of up to two years and a licensing fee of approximately \$1,500 applies.

Queensland is anecdotally considered to be the least-regulated State.³⁴ However, from a cursory perusal of the above and Appendix A, this may not be a valid perception.

³³ Kirsty Ncedham, *The Sydney Morning Herald*, "Sydney Kids going cheap at \$182,300. Don't delay, breed today", 10 October 2002.

³⁴ "Making profits out of preschoolers", *Sydney Morning Herald*, November 11 2002

Victoria

The Department of Human Services regulates both pre-schools and children's services in Victoria under the *Children's Services Act 1996* and the *Children Services Centre Regulation 1988*. A licensing fee applies on a sliding scale.

Regulation of service providers includes the following matters: licensing of centres and staff; minimum staff numbers; staff : child ratios; space requirements; separate administration room; access to outdoor play areas and washrooms; air conditioning and ventilation; exits; fencing; sufficient and suitable items of furniture and play equipment; and sandpits.

South Australia

In South Australia all children's services come under the auspice of the Department of Education, Training and Employment under the *Children's Services Act 1985* and the *Child Care Centre Regulation 1998*. The Department has developed an integrated early years program with a specified curriculum to be taught from birth.

Regulation of service providers includes the following matters: licensing of centres and staff; staff : child ratios; staff training; maximum child group sizes; staffing for indirect services; minimum age of staff; furniture and play equipment; outdoor space; indoor play room; toilet facilities; and different requirements for children of different ages. No licence fee is charged in South Australia.

Western Australia

In Western Australia, children's services are regulated under the *Children's Services Act 1987* and the *Community Services (Child Care) Regulation 1988*.

Regulation of service providers includes the following matters: licensing of centres and staff; development programs; minimum staff requirements; staff : child ratios; staff qualifications; minimum age of staff; indoor and outdoor space requirements; exits; and bathroom facilities. No licence fee is charged in Western Australia.

Tasmania

In Western Australia, children's services are regulated under the *Child Welfare Act 1960* and the *Child Welfare Regulation 1960*.

Regulation of service providers includes the following matters: licensing of centres and staff; staff qualifications; staff : child ratios; development programs; indoor and outdoor space requirements; furniture and play equipment; fences, barriers and drops; water safety; glass, lighting, ventilation, heating and cooling; building cleanliness, maintenance and repair; health, hygiene and infection control; food and nutrition; outdoor play equipment and environment; plants, birds and other animals; and emergency procedures, first aid and administration of medication. No licence fee is charged in Tasmania.

Northern Territory

Territory Health Services is concerned with the regulation of children's services in the Northern Territory under the *Community Welfare Act 1995* and the *Community Welfare (Child Care) Regulation December 1996*.

Regulation of service providers includes the following matters: licensing of centres and staff; maximum number of children; space requirements; and maximum period in care per day. No licence fee is charged in the Northern Territory.

3.9 The proposed legislation

The primary objective of the Act is to aid in the facilitation of the care and protection of children and young people. Section 8 of the Act provides a detailed statement of the objects of the Act, namely:

“That the objects of this Act are to provide:

- 1 that children and young persons receive such care and protection as is necessary for their safety, welfare and well-being, taking into account the rights, powers and duties of their parents or other persons responsible for them, and*
- 2 that all institutions, services and facilities responsible for the care and protection of children and young persons provide an environment for them that is free of violence and exploitation and provide services that foster their health, development needs, spirituality, self-respect and dignity, and*
- 3 that appropriate assistance is rendered to parents and other persons responsible for children and young persons in the performance of their child-rearing responsibilities in order to promote a safe and nurturing environment.³⁵”*

The following outlines the staged proclamation process for the *Children and Young Persons (Care and Protection) Act 1998*:

- 17 April 2000 - the provisions of the 1998 Act dealing with definitions³⁶ and offences³⁷ commenced;
- 17 November 2000 - the Office of the Children's Guardian was established by the commencement of section 178.
- 18 December 2000 - provisions commenced dealing with the objectives of the Act, requests for assistance and reporting, the Children's Court, medical examination, removal of persons and entry of premises and places;³⁸
- 2 July 2001 - provisions commenced dealing with the functions of the Children's Guardian,³⁹ the Children's Court Clinic,⁴⁰ designated agencies,⁴¹ rights of children and young people in out-of-home care,⁴² and reciprocity between States and Territories⁴³;

³⁵ Section 8, *Children and Young Persons (Care and Protection) Act 1998* No 157

³⁶ Chapter 1.

³⁷ Chapter 14.

³⁸ Chapters 2-6 (except sections 28 and 58), Parts 1 and 2 of Chapter 7, Division 1 of Part 3 of Chapter 8, Chapter 9 (except section 176), section 200, section 229, Chapter 15 (except section 236) and sections 246-254, 256, 257 and 265.

³⁹ Chapter 10, sections 179, 180, 185-190.

⁴⁰ Chapter 5, section 58.

- 1 February 2002 - the *Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Act 2001* commenced except for those amendments to sections 135 and 150; and
- the balance of the unproclaimed provisions dealing with Out of Home Care (OOHC) and the Children's Guardian are currently under consideration for commencement.

Chapter 12 of Act has not yet been proclaimed to commence. The provisions contained in chapter 12 of the Act will form the new governing legislation for the regulation of children's services in NSW. When it is introduced, the prior legislation pertaining to children's services contained in the *Children (Care and Protection) Act 1987* will be repealed.

The draft Regulation is aimed at providing further clarification and guidance to particular provisions contained in the Act in order to ensure that the objectives of the Act are achieved.

The Regulation addresses matters relating to:

- the licensing of children's services;
- the approval of employees within the children's services sector as "fit and proper" persons;
- minimum staff education requirements;
- the financial security of entities applying for a licence to operate a children's service;
- building and property specifications; and
- administrative procedures and policies.

Whilst the draft Regulation covers similar matters to the existing regulation applying to the sector, there are a number of significant changes. Details of the draft Regulation and its potential impacts are provided in Chapter 4 of this RIS.

Profitability and competition issues

The analysis presented earlier in this chapter identified the following key issues:

- financial barriers to entry are considered low by commercial standards but high in the context of historically not-for-profit or sole proprietor operations;
- labour related costs dominate the recurrent expense structure;
- economies of scale exist with respect to enrolments; and
- competition occurs on the basis of: quality; locality (proximity to work place or home); branding and advertising.

*... evidence indicates that state regulations both increase the cost of child care as well as have direct (non-price) effects on utilisation but that their total effects tends to reduce the utilisation of market-based child care, especially among households with non-working mothers...*⁴⁴

⁴¹ Chapter 8, section 139.

⁴² Chapter 8, section 162.

⁴³ Chapter 17, section 255.

⁴⁴ Hotz, J and Kilboun, M.R, "Regulating Child Care: The Effects of State Regulations on Child Care Demand and Its Cost", The Harris School : Working Paper Series 94.5

The impact of additional equipment or facility requirements is likely to have fewer implications for private providers (particularly larger operators) but may create greater pressure for smaller and not for profit providers. It may also serve to increase the minimum number of enrolments required for financial sustainability and reduce the ability of service providers to offer places for more expensive forms of care, i.e. for children under 2 years of age and children with special needs.

Increased financial barriers will provide improved entry conditions for larger corporate providers who are able to sustain the investment required and hence make divestments to these groups by existing private providers more attractive. Changes in staffing and conduct requirements (i.e. reducing the child : staff ratios) will impact upon profitability, the sustainability of smaller and not for profit providers, and the attractiveness of the industry to new entrants. All of these matters are likely to lead to reduced market competition.

4 Assessment of the Draft Regulation

4.1 Format of the Draft Regulation

The proposed model of regulation of the children's services sector attempts to ensure that appropriate standards for children's services are in place in order to meet the safety, care and developmental needs of children in children's services by way of a statutory licensing regime and restrictions on the conduct of industry participants.

The draft Regulation is aimed at providing further clarification and guidance to particular provisions contained in Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998* in order to ensure that the objectives of the Act are achieved. The draft Regulation consolidates the two existing regulations — the *Centre Based And Mobile Child Care Services Regulation (No 2) 1996* and the *Family Day Care and Home Based Child Care Regulation 1996* — into a single regulation. The objects and principles of the Act and Chapter 12 are discussed in section 3.9.

The draft Regulation is divided into nine parts as detailed in the table below.

Table 4.1 Overview of Regulation’s Structure

Section number and title	Contents and Purpose
Part 1 - Preliminary	Preliminary matters including definitions used in the Regulation
Part 2 - Applying for a licence for a children’s service	Process and requirements for obtaining a licence.
Part 3 - Licences	The object of this Part is to provide for the granting of licences for children’s services, and to prescribe licence conditions that ensure that licensees are committed to: (a) encouraging social and educational opportunities for children provided with the service, and (b) providing a positive and secure environment for such children, and (c) employing and training staff who have the same commitment.
Part 4 - Staff and child number requirements	The object of this Part is to ensure that children provided with a children’s service are cared for by an appropriate number of qualified staff in an environment conducive to each child’s development.
Part 5 - Facilities and equipment requirements	The object of this Part is to ensure that the physical environment of a children’s service is clean, safe, healthy, well-equipped and in conformity with applicable statutory requirements and building standards.
Part 6 - Administration requirements	The objects of this Part are as follows: (a) to ensure that procedures are in place in a children’s service for access by parents to: (i) information about the service, and (ii) information about their child, and (iii) their child; (b) to ensure that policies are in place in a children’s service with respect to programs for the development of children; (c) to ensure that appropriate records are kept in respect of the procedures, policies and practices of children’s services to enhance the accountability and transparency of those services; (d) to provide for a register of family day carers for a family day care children’s service.
Part 7 - Practice requirements	The object of this Part is to ensure that the policies and procedures implemented by the licensee of a children’s service meet the health, safety and developmental needs of children provided with the service.
Part 8 - Probity Checks	The object of this Part is to ensure that a licensee of a children’s service assesses any risks to children provided with the children’s service arising from the involvement of a person in the management or operation of the children’s service.
Part 9 - Miscellaneous	Other miscellaneous issues.

The draft Regulation is largely based on the provisions of the existing regulation. Key provisions of the draft Regulation include:

- the process of licensing of children’s services providers (Parts 2 and 3);
- the responsibilities of licensees and authorised supervisors (Parts 3 to 9);
- child numbers (Part 4);
- staff (Part 4);
- the standards of the facilities that services must comply with (Part 5);
- the administrative policies and procedures which will apply in services (Part 6); and
- interactions between staff and children, developmental and education programs, and equipment (Parts 5, 6 and 7).

4.2 Impact on Competition

The draft Regulation covers similar matters to the existing regulations applying to the sector. There are a number of changes relating to the format and substance of the provisions, such as:

- requirements for additional equipment or different types of equipment;
- a small number of relaxations in equipment requirements (i.e. removal of requirements relating to flyscreens and seat belts on buses used for excursions);
- changes in staffing requirements including increased entry restrictions and a lower ratio of children to staff;
- increased requirements governing acceptable work practices; and
- provision for mobile services to submit a venue management plan if the service is unable to comply with the provisions of relevant parts of the Regulation.

The proposed changes to the Regulation can be broadly grouped according to their potential impacts on competition. Specifically, the proposed changes would impact upon:

- financial barriers to entry;
- staffing barriers to entry; and
- competitive conduct.

The extent of impacts on competition created by these restrictions will, in part, be determined by the existing level of competition in the market. Anecdotal evidence suggests that service providers are less likely to establish operations in the same geographic catchment area as another provider. This would imply a degree of geographic market power and hence a likely diminished level of competition. Where competition is low, matters limiting the ability to compete are likely to have reduced implications.

Financial and staffing barriers to entry impact on market competition by reducing the:

- ability and attractiveness for new and/or existing participants to enter and/or remain in the industry;
- number of new entrants; and
- resulting vigour of competition between businesses.

Restrictions on conduct may impact upon the way businesses operate (and therefore compete) and the cost of these operations. Competition may be affected by the following:-

- restrictions on business practices reduce the ability for innovation in service delivery; and
- to a lesser extent, operating cost implications reduce profitability and therefore the industry attractiveness to new entrants.

The proposed changes to the Regulation are summarised in the following table (over page), by type of competitive restriction. It should be emphasised that the table is intended to provide a synopsis for all types of service providers. The table should read in conjunction with the specific clauses of the draft Regulation in order to assess the impact of the draft Regulation on all service provider groups. The final column in the table indicates the affected service provider groups. Arguably, the family day care providers may face more restrictions than in the 1996 regulation.

While the focus in this section of the report is on assessing the impact of proposed changes upon competition, this is by no means the only criteria by which the changes will be assessed. For instance, financial barriers to entry can also be viewed as minimum equipment standards that protect the quality of outcomes. It is recognised that both perspectives need to be considered.

*Business benefits from existing regulation which give them secure, privileged or protected markets or shields them and their customers from competition with dubious operators.*⁴⁵

The underlying guiding principle from Clause 5(1) of the Competition Principles Agreement (CPA) requires consideration of whether the objectives of the legislation can be achieved through means which impose less or no restrictions on competition. The purpose of the review therefore is to try and identify the costs and benefits involved for consumers of services (including price, service, quality and access to care issues etc.) and impacts on service providers and government, in order to strike an appropriate balance. Clearly, regulation (and conversely deregulation) of child care services is only beneficial where the ratio of benefits to costs is high.

⁴⁵ Corbett, D (1996) *Australian Public Sector Management*, Sydney : Allen & Unwin

Table 4.2 Competitive Restrictions

Type of Competitive Restriction	Proposed requirement	Current requirement	Relevant parties and direction of impact on restrictions
<i>Financial barriers to entry</i>	Part 2 Clause 16 (b) (c) (d) & (e) Requires more detailed site plans of centre-based services, specifies the number of copies to be submitted (3), requires the plans to be drawn by a person referred to in the <i>Architects Act 1921</i>	Requires a site plan of services but doesn't require same level of detail, doesn't specify the number of copies of the plan to be submitted, doesn't require certification.	Centre Based Increase
	Part 2 Clause 17 Allows mobile children's services to use a venue management plan to identify and manage issues where a venue they are using does not meet the requirements of the regulation	Provides for the Licensee of a mobile service to take all practicable steps to ensure the venues they use meet the regulation.	Mobile Services Decrease
	Part 5 Clause 48 (1) (c) Requires a separate area for sleeping for children under 2 years	Does not require a separate area for cots to be located.	Centre Based Increase
	Part 5 Clause 48 (6) Requires shade in outdoor areas to comply with guidelines issued by the NSW Cancer Council: "Under cover: Guidelines for shade planning and design"	Requires the outdoor areas to be adequately shaded.	Centre Based & Mobile Services Increase
	Part 5 Clause 50 Requires a sink, bench top, and a lockable cupboard for use in craft activities. The area must be adjacent to the indoor play area and not be adjacent to food preparation areas or toilet or nappy change facilities.	Requires a sink for use in craft activities which is separate from food preparation facilities.	Centre Based & Mobile Services Increase
	Part 5 Clause 51 (4) If the premises or home contains a separate kitchen, the kitchen must have a door, half-gate or other barrier to prevent unsupervised entry by children into the kitchen	Does not contain this requirement.	All Children's Services Increase

Type of Competitive Restriction	Proposed requirement	Current requirement	Relevant parties and direction of impact on restrictions
	Part 5 Clause 53 (1) Requires a service to have nappy change facilities only if children wearing nappies attend the service	Requires a service to have nappy change facilities if licensed for children under 3 years of age, whether used or not.	All Children's Services Decrease
	Part 5 Clause 56 (1) Requires the designated outdoor play space of a service to be fenced on all sides by a 1200mm fence	Centre Based and Mobile Regulation already has this requirement.	Children's Services, Family Day Care and Home Based Increase
	Part 5 Clause 56 (6) Age appropriate barriers are to be installed at the top and bottom of stairs on the premises of a service, only where considered necessary by DoCS or the Authorised Supervisor	Requires age appropriate barriers at the top and bottom of all stairs on the premises of a service.	All Children's Services Decrease
	Part 5 Clause 57 Requires glass at the premises of a children's service, where the glass is accessible to children, to be glazed with safety glass if the Building Code of Australia requires it, or to be guarded by barriers, or be treated with a product to prevent the glass shattering if broken.	Centre Based and Mobile Regulation requires safety glass in new services, and in existing services when glass is broken, so this requirement stays the same. Family Day Care and Home Based Regulation is silent on glass requirements.	All Children's Services Increase
	Part 5 Clause 58 (2) Mobile telephones are now acceptable as the telephone for a service, providing there is adequate reception and the phone is kept fully charged for use.	Does not include the use of mobile telephones as the telephone for a service.	All Children's Services Decrease

Type of Competitive Restriction	Proposed requirement	Current requirement	Relevant parties and direction of impact on restrictions
	Part 6 Clause 86 (2) Where vehicles are used to transport children on excursions, only those vehicles with 9 or less seats are required to be fitted with child restraints.	Regulation require that all vehicles used to transport children on excursions are fitted with child restraints.	All Children's Services Decrease
<i>Staffing barriers to entry</i>	Parts 2 Clause 10 Requires the proposed licensee & authorised supervisor to provide a copy of a document with their application which contains a photo of the applicant. eg. a drivers licence	Does not require photo identification of applicants.	All Children's Services Increase
	Part 2 Clause 11 (3) (a) Requires a duly certified copy of the qualifications held by the Authorised Supervisor	Requires a copy of the qualification, but does not require the copy to be certified.	All Children's Services Increase
	Part 2 Clause 11 (3) (b) Requires the original of current character references to be submitted with application	Requires copies of character references.	All Children's Services Increase
	Part 4 Clause 42 (2) (d) Requires that the licensee employ primary contact staff who demonstrate a basic knowledge & understanding of appropriate care of children. Requires the licensee to assess current staff employed at the service, according to the same criteria within 5yrs of the commencement of the Regulation.	Does not require primary contact staff to have specified knowledge about the care and development of children.	Centre Based and Mobile Services Increase

Type of Competitive Restriction	Proposed requirement	Current requirement	Relevant parties and direction of impact on restrictions
	Part 8 Clause 99 Requires the licensee of a service to conduct probity checks on persons involved in the management and operation of the service. These checks are more extensive than the working with children check as they cover general criminal history considerations, not limited to those involving children.	Regulation currently allow, but does not require, the licensee to undertake criminal record checks and any other checks considered necessary to determine if a person is 'fit and proper'. The part proclaimed <i>Working With Children Act</i> requires that a "working with children" check be undertaken to identify any criminal offences related to children.	All Children's Services Neutral
<i>Competitive conduct</i>	Part 3 Clause 27 (8) (b) Requires the Authorised Supervisor of a service to be on the premises of the service for no less than 60% of the time that the service is provided.	Does not specify that the Authorised Supervisor must be on the premises. However, the AS had to be there because of many responsibilities.	All Children's Services Neutral
	Part 3 Clause 27 (26) Requires staff and carers to give an undertaking to the licensee that they will abide by the Code of Ethics issued by the Australian Early Childhood Association	Does not require this undertaking.	All Children's Services Increase
	Part 3 Clause 29 Allows the approval of a Temporary Authorised Supervisor for a service, to replace the Authorised Supervisor when on leave.	Has no provision for Temporary Authorised Supervisor, meaning the Authorised Supervisor remains responsible for the service in their absence.	All Children's Services Neutral

Type of Competitive Restriction	Proposed requirement	Current requirement	Relevant parties and direction of impact on restrictions
	Part 4 Clause 39 Children aged between 3-6 years are to be arranged and supervised in groups of not more than 20. Staff child ratios of 1 : 10 will remain the key determinant for organising groups.	Allows a group of 3-6 years olds to be not more than 25.	Centre Based and Mobile Services Increase
	Part 4 Clause 41 Where school aged children (up to 12 years of age) are attending a service for before & after school care, and are mixed in with the younger children, 10% of the licensed places of the service can be occupied by those school aged children, or, if all school aged children attending the service are attending school in kindergarten or Year 1, 20% of the licensed places can be occupied by school aged children. If more than 10% or 20% then separate facilities and staff need to be provided	Allows 10% of the licensed number of service to be occupied by school aged children. If more than 10% separate facilities and staff are required.	Centre Based and Mobile Services Decrease
	Part 4 Clause 44 (1) The ratio of staff to children is increased to 1:4 for children under the age of 2 years.	Requires a ratio of 1 staff member for every five children under the age of 2 years.	Centre Based and Mobile Services Increase
	Part 4 Clause 44 (3) Where children are cared for in mixed age groups the ratio of Staff : Children must be based on the age of the youngest children in the group. In practice, the requirement will be similar to, though greater than, the existing regulation.	The current regulation is silent on mixed age group care.	Centre Based and Mobile Services Increase

Type of Competitive Restriction	Proposed requirement	Current requirement	Relevant parties and direction of impact on restrictions
	Part 6 Clause 68 (4) Restricts the use of video surveillance and monitoring equipment in a child care service to ensure images produced by such cameras are available only on the premises of the service	The Regulation is silent on the use of video and surveillance monitoring equipment.	All Children's Services Increase
	Part 6 Clause 75 Records will be required to be stored in a safe and secure area (either on the premises or off-site) until the relevant child reaches the age of 24 years and be made available within one working day. The records kept must include information pertaining to enrolments, medication, attendance and excursion forms and records of complaints.	The current regulation requires that records relating to child injury, illness and accidents be kept on the premises until the relevant child reaches 24 years of age.	All Children's Services Increase in records to be kept Decrease regarding storage location. Overall Neutral
	Part 6 Clause 80 Requires at least 2 staff members to check beds and all areas of the premises to ensure no child remains on the premises after the service closes.	Centre Based and Mobile Regulation is silent on this matter.	Centre Based and Mobile Services Increase
	Part 7 Clause 93 (2) Requires 1 adult for each child within the fenced area of any swimming pool on the premises of a centre or the home of a carer.	Centre Based and Mobile Regulation requires 1 adult in the pool for each child in the pool. Family Day Care and Home Based Regulation requires a 1:1 ratio for children under 3 and 1:2 for children over 3 when swimming, and requires a minimum of 2 adults to be present when children are swimming but does not require the adults to be in the pool.	All Children's Services Increase
	Part 7 Clause 95 (6) Requires that animals do not travel in a car with children unless the animal is restrained.	Current Regulation do not contain this requirement.	All Children's Services Increase

The previous table indicates that the largest number of changes or additional restrictions introduced by the regulation relate to equipment requirements / financial barriers to entry and changes in work practices / conduct requirements. As discussed in section 3.5, these issues are more likely to impact on not for profit and sole proprietors than larger private providers.

There are roughly half as many issues relating to staffing barriers to entry as compared to each of the previous two categories. The relevant matters are minor in nature and unlikely to result in significant increases in financial and non-financial barriers to entry for staff, even considering the general shortage in supply of workers in the children's services industry.

Chapter 2 of this report identified the generic costs and benefits of a statutory regulatory system in the context of a range of other general regulatory and non-regulatory approaches. The following section discusses some of the generic matters in more detail.

To provide a point of comparison in the generic discussion of the potential benefits and costs of statutory regulation, the discussion adapts a number of themes from a debate between Alan Moran of the Institute of Public Affairs and Robert Fitzgerald of the NSW Community Services Commission on the appropriateness of market based regulation to community services.⁴⁶ In particular, the "alternative perspective" has been drawn upon to allow consideration of other less restrictive approaches than black-letter statutory regulation; supplemental analysis of these concepts and arguments; and, in turn, to critique the draft Regulation in this context.

Following the generic discussion, the specific costs and benefits of the proposed statutory regime will be examined according to the type of competitive restriction (as per the classifications above). This discussion aims to assess the specific costs and benefits of the changes proposed in the draft Regulation.

Finally, an "impact matrix" is presented at the end of this chapter summarising the costs and benefits of each regulatory approach for key stakeholder groups and the incremental impacts of the draft Regulation over the existing regulation.

The benefits and costs of a statutory licensing regime for children's services are difficult to quantify because of a lack of available data. In most cases these potential benefits are qualitative in nature and as such are not possible to measure. Where possible we have attempted to quantify impacts, however the analysis has been necessarily restricted to qualitative estimates in a number of instances.

4.3 General Benefits

The major general benefits of licensing children's services can be derived from the objectives of Chapter 12 of the Act noted above — in particular, to ensure the safety, welfare and well-being of children in children's services. The draft Regulation also contains a number of "object of part" comments which are intended to assist in understanding the intent of the provisions.

⁴⁶ Conference Proceedings, *Achieving Better Regulation of Services*, "Regulating to attain Social Goals", Australian National University, Canberra, 26-27 June 2000

The potential benefits associated with the statutory licensing of children's services include ensuring the safety, well being and welfare of children in children's services by means of:

- a transparent, consistent and accountable regime;
- ensuring compliance with regulatory requirements through the monitoring and enforcement of those requirements upon children's services providers; and
- addressing market failures, which would exist in the absence of a statutory licensing regime.

Transparency, consistency and accountability

A statutory licensing system for children's services provides a transparent, independent model of regulation that all those providing children's services can be measured against. The proposed licensing system aims to ensure that a person or organisation granted a licence has met standards prescribed by the regulation prior to entering the children's services sector and providing children's services — that is, that the person or organisation is able to provide a minimum and consistent level of quality services to children. A statutory licensing regime also provides a system for accountability to Parliament, users of children's services and the community in general.

In addition, the statutory licensing model provides children's service providers with the benefit of operating in a consistent environment in which the standards to be met by services are clearly specified.

Compliance, monitoring and enforcement

A critical aspect of a licensing scheme is the compliance, monitoring and enforcement program. A compliance program is a core component of ensuring that those providers that offer children's services comply with the terms and conditions of their licence as specified in the draft Regulation. Consequently, it is seen to reduce the potential risk of adverse impacts upon children in the children's services sector.

In particular, a statutory licensing regime provides the Director-General of DoCS with the necessary information to monitor whether children's services providers providing children's services are complying with prescribed standards. One of the advantages of statutory licensing is that it is enforceable by law, and provides the enforcement authority — in this case the Director-General — with the necessary power to impose sanctions on children's service providers who do not meet prescribed standards. Licensed providers who do not comply with the prescribed conditions of their licence may have their licence revoked or conditions imposed.

Licence breaches are essentially discovered in one of three ways: where a Children's Service Adviser (CSA) is visiting a service in response to a report from a member of the public; during a scheduled licence visit; during follow-up visits where inadequacies were noted during an earlier visit. Where a licensee falls into breach CSAs generally attempt to work with the licensee to promote compliance with the minimum standards. Prosecution is usually restricted to licensees who persistently breach the Regulations.

One factor, which may increase the likelihood of compliance with a statutory licensing scheme, is the high degree of acceptance of this approach already by the children's services sector, as substantially similar provisions are currently in place.

Addressing market failures

One rationale for government intervention in a market, such as regulation, is to address situations where market failures exist. Market failures occur where, in the absence of government intervention, the market would fail to deliver optimal social and/or economic outcomes. One

example of market failure that is relevant to the children's services sector is the existence of information asymmetries. Asymmetric information / inadequate information for consumers occurs when participants within the market do not have access to the same level of information. Typically, this means that consumers have insufficient or inadequate information on which to base their decisions to purchase and consume. This may lead consumers to make decisions, which are not in their best interests.

A licensing system attempts to balance the information imbalance between the consumers (children and their parents) of providers of children's services. When parents seek out children's service providers, they often lack the necessary information and knowledge to determine what is the appropriate standard of service required to address their child's individual needs.

Hence, there is an imbalance in the level of information between the child, their parents and the children's services provider. Moreover, should the parents or guardians wish to obtain information in relation to certain matters to make an informed choice, it may be difficult to obtain adequate information in relation to matters such as:

- the minimum standard of quality services that should be provided;
- the qualifications of staff;
- staff : child ratios; and
- policies and procedures to minimise risks to children.

Therefore, statutory licensing is one of the mechanisms used to protect children and their parents from problems that can arise from information inadequacies in the market for children's services. Without a statutory licensing system any person could operate a children's service and it would be difficult for consumers of those services to determine which service providers were reputable and able to offer safe and consistent standards of quality services appropriate to ensure the safety, welfare and well-being of children. Statutory licensing of service providers precludes the entry of substandard operators into the sector and requires all service providers to maintain clearly specified minimum standards, and thus acts as a signal of quality to consumers.

Regulating an industry and creating minimum standards for all providers can create its own difficulties. Consumers may not fully understand the:

- content and interpretation of the Regulation;
- degree of general industry compliance; and
- number or form or any complaints or disciplinary action applied to individual service providers.⁴⁷

Simpler and less prescriptive approaches to regulation could also be applied to address concerns relating to information inadequacies. For instance, the prescriptive minimum requirements of the draft Regulation could be abandoned and replaced with a requirement that all centres prominently display up-to-date information on:

- the number of children enrolled;
- the number and qualifications of all staff;
- the centre's operating hours; and
- any other pertinent information.

⁴⁷ Conference Proceedings, *Achieving Better Regulation of Services*, "Regulating to attain Social Goals, Australian National University, Canberra, 26-27 June 2000, page 233.

This information would more fully address specific concerns related to information inadequacies than the draft Regulation without the associated costs. However, prescriptive regulation also offers a number of associated benefits, which may make it preferable to simple information disclosure:

- regulatory experts, by definition, appear to be better placed than the average decision maker;
- there are economies in the search activity – regulations bring minimum standards, allowing consumers to avoid time-consuming reviews of different providers.⁴⁸

Another form of market failure that may arise in the absence of government regulation of children’s services is that of “spill over effects”.⁴⁹ Spill over effects arise when a transaction between parties creates benefits (positive spill overs) that are not paid for or imposes costs (negative spill overs) that are not compensated on other parties not directly involved in the transaction. In the case of children’s services, negative spill overs may arise where appropriate minimum standards of services are not provided, with adverse impacts on child safety and development. In turn, these impacts may create negative spill overs for society, in terms of costs of providing remedial action to address the adverse impacts.

4.4 General Costs

The main costs associated with the draft Regulation are:

- compliance costs incurred by providers of children’s services;
- administrative, monitoring and enforcement costs incurred by DoCS; and
- economic efficiency costs, such as reduced competition among service providers as a result of barriers to entry to the market, reduced flexibility to adopt different standards in response to different circumstances, and costs arising from a possible focus by employers on meeting the requirements of the regulation rather than striving to achieve best practice in the provision of children’s services.

Compliance costs

The major costs that a statutory licensing scheme imposes on providers of children’s services are compliance costs — that is, the costs of complying with the requirements imposed by the licensing process and standards to be achieved in order to become and remain licensed.

Compliance costs may include staff training and professional development, facility upgrades, costs associated with providing and maintaining information and other costs of complying with the requirements of the licensing regime.

As noted previously, children’s service providers are currently required to comply with the requirements of the existing Regulations 1996. The provisions of the draft Regulation are largely based on the provisions of these existing regulation., Where provisions have not substantially changed, it is unlikely there will be major changes to the compliance costs currently being incurred.

Nonetheless, the draft Regulation does present another incremental increase in the level of restrictions and costs imposed on service providers. Between 1991 and 1998 the average real cost for Australian service providers have increased 37% for community centres; 34% for private centres; and 12% for family day care.⁵⁰

⁴⁸ Conference Proceedings, *Achieving Better Regulation of Services*, “Regulating to attain Social Goals, Australian National University, Canberra, 26-27 June 2000, page 233.

⁴⁹ Externalities are often referred to as “spill over” effects.

⁵⁰ Conference Proceedings, *Achieving Better Regulation of Services*, “Regulating to attain Social Goals, Australian National University, Canberra, 26-27 June 2000, page 230.

While certainly not all of these costs can be attributed to the national movement towards increased regulation, the trend of growing costs is generally accepted as a cost of statutory regulation. The resulting implication being a continued and growing dependence on increasing fees for service or public subsidisation to maintain the financial viability of service providers.

Administration, monitoring and enforcement costs

DoCS will incur direct financial costs in administering, monitoring and enforcing the proposed statutory licensing regime. However, these are unlikely to be significantly different from the current costs incurred by DoCS. Put into perspective, this represents a significantly smaller amount of expenditures than general funding from the provision of children's services.

The role government plays in setting regulation and licensing may have a positive impact on the costs of monitoring and enforcing the practices of service providers. The time and energy invested by both the government and the service provider when the service is established can ensure that it is operating optimally from its outset and may imply a reduced likelihood of subsequent negative occurrences.

There may also be some administrative savings arising from consolidation of the two existing regulations into a single regulation, however these are not likely to be significant.

One of the key rationales for establishing prescriptive requirements for equipment and staffing standards is to address information asymmetries / inadequacies for consumers in choosing a service provider able to offer an appropriate standard of care, i.e. one which is consistent with their requirements.

Over time however, consumers' reliance on the role provided by the Regulation and their willingness to accept that service providers meet minimum standards of service (without investigation) is likely to create a long term dependence on government, or a 'moral hazard' as it is often known.⁵¹

When States regulate child care programs; the level of regulation is most often at the threshold [minimum] rather than the optimal level. That is, regulation is designed to prevent programs that harm children rather than promote programs that enhance development.⁵²

If the draft Regulation provides for "minimum" requirements only, the moral hazard created may actually result in the potential risk of harm increasing - to the extent that "market based" mechanisms to differentiate quality are not effective.⁵³

Increasing minimum facility and equipment standards and restrictions on conduct will impact upon the fixed capital and annual operating cost profiles of service providers. Smaller private and, in particular, not-for-profit service providers who are presently struggling to achieve financial sustainability will be further marginalised by the restrictions. This may result in increased dependency on government funding to support continued operation.

⁵¹ Conference Proceedings, *Achieving Better Regulation of Services*, "Regulating to attain Social Goals, Australian National University, Canberra, 26-27 June 2000, page 235.

⁵² Howes, Carolee, "Child Outcomes of Child Care Programs", Chapter 3 of *Issues in Child Care*, Teachers College Press, New York 1992

⁵³ One of the larger private providers, ABC Learning Centres (Queensland), highlights brand and reputation for quality (through training and motivation of staff) as "market based" differentiating factors with policy and procedures otherwise the same. Brian Robins, *The Sydney Morning Herald*, "Play dough", 12 October 2002.

Economic efficiency costs

A statutory licensing regime can impose economic costs on society by reducing the overall economic efficiency of the sector. As noted above, statutory licensing of children's services can result in economic efficiency costs due to barriers to entry to the market, reduced flexibility to adopt different standards in response to different circumstances, and costs arising from a possible focus by service providers on meeting the requirements of the Regulation rather than striving to achieve best practice in the provision of children's services.

A statutory licensing regime for children's services, whilst created for the purposes of child protection, creates a barrier to entry into the children's services sector by imposing particular minimum standards and requirements on service providers, and preventing those who cannot meet these standards from providing services.

An alternative perspective may question the need for the extensive facility and equipment standards imposed for the time spent in care, which far exceed those provided in the child's own residence.

Taken to its logical extension, standard residential premises would not be considered to provide sufficient health and safety protection for children. Similar arguments can be presented for the necessity of training and qualifications for staff which are not required of natural parents – if early child development and education matters are considered important objectives then this may be better addressed through a lowering of the entry age for schooling.⁵⁴

These views are likely to be an oversimplification as standard family residences do not service the same quantity of children on a day to day basis and offer the usually better ratio of parents: child than staff: child ratio. Also, international studies into the societal benefits from child care are beginning to show evidence of benefits, particularly in the area of early childhood development.⁵⁵

An important cost to be recognised is that by limiting the number of service providers in the sector, competitive pressures on providers may be reduced, resulting in higher prices for children's services or a lower quantity of service provided.

Licensing may also impose efficiency costs by reducing the flexibility of service providers to adopt different standards of service provision in response to different circumstances such as those associated with geographical, cultural or service type differences, or to implement arrangements which allow them to achieve prescribed standards of service at least cost. By reducing the costs of complying with the regulation, service providers may be able to reallocate additional resources to particular aspects of their service, such as increasing service quality.

A statutory licensing regime may also reduce flexibility and incentives for service providers to develop innovative arrangements for the provision of children's services, and reduce the scope for service providers to differentiate themselves on the basis of the level of service provided, thus promoting competition in the sector and promoting consumer choice.

A statutory licensing regime may also reduce economic efficiency by discouraging the development of higher standards of practice as its focus is principally on ensuring those who are regulated comply with the regulated standards instead of striving to achieve best practice, innovation and continuous improvement. That is, there may be no incentive for children's services providers to achieve beyond the minimum standards set by the Regulation.

⁵⁴ Conference Proceedings, *Achieving Better Regulation of Services*, "Regulating to attain Social Goals, Australian National University, Canberra, 26-27 June 2000, page 230.

⁵⁵ Conference Proceedings, *Achieving Better Regulation of Services*, "Regulating to attain Social Goals, Australian National University, Canberra, 26-27 June 2000, page 250.

4.5 Detailed Cost Benefit Analysis of Specific Provisions

The previous sections addressed general costs and benefits anticipated in relation to the draft Regulation. The purpose of this section is to provide a detailed analysis of the specific impacts expected to result from some of the key proposed changes under the draft Regulation, which may impact upon competition. The following discussion draws on the general cost and benefit themes discussed above and analyses their relevance for each provision.

For each proposal we have taken into consideration:

- the contribution of the provisions to improving the ability to meet the objectives of the legislation – i.e. improved outcomes for consumers of children’s services;
- the likely direction and impact of financial and competitive restrictions on industry providers; and
- impacts for DoCS.

The provisions are discussed in the following sections according to their type of impact on market competition.

Financial Barriers to entry

The draft Regulation includes a number of changes relating to financial barriers to entry. These matters can be broadly grouped as follows:

- matters pertaining to site and practice management plans;
- matters relating to premises and equipment requirements and standards; and
- relaxations in financial barriers to entry.

These matters are discussed in turn below. In each case, the impact of one-off financial costs will be more significant for smaller rather than larger providers. Also, the degree of impact of minimum equipment requirements and standards required by the draft Regulation will be dependent upon the existing industry practice, i.e. whether service providers presently adopt these practices and how easily premises may be upgraded.

Where costs cannot be recouped through higher fees for service or additional public funding, a resulting reduction in both operating margins and funds available for expenditure on other infrastructure at the service will be reduced. Consumers may also look to “informal” alternatives if a resulting price increase makes buying the service uneconomical.

Site and practice management plans

The existing Regulations require that a site plan be submitted to DoCS for certification by the Property Branch. The draft Regulation would require that a more detailed site plan be prepared by an architect, architectural draftsman or architect’s assistant. This requirement only applies for newly licensed services and not for licence renewals. The increased standard will eliminate the requirement for DoCS property branch to undertake an assessment, providing DoCS with a financial saving.

Current practice within the industry includes the use of a range of service providers to prepare plans including architects and architectural draftsman. The most common / lowest cost approach has been to utilise the services of the selected builder’s preferred draftsman. The fee for services is negotiable. As an indication, an architect may levy in the order of 10% of total construction costs; this may translate to \$10,000 to \$20,000 or more. A draftsman may charge \$4,000 to \$10,000. Charges will vary depending on complexity of design and other matters.

The draft Regulation will place an increased responsibility and liability upon the person preparing the plans to ensure that they comply with the Regulation. In the initial period of

implementation there will be greater delays, as relevant parties become familiar with the Regulation. The increased responsibility will also result in an increased fee for service to compensate for the increased risks involved.

At present there are only a limited number of providers who specialise in preparation of designs for children's services facilities and these are based in the Sydney metropolitan area (i.e. don't service rural and remote communities). These parties are not well known at present.

It would be expected that the draft Regulation will both increase the emergence of specialisation in the preparation of children's services facilities and also increase the standardisation of plans applied. This may both enhance the practicality of designs but reduce creativity, flexibility and innovation.

The increased requirement of the draft Regulation will result in a transfer in costs from DoCS to the applicant. This will result in a small increase in barriers to entry for service providers. It will reduce the time taken for the licensing process itself and will increase the time taken to prepare plans. The net effect in timing may be negligible.

The draft Regulation provides for mobile services to submit a venue management plan at the time of lodging an application for a licence if the service is unable to comply with the provisions in the parts to the Regulation. This reflects the different characteristics of mobile service venues and the often limited control that the licensee has over the standard of facilities at these venues. This flexibility reduces the compliance costs which would otherwise be incurred by mobile service providers, as well as promoting economic efficiency by allowing service providers to provide for appropriate standards in the most efficient manner possible and to adapt to different circumstances at different venues.

The proposal is an improved expression of the present approach under the current regulation and essentially reflects the legislation catching up to the risk management practice requirements applied by CSAs.

Premises and equipment requirements and standards

Requirements related to premises and equipment address both indoor and outdoor items. These are discussed in turn below.

Indoor requirements

The draft Regulation would require a separate area to be set aside for sleeping for children under 2 years of age. The rationale for this item is to allow younger children to sleep, undisturbed by older children.

The current practice of service providers is already largely consistent with this requirement; however, some smaller 'one-room' providers may be less able to make as distinct a separation. For example, where it is possible the draft regulation allows an area to be "set aside" by furniture or other partitioning or screens, as distinct from the construction of dividing walls. A simple re-arrangement of premises' facilities could be undertaken with no cost, however, higher costs may be incurred where it is not feasible, due to space constraints, to "set aside" an area distinct from activities which may be undertaken by other children at the same time.

Although the proposal will certainly improve the sleeping environment for relevant children, there is no guarantee that the intended outcomes will be achieved in full. For instance, even in a separate room, the noise from other children may be sufficient to disturb sleep. Also, in order to provide a separate area the space provided for inside play may need to be reduced (albeit within minimum tolerances) and therefore impact upon the ability of other children to play. That said, it

should be recognised that the proposed change would nevertheless provide an improved outcome for sleeping opportunities as compared to the current regulation.

The draft Regulation includes the requirement for a sink, bench top, and a lockable cupboard for use in craft activities, adjacent to the indoor play area, but not adjacent to food preparation areas or toilet or nappy change facilities. The term “adjacent” is not defined in the draft Regulation. In these instances the dictionary meaning is to be relied upon.⁵⁶ ‘Adjacent’ means lying near, close, or contiguous; adjoining; neighbouring.

There is notionally some potential health and safety issues related to hygiene where craft facilities are not separated from nappy change facilities, if disciplined cleaning and disinfecting practices are not applied. In practice, craft preparation facilities are often used by staff only for limited times during the day. Nappy changing facilities are not likely to be used at the same time as craft facilities. Many of the costs associated with poor hygiene are often hidden and causality associated with illness can be difficult to establish. It is therefore difficult to establish how significant the prevalence of poor outcomes are in existing industry practice.

Application of the “precautionary principle” would suggest there might be some benefits in applying this provision, particularly if occupational health and safety legislation requires it.. The potential cost implications of the additional equipment requirements may be significant in the context of benefits, which are not clearly demonstrable. The interpretation of the provision and the existing set-up of service providers will determine the level of impacts, which may result.

If the requirement that the craft sink not be adjacent to nappy change facilities can be satisfied by installing a partition between a co-located craft sink and nappy change facilities, then the financial cost incurred will be small. Likewise, provided the requirement not be to adjacent to a toilet allows a sink to be located near the entrance to such a room, then a number of potential costs will be avoided.

Plumbing infrastructure is typically co-located in buildings and installation of additional sinks in separate locations would be relatively expensive (approximately \$3,000 in direct costs for the sink and bench top). The introduction of an additional bench top and sink arrangement would also create a hazard in play areas, particularly for younger children. Regulation in other State and Territories are silent on the issue of craft sinks.

The draft Regulation will require that if the premises or home of a service provider contains a separate kitchen, the kitchen must have a door, half-gate or other barrier. Some homes used by service providers may feature open-plan kitchens in which installation of a half-gate may not be easily installed. For these premises the cost of compliance may be higher.

Outdoor requirements

The draft Regulation impacts on a number of the existing regulation in relation to outdoor equipment, including:

- requirements that shade in outdoor areas be ‘adequate’. ‘Adequate’ has been defined to mean the shaded areas comply with guidelines issued by the NSW Cancer Council;
- designated outdoor play space be fenced on all sides to 1.2m;
- accessible glass at the premises must be glazed with safety glass if the Building Code of Australia requires it, or guarded by barriers or otherwise treated to prevent shattering if broken.

The NSW Cancer Council produced the document *Under cover: Guidelines for shade planning and design*. The guidelines indicate (Chapter 5) that:

⁵⁶ Concise Macquarie Dictionary Doubleday 1982. Macquarie University. page 27

...some organisations will have existing procedures for initiatives such as a shade project. If your organisation does not have such procedures in place, the steps and principles outlined in this chapter will be a useful guide.

It can be confusing establishing the contents of “guidelines” as a requirement to be complied with by prescriptive statutory Regulation. Problems arise as “guidelines” are typically focused on principles rather than specific requirements. It would be difficult to apply the guidelines in a prescriptive sense as it is common to find references similar to that above with respect to existing procedures and initiatives or equivalent processes, which could be used as an exemption to the requirement. It is likely that this may create confusion for service providers. The Cancer Council is currently developing a strategic plan for sun protection. The Office of Child Care is on the advisory committee.

Assuming that these issues are resolved, the guidelines specify a number of processes, which should be followed, including:

- establishing a project team;
- consultation with interested parties;
- conducting a shade inventory and audit – including measurement of existing shade compared to children’s requirements;
- preparation of a design brief;
- identification of external funding sources; and
- consultation.

As discussed, the contents of the guidelines are general and recommendatory in nature. However, there are a number of items, which could be interpreted literally. For instance, some specific “recommendations” with respect to fixed play equipment and the transition zone (Chapter 6) include that:

- the roofline of the shade structure should extend at least 500mm beyond the edge of the deck of the play equipment, to prevent child access on to the roof;
- the roof of the shade structure should allow for a minimum head clearance height of two metres above the deck of the play equipment;
- tree trunks and the upright posts of shade structures should be located a minimum distance of two metres away from the most fully extended part of the play equipment; and
- the width of the veranda should be a minimum of four metres to allow for shaded play underneath.

The suitability of the guidelines to the children’s services sector may also be questionable, as they are generic guidelines. However, there is a chapter specifically on early childhood services and the presence of the Office of Child Care on the advisory committee should ensure continuing sector input. The regulatory consultation process may also prove helpful in this regard.

The draft Regulation requires a minimum fencing provision of 1.2m around outdoor play space for family day care and home based services. A fence around play areas should prevent children from gaining access to hazards or escaping into neighbouring properties. It also restricts how freely intruders can enter the premise. The requirement already applies to centre based services however no minimum height attributes were previously specified for family or home based care.

The effectiveness of this provision in meeting its objective and contributing to the overall objectives of the legislation will be impacted upon by site specific considerations. For instance, how easily can children climb over existing fences, how close are surrounding properties etc. A financial cost will be incurred for service providers who do not presently meet the

Assuming that these issues are resolved, the guidelines specify a number of processes, which should be followed, including:

- establishing a project team;
- consultation with interested parties;
- conducting a shade inventory and audit – including measurement of existing shade compared to children’s requirements;
- preparation of a design brief;
- identification of external funding sources; and
- consultation.

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The effectiveness of this provision in meeting its objective and contributing to the overall objectives of the legislation will be impacted upon by site specific considerations. For instance, how easily can children climb over existing fences, how close are surrounding properties etc. A financial cost will be incurred for service providers who do not presently meet the requirements.⁵⁷ The incremental benefit for children will vary depending on the existing attributes of the fence (ie. an existing height of 1m may not have significantly different benefits) and the likelihood that children may stray or intruders enter the premises.

A child in NSW died recently after falling through a plate glass window at a children’s services facility. Although tragedies like this are infrequent in nature, children are likely to face serious injury or death whenever they are in direct contact with breaking glass. The seriousness of the potential harm to children suggests that action should be taken to safeguard against the possibility.

The 1996 Regulations require that centre based and mobile services use safety glass in new services and in existing services when glass is broken. At present, no requirements exist for family day care and home based services. In Tasmania, the Northern Territory and Western Australia it is mandatory to install safety glass. In the ACT, either safety glass or appropriate

⁵⁷ It is likely that fences may be able to be retrofitted with lattice or other extensions rather than being rebuilt in full. The latter option may cost in the order of \$5,000 for a single boundary.

guarding barriers can be applied. No requirements are specified for Victoria, Queensland or South Australia.

The draft Regulation increases the requirements for family day care and home based services to match that for centre based and mobile services. It also removes the breakage of glass as a trigger for compliance. The proposed transitional arrangements in clause 2 of Schedule 1 to the draft Regulation extends the existing licence for twelve months. Clause 3 applies the provisions of the 1996 Regulations for twelve months from the transition day, which is the date of commencement of the Children's Services Regulation.

The relevant Australian Standard for safety glass film is AS 1288 which points to 175-micron safety film as the appropriate type. This film costs in the order of \$60-\$70 per square metre. A small day care centre may cost in the order of \$1,500 to retrofit and up to \$5,000 for an average size facility. Costs vary according to the quantity of glass in the centre, although not all glass requires treatment. As a general rule, any glass more than 1m off the ground is unlikely to require treatment however floor to ceiling glass would need to be treated in its entirety.

It seems reasonable that similar requirements are imposed on family day care and home services to the extent that they exhibit similar risk characteristics. Application of this provision will reduce risk of harm and improve the safety and wellbeing of children in care.

As there are a large number of services which have not installed safety glass, and which may apply the film gradually, it is possible in the interim to use some form of "barrier". Sophisticated barriers could include bars over windows, however the simple alternative would be to re-arrange existing furniture to block direct access. This alternative would result in minimal compliance costs, however will need to be carefully assessed in individual circumstance.

Relaxations in financial barriers to entry

A number of relaxations to financial barriers to entry are proposed by the draft Regulation, including:

- that age appropriate barriers only be installed at the top and bottom of stairs where considered necessary;
- nappy change facilities are only required if children wearing nappies attend the service; and
- acceptance of mobile phones as the telephone for a service;
- only motor vehicles with 9 or less seats are required to be fitted with child restraints.

The rationale for the first two relaxations reflect the general tendency of prescriptive statutory regulation to reduce opportunities for innovation and often fail to tailor requirements to individual circumstances, without detailed exemptions. The relaxations will ensure that minimum equipment standards are only applied where required. A reduction in entry barriers will be achieved without impact on child safety standards.

One possible concern with respect to nappy change facilities is that services may no longer accept children wearing nappies in a facility, which has no other children wearing nappies. This would result in a reduced access to services, however is not expected to be a common outcome.

The acceptance of mobile phones for a telephone service reflects a change in community attitudes with the uptake and acceptance of technology. Mobile telephone services are able to provide equivalent functionality to traditional fixed line services, provided (as set out in the draft Regulation) they are charged and have adequate coverage. The relaxation will better suit the requirements of service providers and reduce costs to consumers without compromising service quality. This issue is most relevant for mobile services.

The final relaxation of the draft Regulation relates to child restraints in motor vehicles. At present, there is a lack of available buses with seat belts and higher costs are incurred for those, which can be sourced. As a result, the number of excursions undertaken by service providers has been reduced. The proposed relaxation reflects these practical difficulties.

It is proposed that seat restraints only be required for vehicles with 9 or less seats. The impact of this provision will be to increase the number of excursions possible for children, thereby improving the level of services made available. The commensurate cost impact is an increased risk of harm should an accident occur.

Staffing Barriers to entry

The draft Regulation incorporates the following increases in staffing barriers to entry:

- that a copy of a document with a photo of the applicant be provided for licence applications;
- that the copy of the qualifications held by the Authorised Supervisor provided be “duly certified”;
- character references submitted with the application be the “original copies”;
- the licensee to assess whether primary contact staff demonstrate a basic knowledge, understanding and experience of appropriate care of children (including a 5 year timeline for assessment of existing staff); and
- the licensee will be required to conduct more extensive probity checks on staff.

These matters are minor in nature and generally unlikely to result in significant costs with respect to time or financial expense.

Part 7 of the Commission for Children & Young People Act 1998, which is not yet fully proclaimed, presently requires a “working with children” check to be undertaken to identify any previous offences (relating to children) which applicants may have recorded against them. The 1996 Regulations allow service providers to make whatever inquiries are considered appropriate to assess candidates for employment. In practice, a full criminal record check is not usually undertaken due to the financial costs and time involved. Most service providers rely on the working with children check only.

The draft Regulation will require that service licensees undertake full criminal history checks for all employment candidates and therefore to evaluate both offences related to children and other relevant matters, i.e. in relation to motor vehicles, domestic violence and other issues.

The requirement for the licensee to undertake these additional probity checks will incur no direct financial costs. DoCS’ screening unit is able to provide these services on a no-cost basis to employers, instead receiving funding from internal State government sources. The screening process presently incurs a cost to the State government of \$18.50 per *name* for a “working with children” and “criminal histories” check. An estimated 5,500 people are screened each month, i.e. totalling \$101,750 per month in financial expenses to the State government.⁵⁸ While these additional checks may prohibit some applicants from entering the industry, the safeguards it provides appear justifiable and are consistent with licensing processes in other industries.

The increased restrictions will assist in establishing the true identify of the applicant by verifying documents thereby preventing any fraudulent behaviour. The risk and frequency of these problems occurring under the present Regulation is small. However, the costs involved in upgrading safeguards are limited and will bring the industry into line with practice in other industries.

⁵⁸ The probity check service is provided by CrimTrack, a Commonwealth Government agency. CrimTrack are planning to change the fee structure to charge on a per *person* rather than per *name* basis (a married woman may incur two charges if she has been known by both maiden and married name). This change is projected to decrease the costs to the Screening Unit by approx 10%.

The requirement that the licensee assess whether primary contact staff demonstrate a “basic knowledge” and understanding of appropriate care of children will have limited impact upon the current practice recruitment processes of service providers. However, the requirement that the applicant have “experience” in these matters is open to interpretation and may exclude some applicants. This would result in a further reduction in potential staff and an increased cost to attract experienced personnel. While it is desirable to have more experienced staff, current practice has not suggested that any negative outcomes have resulted from existing recruitment practices.

Competitive Conduct

The draft Regulation contains a number of proposals impacting upon competitive conduct:

- staff conduct;
- staff : child ratios;
- child age mixes;
- group sizes; and
- other requirements.

These issues are discussed in turn below.

Staff conduct

Under the present Regulation, there are no specific requirements pertaining to the time spent by an Authorised Supervisor of a service in service provision on particular premises. While not on the premises, the Authorised Supervisor still remains responsible. Arguably, the continuance of accountability should be sufficient incentive for the Authorised Supervisor to ensure consistent levels of service provision. In practice, however, their direct ability to influence the way in which services are provided may be diluted.

The draft Regulation will require that the Authorised Supervisor of a service be on the premises of the service for no less than 60% of the time. This will provide for improved ability to directly contribute to the quality of service provision and reduce risk of harm. The provision will however reduce the flexibility of service providers in staffing and managing their operations reducing potential for innovation and the cost of service delivery.

Appropriate procedures and staff training could potentially provide equivalent quality levels even if the Authorised Supervisor manages more than one premise. The exact number, which an Authorised Supervisor could adequately handle, would be subject to a range of factors including the number and training levels of staff, number of children, travel distances etc.

Recent incidents have occurred where children have been left locked in a service after closing for the day, sometimes for many hours. These incidents create undue trauma for the children and families involved. The draft Regulation will require that at least 2 staff members check beds in all areas of the premises to ensure no child remains on the premises after the service closes. Services are required to be staffed by 2 persons as a minimum, at all times. The provision would allow the two persons to undertake the inspections at different times, provided they are able to continue to adequately supervise children. In larger centres these issues may be managed by closing rooms progressively during the day. A minimal impact is therefore anticipated.

The draft Regulation will require that staff and carers give an undertaking to the licensee that they will abide by the Code of Ethics issued by the Australian Early Childhood Association.

A code of ethics is a set of statements about appropriate and expected behaviour of members of a professional group and, as such, reflects its values.

A Code of Ethics is most effective where it is widely recognised, applied and accepted by service providers. There are mixed views regarding the appropriateness of this specific Code. Unless a majority of service providers are members of the association then it may be unrepresentative of the values of a majority of service providers who are not members. Arguably, there may be alternative codes, which provide equivalent outcomes and better match the requirements of service providers without creating conflict between associations. The consultation process may prove helpful in this regard.

Staff: child ratios

The draft Regulation includes the following changes:

- the staff : child ratio for children under 2 years of age is reduced from 1:5 to 1:4;
- the ratio of staff : children must be based on the age of the youngest children in the group; and
- 1 adult for each child is required within the fenced area of any swimming pool on the premises of a centre or the home of a carer.

Mixed views have been expressed regarding the reduction in the staff: child ratio for children under 2 years of age. Current practice is for children to be arranged in groups of 1:5 or to a lesser extent in ratios of 1:4.

The rationale for the change in ratios is based on more than 30 years of child development research and is supported by the more recent research in relation to child brain development (most of the development in the intelligence of children occurs before the age of 7 years and most of the growth of brain cells occurs before the age of 2 years). The key contributing components of quality in child care are the ratio of staff to children, the numbers of children in the group in which they are cared for and the qualifications of staff. Of these components research has consistently identified the staff:child ratio as the most important contributing factor.

The effects of child care on outcomes for children have been the subject of extensive research over the last 50 years. The area that has received the most attention has been the effect of child care on the development of children aged from birth to 2 years.

The research findings in this area have shown remarkable consensus with ratios below 1:5 leading to the best outcomes for young children. Reflecting a concern for outcomes for this vulnerable group both Queensland and Western Australia's regulations now require a ration of 1:4. This ratio is also consistent with the current practice of major employing bodies in NSW.

A High/Scope Perry preschool study has indicated that children who receive high-quality, active learning child care at ages 3 and 4 have improved social development outcomes.⁵⁹ Another study comments:

Adult-child ratio affects children because as the number of children per adult increases, the opportunity for sensitive or appropriate interaction between the adult and each child decreases.⁶⁰

While a lower ratio tends to make quality care a more likely outcome, the available research also indicates that it is not a necessary or sufficient condition for quality care. For instance, some

⁵⁹ Improved outcomes include half as many criminal arrests, higher earnings and property wealth and a greater commitment to marriage. High/Scope Educational Research Foundation, Perry Project Fact Sheet (US research) www.highscope.org/Research/Perry/Project/perrymain.htm. Accessed 11/12/02.

⁶⁰ Howes, Carollee, "Child Outcomes of Child Care Programs", Chapter 3 of *Issues in Child Care*, page 34.

adults (particularly highly educated and well-trained teachers) can apply routines, rituals and peer cohesiveness to manage large numbers of children without compromising the quality of staff and child interaction. However for other less qualified adults, large group sizes may lead to restrictive and harsh practices.⁶¹

It should be noted that the results of this research have been interpreted in different ways by different stakeholders in the child care industry. However, common sense would suggest that the more carers available to share the care of a group of children, the better the expected outcomes for individual children – the key question becoming where the optimal trade off in benefits and costs can be achieved.

A staff child ratio of 1:5 is presently applied in the ACT, Victoria, Tasmania, the Northern Territory and South Australia. Queensland and Western Australia are the only States, which presently apply a 1:4 ratio.⁶²

Limited preliminary discussions with some peak bodies suggested that a ratio of 1:3 would be ideal but that 1:4 may be the smallest size possible to remain cost effective. Other service providers suggested that 1:5 was sufficient to achieve equivalent quality outcomes.

Reduced staff:child ratios will result in a direct increase in the cost of service provision in what is already a high cost component of children's services. A 20% increase in staffing across the State for children under 2 years of age would result in a large increase in demand for staff. Attracting quality staff is reportedly already difficult for the industry and a premium in excess of 10% above the Award is likely to be required, implying additional annual salary costs in the order of \$30,000 plus on-costs, for each additional staff member. Where the service provider is able to accommodate an expansion in enrolment numbers, some additional enrolments may partly offset the additional costs incurred.

Service providers may respond to these cost impacts through a combination of a reduced number of child places, reduced expenditure on other parts of the service and increased fee for services.

The impact of the staffing ratios for children under 2 years of age will have flow-on implications to a related change in the draft Regulation that ratios be based on the age of the youngest child in the group. This change is likely to have a significant cost impact for service providers.

During the early and later hours of the day (before 8am and after 5:30pm) there are likely to be a small number of children on the premises engaged in principally free-play time activities. If the group included one under 2 year old child and eight children 4 years of age, then three staff members would be required (the existing Regulation would require only 2 staff). Every service provider is likely to have mixed groups at the beginning and end of the day.

If the proposed changes were implemented, centres may respond by not accepting children under 2 years of age for early drop-off or late pick-up. The resulting impact could be a reduction in access to services, rather than an increase in the quality of care.

The proposal to increase ratios for supervision of children when swimming will enable more direct attention for each child and provide an increased safeguard. An increased cost will be associated with the additional supervision requirements.

Group sizes and Child Age Mixes

The regulation propose the following changes with respect to child age mix ratios:

⁶¹ Howes, Carolee, "Child Outcomes of Child Care Programs", Chapter 3 of *Issues in Child Care*, page 34.

⁶² A 1 : 5 ratio is applied in Western Australia for family day care.

- children aged between 3-6 years are to be arranged and supervised in groups of not more than 20;
- where school aged children (up to 12 years of age) are attending a service for before & after school care, and are mixed in with the younger children, 10% of the licensed places of the service can be occupied by those school aged children, or, if all school aged children attending the service are attending school in kindergarten or Year 1, 20% of the licensed places can be occupied by school aged children.

The current regulation cap group sizes at no more than 25 children. In practice, CSAs have tended to allow group sizes (for children over 3 years of age) of up to 30 children, provided that child: staff ratios of 1:10 were maintained, i.e. 3 staff for a group of 30 children. This approach is considered acceptable, as, in practice, children are not grouped together in full for all activities but only for “large group” experiences. For the majority of the time, the larger group operates as a number of smaller sub-groups (of usually 10 children), each of who undertake “small group” activities led by one of the three staff.

Under current practice, negative consequences have not been attributed to group sizes of 30, nor the lesser size of 25. One of the benefits of socialisation in larger groups is the preparation it provides for the first year of schooling where class sizes can be as high as 30 children. The younger age and development status of children may argue for smaller group sizes before reaching school (i.e. children of only 3 years of age will not reach school for a number of years) however this may be more than compensated for under current practice by the additional number of staff and the predominance of smaller group activities.

The NSW Department of Education and Training delegates decisions on school class sizes to principals based on “need not exceed” guidelines. These guidelines indicate that kindergarten classes need not exceed 26 students, year 1 classes need not exceed 28 students and year 2 classes need not exceed 29 students. A snapshot on class sizes from the NSW Teachers Federation found that 95% of kindergarten to year 3 classes exceeded these thresholds.⁶³

In other States and Territories restrictions on maximum group sizes in children’s services vary significantly. In the ACT, Victoria, Tasmania and South Australia there is no specified maximum group size. In Queensland and Western Australia, group sizes are limited according to age: children 0-2 years are capped at 8 and 12 places respectively; children 2-3 years are capped at 12 and 15 respectively; children 3-5 years are capped at 24 in Queensland; and children 3-6 years are capped at 30 in Western Australia.

*The inquiry [chaired by Professor Tony Vinson] is convinced that small class size in the early years of education has a beneficial effect on learning outcomes for students.*⁶⁴

The inquiry chaired by Professor Vinson cited a variety of evidence including a study in the United States which measured the impact of smaller class sizes in Kindergarten to year 3 which found that by the end of year 2 schooling, children in groups of 13 to 17 students were 5.6 months superior in academic terms to those children arranged in class sizes of 22 to 25.⁶⁵

The draft Regulation reduces group sizes from 25 to 20, for small group activities. The current practice examples of larger group experiences in excess of the 25 child threshold suggest that events such as meal times, story times etc. could still occur in groups of 30 children.

⁶³ Doherty, L, “Aim low or pupils pay a high price”, *Sydney Morning Herald*, 4 November 2002

⁶⁴ Doherty, L, “Aim low or pupils pay a high price”, *Sydney Morning Herald*, 4 November 2002

⁶⁵ Doherty, L, “Aim low or pupils pay a high price”, *Sydney Morning Herald*, 4 November 2002

Under this interpretation, the proposed change would not be expected to have a significant cost impact for the majority of service providers.⁶⁶

The proposal in the draft Regulation for before and after school care is intended to provide a relaxation from the existing 10% of places able to be filled to 20% if those children are in kindergarten or year 1. Under current practice, there have not been demonstrable problems with the 10% requirement and a relaxation to 20% does not appear to present a compromise for the quality and safety of children in care.

A wide range of approaches is applied in other jurisdictions. In the ACT, school aged children may only attend services until the age of eight years and they must be cared for in a separate room and a staff: child ratio of 1:11 applies. In Victoria, the total number of school aged children must not exceed 30% of the total number of places. In Queensland a maximum of 24 school-aged children is permitted. These children must be cared for in a separate room with their own group leader and in a staff child ratio of 1:12.

In South Australia, school aged children are allowed without neither a specific requirement relating to the proportion of places nor a requirement for separate facilities. Children must however be accommodated within the licensed numbers. If in a mixed group of 2 plus year olds, then a staff: child ratio of 1:10 applies. If the group is school aged only then a ratio of 1:15 applies.

Other Requirements

The draft Regulation will restrict the use of video surveillance and monitoring equipment in a child care service to ensure images produced by such cameras are available only on the premises of the service.

This change is intended to ensure that images are not accessible over the Internet or otherwise viewable away from the service. The proposal is intended to safeguard against concerns regarding children's privacy and potential paedophilic activity. Concerns existed that access may be gained through "hacking" into the systems and that parents who have children in the service would have the capacity to view other children in the service.

The technology does provide an additional service to parents and a mechanism for increasing transparency and accountability of service providers. There is however, the potential for events and activities viewed from a remote location to be misinterpreted. This is an obvious trade off in accountability.

Only a small number of services in NSW presently use the technology however some of these have outlaid material amounts for the technology as an additional service platform and the basis on which they compete to attract customers. These service providers may be significantly impacted if the proposal is implemented.

Instances of negative events related to these matters have not been reported however limited preliminary discussions with peak bodies tended to suggest support for the precautionary principle given the lack of experience and demonstration that existing protections would be sufficient. This presents an obvious "catch 22" in that the technology can not be tested if its application is restricted.

⁶⁶ It is unlikely to be cost effective to presently operate groups of 25 children with 3 staff members. Where this does occur, the draft Regulation will require the group to be split into smaller numbers for small group activities. This would not impact upon the financial cost of staffing requirements, however would create an increased burden on infrastructure and the requirement for additional play equipment where particular items were required by both groups at the same time. As discussed, this is not likely to be a common manner for arranging group sizes and hence the impacts will not be wide spread.

The current regulation requires that certain records be kept on the premises until the relevant child reaches 24 years of age (i.e. those relating to child injury, illness and accidents). Record keeping under the draft Regulation will include the requirement that records be stored in a safe and secure area (either on the premises or off site) until the relevant child reaches the age of 24 years and that those records be made available within one working day. The records kept will also be required to include information pertaining to enrolments, medication, attendance and excursion forms and records of complaints.

Record keeping requirements in other States and Territories of Australia vary significantly. The ACT for instance requires records to be retained for a period of 7 years, including attendance, admission and parental permission records. Tasmania and the Northern Territory require records to be kept for 2 years after the date of an excursion, 6 years after the death of a child and 30 years for injury treatments. Western Australia requires records for accident and injury treatment to be retained until a child is 24 years of age or until 6 years after a child death.

The financial costs associated with the additional degree of record storage for such an extensive period of time may be significant if provided through an external archiving facility. If the records are held on the premises, the proposed change will serve to increase the space required to house the information but practices will be otherwise unaffected.

With respect to retrieval times, although it is desirable that records are able to be accessed as quickly as possible, the net benefits of retrieving records from external archiving agencies, within one working day, may be questionable in light of the potential charges levied by archiving service providers. It is not clear that a one week waiting time would impose an undue delay.

The draft Regulation will require that animals do not travel in vehicles with children unless the animal is restrained. The provision is intended to address health and safety concerns. The constraints the provision imposes on the flexibility of service delivery are expected to be limited and will avoid any potential physical harm or hygiene issues. This matter is likely to impact rural and remote communities to a greater extent than metropolitan services.

4.6 Impact Matrix

An impact matrix has been prepared for the draft Regulation summarising expected impacts for each of the key groups as compared to current practice and the identified alternatives.

Table 4.1 Impact Matrix

Regulatory Options	Impact on Consumers (incremental to the existing Regulation)		Impact on Service Providers (incremental to the existing Regulation)		Impact on Government (incremental to the existing Regulation)	
	Benefits	Costs	Benefits	Costs	Benefits	Costs
Existing Regulation (point of comparison)	<ul style="list-style-type: none"> transparent independent model of regulation, maintaining operational standards unaffected by commercial considerations addresses information asymmetry issues, provides assurances as to the benchmark being applied enforceable as provisions for penalties and sanctions incentive mechanisms proactive rather than reactive - it aims to ensure that provisions are in place, rather than relying upon options that may only be applied upon an adverse event involving a child 	<ul style="list-style-type: none"> creates barriers to entry which can reduce competition through price and non-price attributes unresponsive and inflexible - it has the potential to inhibit the evolution of innovative forms of service delivery 	<ul style="list-style-type: none"> improves consumer willingness and acceptance of the suitability of service provider quality 	<ul style="list-style-type: none"> restricts entry to the children's services sector through the imposition of requirements and standards which service providers are required to meet and as such may impede competition impose additional costs on service providers unresponsive and inflexible - it has the potential to inhibit the evolution of innovative forms of service delivery 	<ul style="list-style-type: none"> by establishing minimum entry standards, investigation costs are reduced from otherwise reactive responses to incidents 	<ul style="list-style-type: none"> significant financial barriers to entry and restrictions on conduct present up-front and ongoing impacts on cost structures reducing the operating margins in service delivery for a given fee. Service providers are reliant on subsidies for financial viability consumer willingness to accept the minimum standards of service providers may create a 'moral hazard' creating long term dependence on government screening
I. Proposed changes to the Regulation	<ul style="list-style-type: none"> improvements in minimum standards for health and safety of children reducing risk of harm small reduced possibility for fraudulent behavior in applications providing small reduction in risk of harm 	<ul style="list-style-type: none"> arguably, increases in costs and reduced access to services may result from the application of the youngest child's age when determining staff : child ratios; and a reduction in the staff child ratio to 1 : 4 arguably, net increased financial and staffing 	<ul style="list-style-type: none"> some relaxations of provisions allowing more flexible service delivery – i.e. use of mobile phones by mobile services; nappy change services only where children wear nappies; age appropriate barriers on stairs only where 	<ul style="list-style-type: none"> arguably, increases in costs for service providers may result from the application of the youngest child's age when determining staff : child ratios; and a reduction in the staff child ratio to 1 : 4 arguably, net increased financial and staffing 	<ul style="list-style-type: none"> by raising minimum entry standards, investigation costs are reduced from otherwise reactive responses to incidents 	<ul style="list-style-type: none"> arguably, increasing financial barriers to entry and restrictions on conduct will marginalise financial viability for a given fee level unless increased government assistance is provided

Regulatory Options	Impact on Consumers (incremental to the existing Regulation)		Impact on Service Providers (incremental to the existing Regulation)		Impact on Government (incremental to the existing Regulation)	
	Benefits	Costs	Benefits	Costs	Benefits	Costs
	<ul style="list-style-type: none"> potential for a small improvement in basic knowledge and understanding of staff some relaxations of provisions allowing more flexible service delivery – i.e. use of mobile phones by mobile services; nappy change services only where children wear nappies; age appropriate barriers on stairs only where necessary; child restraints only required only vehicles seating < 9 persons; and child ratios for mixing school aged and younger children for before and after school care 	<p>barriers to entry may make some service providers financial unviable leading to reduced competition and access to services and increased prices</p> <ul style="list-style-type: none"> arguably, net increased restrictions on conduct will reduce the potential for innovative service delivery 	<p>necessary; child restraints only required only vehicles seating < 9 persons; and child ratios for mixing school aged and younger children for before and after school care</p>	<p>barriers to entry may make some service providers financial unviable reducing competition and access to services</p> <ul style="list-style-type: none"> arguably, net increased restrictions on conduct will reduce the potential for innovative service delivery 		
2. Co-regulation	<ul style="list-style-type: none"> more flexible regulation would better meet the needs of service consumers and reduce the price of services 	<ul style="list-style-type: none"> conflicts of interest for professional bodies resulting in standards inadequate to ensure the safety, care and developmental needs of children poor acceptance by consumers reduced transparency of what service standards are provided 	<ul style="list-style-type: none"> greater flexibility to develop arrangements which more closely meet the needs of providers of children's services 	<ul style="list-style-type: none"> increased costs to the sector of developing and administering regulatory arrangements the sector does not currently appear to have in place a body with the capacity to operate as co-regulator poor acceptance by service providers 	<ul style="list-style-type: none"> administrative cost savings to DoCS 	<ul style="list-style-type: none"> increased cost of monitoring and enforcement
3. Self regulation	<ul style="list-style-type: none"> more flexible regulation 	<ul style="list-style-type: none"> conflicts of interest for 	<ul style="list-style-type: none"> greater flexibility to 	<ul style="list-style-type: none"> increased costs to the 	<ul style="list-style-type: none"> elimination of regulatory 	<ul style="list-style-type: none"> costs of investigation of

Regulatory Options	Impact on Consumers (incremental to the existing Regulation)		Impact on Service Providers (incremental to the existing Regulation)		Impact on Government (incremental to the existing Regulation)	
	Benefits	Costs	Benefits	Costs	Benefits	Costs
	<p>would better meet the needs of service consumers and reduce the price of services</p> <ul style="list-style-type: none"> scope to differentiate between providers, thus promoting competition in the sector 	<p>professional bodies resulting in standards inadequate to ensure the safety, care and developmental needs of children</p> <ul style="list-style-type: none"> service standards would not be enforceable by law, poor acceptance by consumers greater transactions costs in information search costs of poor performance incurred before inappropriate providers were identified reduced transparency of what service standards are provided 	<p>develop arrangements which more closely meet the needs of providers of children's services</p> <ul style="list-style-type: none"> reduced costs to the sector of complying with regulation greater flexibility and incentives to develop innovative arrangements 	<p>sector of developing, administering and enforcing arrangements</p> <ul style="list-style-type: none"> the sector does not currently appear to have in place a body with the capacity to operate as co-regulator poor acceptance by service providers 	<p>costs involved in licensing of services by the DoCS including administration, monitoring and enforcement costs</p>	<p>reports of abuse or neglect under the general protection and advocacy provisions of the Act may increase</p> <ul style="list-style-type: none"> significant education of consumers and service providers would be required
4. Negative Licensing	<ul style="list-style-type: none"> reduced barriers to entry promoting greater competition enforceable by law the threat of revoking approval an incentive to ensure quality is maintained more flexible regulation would better meet the needs of service consumers and reduce the price of services scope to differentiate between providers, thus promoting competition in 	<ul style="list-style-type: none"> negative licensing is retrospective in nature, the number of service providers offering services of an inappropriate standard may initially increase poor acceptance by consumers greater transactions costs in information search reduced transparency of what service standards are provided 	<ul style="list-style-type: none"> reduced costs to the sector of complying with regulation reduced barriers to entry for potential participants greater flexibility to develop arrangements which more closely meet the needs of providers of children's services greater flexibility and incentives to develop innovative arrangements 	<ul style="list-style-type: none"> poor acceptance by service providers 	<ul style="list-style-type: none"> lower administrative costs for the DoCS, as the costs associated with a negative licensing regime are likely to be lower than those of a positive licensing regime 	<ul style="list-style-type: none"> Departmental monitoring and enforcement costs may need to be increased to ensure that children's services of an appropriate standard are being provided significant education of consumers and service providers would be required

Regulatory Options	Impact on Consumers (incremental to the existing Regulation)		Impact on Service Providers (incremental to the existing Regulation)		Impact on Government (incremental to the existing Regulation)	
	Benefits	Costs	Benefits	Costs	Benefits	Costs
	the sector					
5. Other regulation and industry standards	<ul style="list-style-type: none"> more flexible regulation would better meet the needs of service consumers and reduce the price of services scope to differentiate between providers, thus promoting competition in the sector 	<ul style="list-style-type: none"> increased scope for inappropriate standards in the provision of children's services, with associated risks to the safety, care and developmental needs of children in children's services there would be no mechanism to prevent unsuitable persons entering the sector reduced transparency of what service standards are provided litigation costs for addressing complaints poor acceptance by consumers greater transactions costs in information search reduced transparency of what service standards are provided 	<ul style="list-style-type: none"> reduced costs to the sector of complying with regulation, reduced barriers to entry for potential participants greater flexibility to develop arrangements which more closely meet the needs of providers of children's services greater flexibility and incentives to develop innovative arrangements 	<ul style="list-style-type: none"> poor acceptance by service providers 	<ul style="list-style-type: none"> regulatory costs incurred by DoCS in would be eliminated the removal of some policy and legislative drafting costs 	<ul style="list-style-type: none"> costs of investigation of reports of abuse or neglect under the general protection and advocacy provisions of the Act may increase significant education of consumers and service providers would be required

5 Conclusions and Recommendations

In order for the Assessment Team to evaluate the overall costs and benefits of the proposed regulatory model, an overall assessment of the costs and benefits of both the proposed statutory regime and the identified alternatives is required. Although the proposed alternatives have been analysed independently, an overall assessment is required to compare the net benefits and costs to the overall net impact of the proposed statutory model.

5.1 Benefits of the draft Regulation

The benefits that will result from the introduction of the draft Regulation have been discussed in Chapter 4 of this RIS. In summary it has been demonstrated that a regulatory regime will have particular benefits that are not common to the alternative options. These benefits include:

- ensuring the safety, welfare and well-being of children in children's services is adequately provided for through setting minimum standards for services;
- ensuring that a transparent, consistent and accountable approach to the provision of children's services that is enforceable by law is in place;
- addressing market failures such as externalities that may arise if the safety, welfare and well-being of children in children's services is not adequately provided for, and information asymmetry between providers of children's services and parents; and
- acceptance by the children's services sector and the community, given that substantially similar provisions are already in place.

The children's services sector has been regulated in the past by statutory regulation, which provided for licensing of service providers and appropriate minimum standards in the provision of children's services. The significance of the risks associated with inappropriate standards of provision of children's services means that a statutory regulatory regime is required.

A number of specific changes have been proposed to the statutory arrangements as set out in the draft Regulation. The proposed changes include a number of relaxations with respect to:

- use of mobile phones for service providers;
- requirements for nappy change services only where children wear nappies;
- age appropriate barriers on stairs only where necessary;
- child restraints only required for vehicles seating less than 9 persons; and
- mixing school aged and younger children in before and after school care.

These relaxations are not significant changes to the overall regulatory framework however are expected to provide increased flexibility and reduced costs without a discernible impact on the quality of services provided.

5.2 Costs of the draft Regulation

Costs to the children's services sector in meeting the requirements of the draft Regulation have been identified, and where possible quantified. While it has not been possible to estimate an aggregate net cost associated with the draft Regulation, there are particular costs associated with a statutory licensing regime that may not be associated with other forms of regulation, or which may be reduced under a non-statutory regime. In summary, these costs include:

- compliance costs incurred by service providers;
- administration, monitoring and enforcement costs incurred by DoCS;
- economic efficiency costs by creating potential barriers to new sector entrants reduced flexibility and possible discouragement of innovative practices and the development of standards above the minimum requirements.

On balance, the Assessment Team considers that the benefits of the draft Regulation, in terms of providing arrangements to ensure appropriate minimum standards for the provision of children's services, significantly outweigh the costs of the draft Regulation.

The majority of changes proposed under the draft Regulation relate to increased requirements. A number of these changes may have a material "financial" cost impact on service providers and therefore also the consumers of these services and the availability of places in child care. The most significant of these issues include:

- the location of craft sinks not being adjacent to nappy change facilities or toilets;
- a reduction in the staff : child ratio from 1:5 to 1:4 for children under 2 years of age; and
- application of the youngest child's age when determining staff: child ratios in mixed age groups.

Consultation on these changes in required assessing the overall net public benefit. .

5.3 Summary of the costs and benefits of alternative options

Various alternatives have been discussed in Chapter 2 of this RIS. Benefits and costs have been examined for each of the alternatives to the proposed statutory model of regulation, however an overall assessment of the proposed options is required in order to determine which option is able to provide the greatest net benefit or least net cost to the community.

The option of relying on other regulation and industry standards would see no specific regulation providing for the safety, care and developmental needs of children in children's services.

However, given that the children's services sector is primarily concerned with the safety, welfare and well being of children, it is unlikely the community, government and those within the sector would accept such a model. Any benefits in the form of reduced compliance, administration, monitoring and enforcement costs, increased flexibility and reduced barriers to entry would be outweighed by the significant costs that may arise under this model, including, importantly,

adverse impacts on children as a consequence of appropriate minimum standards for the provision of children's services not being in place.

Self-regulation as an alternative option shares many of the costs and benefits of relying on other regulation and industry standards. Costs relating to administration, compliance and monitoring would be eliminated or significantly reduced and flexibility would be available to individual service providers to determine their own code of ethics and performance standards. However, given that the safety and wellbeing of children is at stake, it is unlikely that this model would be acceptable to government, the community and the sector.

Further, key determinants of the success of self regulation include adequate coverage of the sector, a viable body to develop and implement arrangements for self regulation, and a sufficient degree of commonality between sector participants to ensure appropriate arrangements are developed and to implement sanctions to deter non-compliance. It is not clear that these criteria would currently be met in the children's services sector. These factors, combined with the fact that arrangements would not be enforceable by law and the significance of the harm that may be done to children in children's services in the absence of appropriate standards, means that self regulation is not a viable alternative to statutory regulation of children's services. The benefits of self-regulation are likely to be outweighed by the costs.

Co-regulation, while sharing many of the costs and benefits of self-regulation, has the additional advantage that arrangements for standards for the provision of children's services are enforceable by law (where government provides legislative backing). However, there is likely to be poor acceptance of this model by stakeholders at the current time. Thus, while there may be scope to move toward such a regulatory model over time, introduction of this model at the current time would be likely to be premature. The costs of doing so would outweigh the benefits.

Negative licensing also offers benefits in terms of reduced costs to service providers and to DoCS, enforceability and flexibility. However, because negative licensing is retrospective in nature, there would be no mechanism to prevent unsuitable persons entering the sector and increased scope would exist for some sub-standard service providers to be able to operate undetected or act inappropriately before they are detected. This is potentially a significant cost given the risk of harm to children in children's services. Other costs associated with negative licensing, are likely poor acceptance of such arrangements by the sector and the community and increased transaction costs. These costs are likely to outweigh the benefits of negative licensing.

5.4 Conclusion and recommendations

This RIS has identified the direct and indirect benefits and costs of the draft Regulation and alternatives for ensuring the safety, welfare and well being of children in children's services. The evaluation has considered the impact that the proposed regime and alternatives will have upon children, parents, the children's services sector, government and the community in general.

For the reasons discussed above, the Assessment Team finds that the proposed statutory model of regulation to be the most appropriate model of regulation. Not only do the benefits from such a model outweigh the costs; it is considered that this model provides the only net benefit when compared to the alternative options.

While statutory legislation is considered the preferred option for the overall regulatory framework, it is not clear that all of the proposals set out in the draft Regulation will have a net public benefit, incremental to the current Regulation. The individual provisions of the regulation should therefore be subject to further detailed review before a decision is made on their implementation.

Appendix A

APPLICATION OF LEGISLATION / LICENCE COVERAGE – Centre Based 1.

NSW	ACT	VICTORIA	QUEENSLAND	TASMANIA	NT	SOUTH AUST.	WEST AUST.
Children's (Care & Protection) Act 1987. Centre Based Care - LDC - OCC - LDC - Pre School - Mobile	Children's Services Act '86 Centre Based Care - LDC - OCC - ADJUNCT	Children's Services Act '96 5 or more children under 6 in the absence of their parents – 1. For fee, gain or reward, or 2. While the parents use services or facilities provided by the proprietor of the service	Child Care Act 1991 Kindergarten, LDC, OCC, and Limited Hours Care Centres for Ch'n 0-5. (FDC Regs) Adjunct care is defined as being care for not more than 2 hours in conjunction with a meeting, function or activity involving the child's parents.	Child Welfare Act 1960 LDC, OCC, and Play Centres – (similar to Pre-school) for ch'n 0-7 cared for away from their homes. Anyone caring for children, not related to them, away from the child's home, must be licensed, FDC HBC have outcome standards.	Community Welfare Act '95 Child Care Centres, not Preschools. More than 4 ch'n under 6, some or all of whom are cared for away from their parents, in an environment other than a home.	Children's Services Act '85 Child Care Centres, whether or not provided for fee, gain or reward.	Children's Services Act '87 Child Care Services include - LDC - OCC - FDC - MOBILES - MULTI-FUNCTION
REGS	REGS	REGS	REGS	REGS	REGS	REGS	REGS
Centre Based and Mobile Child Care Services Regulation 1996	Licence Conditions rather than regs. Handbook on compliance	Regulations '96 And Operational Guide providing a background to the Regs	Regulation s '91	Centre Based Child Care Licensing Guidelines 1997 & explanations	Childcare Standards 1. 1- 16 places 2. 17-75 places	Child Care Centre Regulations '98	Community Services (Child Care) Regulations '88

INFORMATION REQUIRED FOR LICENSING 2.

NSW	ACT	VICTORIA	QUEENSLAND	TASMANIA	NT	SOUTH AUST.	WEST AUST.
Minimum age for licensee is 21. Requires personal details on applicant, experience, training, previous ch'n services, CRC authority, info to support fit and proper person. Details on corporate body. Plans, statement of compliance, referees, financial records, info on proposed auth. Supervisor.	Service details, Insurance, Details on Office bearers, Directors, Individuals and Partnerships, Checklist on service operation -completed one month prior to expiry, Staff profile and rosters. No CRC, No minimum age for licensee.	As for NSW, and also requires an approval in principle prior to submitting an application for a licence. The approval number must be included on the application. No minimum age for licensee, but must have quals relevant to providing a child care service.	As for NSW, minimum age for licensee not specified.	Minimum age for licensee is 21. Applicants must provide a copy of their CRC. Applicants undergo an interview to assess their knowledge of the Regs.	Minimum age for licensee is 21. As for NSW	Minimum age for licensee is 21. As for NSW	Minimum age for Licensee is 21. Licensee must provide a medical certificate. Information required as for NSW.

AUTHORISED SUPERVISOR

3.

NSW	ACT	VICTORIA	QUEENSLAND	TASMANIA	NT	SOUTH AUST.	WEST AUST.
<p>Authorised Supervisor must have at least 2 yr qual with a minimum of 12 months service provision experience. Position has legislative responsibility. AS is not required to be on the premises at all times or during core hours.</p>	<p>Centre Director, must be an adult and must have at least 2 yr qual, or other quals with current cc experience. Centre Director must be non-contact if over 40 place service. If less than 40 place service Director can be included in ratios for a maximum of 20 hours per week. Director absent, must be replaced - if more than 3 days with a qual person, - if more than 5 days with exp Director</p>	<p>Primary Nominee to manage or control service in licensee's absence, or if licensee will not attend service on a daily basis to manage. Licensee or Primary Nominee must be present when service is operating. Similar approval as for NSW AS.</p>	<p>Centre Director, in services of less than 30 places, must have at least 2 yr qual, services of more than 30 places, and must have at least a 3 yr qual. Assistant Director must have a minimum of 2 yr qual and experience. Similar approval as for NSW AS.</p>	<p>Licensee must nominate person to be responsible for the operation of the centre. Person must have at least 2 yr qual and experience in child care. Must also have a knowledge of the Regs demonstrated at an interview with Department.</p>	<p>No requirements. Licensee can manage service.</p>	<p>No requirements. Licensee can manage service.</p>	<p>Centre Coordinator must be 21 yrs of age. Must have at least a 2yr qual or mothercraft qual Coordinator does not count as ratio where:</p> <ul style="list-style-type: none"> - more than 40 places - responsible for more than 1 service - service is open longer than 12 hours per day.

SERVICE POLICIES

4.

NSW	ACT	VICTORIA	QUEENSLAND	TASMANIA	NT	SOUTH AUST.	WEST AUST.
<p>Policies, practices and procedures:</p> <ul style="list-style-type: none"> - philosophy - parent participation - individ devel needs - transition to school - interactions - cultural relevance - self esteem - disabilities - inclusion - excursions - child abuse - complaints - staff develop - positive guidance - health/safety - infectious diseases - medications. 	<p>Policies and implementation strategies required for licensing. Must have policies on:</p> <ul style="list-style-type: none"> - philosophy - parent participation - individual chn's needs - health and hygiene - food - cultural relevance of program - child self reliance, self esteem - inclusion - gender equity - excursions 	<p>As for NSW</p>	<p>As for NSW.</p>	<p>As for NSW and additional policies on</p> <ul style="list-style-type: none"> - abandoned and lost children - clothing and sun protection - OH&S - Staff development <p>Includes an explanation as to why policies are important.</p>	<p>Policies required</p> <ul style="list-style-type: none"> - curriculum and strategy - delivery and collection - fees - operating times - complaints - emergencies - staff development 	<p>Policies required</p> <ul style="list-style-type: none"> - curriculum and strategy <p>Other policies are not listed, but if the service has policies they must make them available to parents.</p>	<p>Policies required to be written and available on request:</p> <ul style="list-style-type: none"> - outings - arrival and departure - illness and infection - complaints - discipline and management of children - food and nutrition - FDC relief care.

INSPECTION AUTHORITY / RESPONSIBILITY 5.

NSW	ACT	VICTORIA	QUEENSLAND	TASMANIA	NT	SOUTH AUST.	WEST AUST.
Advisers have authority to enter and inspect the premises during normal business hours.	Advisers have authority to enter and inspect the premises, at any time. Services must allow access as a condition of the licence. Advisers have authority to investigate complaints	Advisers have authority to enter and inspect the premises anytime the service is operating.	Advisers have authority to enter and inspect premises during operating hours only, and at other times by arrangement.	Advisers may enter premises at any time. Act specifies 3 monthly inspections where practicable.	Authority to enter and inspect as necessary.	Authority to enter not specified, but inspection must take place at least every 2 years.	Licensing Officers have authority to enter and inspect.

AUTHORITIES (Emergency Medical / Excursions) 6.

NSW	ACT	VICTORIA	QUEENSLAND	TASMANIA	NT	SOUTH AUST.	WEST AUST.
Written authorisation for emergency medical treatment. Excursion authorisation includes: <ul style="list-style-type: none"> - Date of excursion - Destination - Method of transport or walking itinerary - Activities during excursion - Number of adults to accompany - Name of first aid person - Duration and - Emergency contact. 	Written authorisations as for NSW, Information on excursions must be given to parents including the method of transport and whether or not seat belts will be used.	Written authorisations as for NSW, 'excursion' applies when children are taken outside the centre.	Written authorisations as for NSW, authorisation for excursions requires parents to acknowledge the method of transport to be used and the type of safety restraints provided in the vehicle.	Written authorisations as for NSW, acknowledging type of transport to be used numbers of adults accompanying, and a contact for the venue.	Written authorisations as for NSW, and excursion information as for Tasmania.	Written authorisations as for NSW, and excursion information as for Tasmania	Written authorisations as for NSW. Excursions (outing) do not specify information to be given to parents regarding mode of travel etc. Seat belts are required in vehicles of less than 8 seats.

REQUIREMENTS FOR COOKS / FOOD PREPARATION FACILITIES. 7.

NSW	ACT	VICTORIA	QUEENSLAND	TASMANIA	NT	SOUTH AUST.	WEST AUST.
If meals are prepared, cooks must have training in food safety and nutrition.	No requirements for cooks to have training or experience.	No requirements for cooks to have training or experience.	No requirement for cooks to have training or experience.	No requirement for cooks to have training and experience.	No requirements for cooks to have training and experience.	No requirements for cooks to have training and experience.	If meals are prepared for 20 or more children must employ a cook. No other requirements.
<p>Must have an area designated for food preparation. Area must include:</p> <ul style="list-style-type: none"> - Stove - Microwave - Double sink - Fridge - Suitable disposal facilities - hot water supply - separate area for bottle prep 0-2. 	Food preparation facilities as for NSW, kitchen must only be used for the preparation of food, and the storage of non-toxic items.	Food preparation facilities as for NSW, also require suitable eating arrangements.	Full kitchen is required whether food is prepared or not, facilities vary according to type of service, kitchen must only be used for food preparation and storage of play materials.	Full kitchen facilities are required whether food/meals are provided or not. Facilities must meet the BCA and service must have separate facilities for babies, fridge, sink and heating appliance.	Services must have a full kitchen, which meets BCA.	Services must have at least a fridge, sink and a form of heating appliance.	Services must have at least a fridge, sink, stove and hot water. Must have fly screens on windows, appropriate coverings on walls and floors.

INFORMATION TO BE PROVIDED TO PARENTS / INSURANCE REQUIREMENTS 8.

NSW	ACT	VICTORIA	QUEENSLAND	TASMANIA	NT	SOUTH AUST.	WEST AUST.
Information to parents on service policies and procedures, service provider number, Emergency procedures, Dept contact, Hours of operation, fees, staffing, develop records.	Information to parents on service policies and procedures and providing a contact for the Department.	Information on service must be provided to parents, service information must be on display, policies must be available to parents for inspect at any time.	Policies must be given to parents and must accessible to staff, policies include parents rights and responsibilities.	Policies must be on display.	Policies must be available to parents and a list on display.	Licence and operating hours must be on display, policies must be available for inspection.	Information to parents must include written policies, opening hours, program outline, fees, emergency procedures, Dept contact, complaints procedures.
Required obtaining and keeping public liability for \$10 million. Service must not ask parents to indemnify against accidents.	Required to take out and maintain - workers comp - public liability (amount not specified) - additional cover for volunteers and excursions.	Insurances not specified in Regs but suggested in handbook.	Must take out and maintain - public liability to the value of \$5 million.	Must keep up to date: - public liability - workers comp amounts not specified.	Licensee must be insured for an amount decided by the Minister and published in the Gazette.	Must take out and maintain sufficient public liability.	Must have adequate Public Liability.

RECORDS TO BE KEPT / RETAINED / INSPECTED 9.

NSW	ACT	VICTORIA	QUEENSLAND	TASMANIA	NT	SOUTH AUST.	WEST AUST.
Requires: - enrolment details - excursion authorities - accident, injury and treatments - death/child - staff rosters - complaints - staff details - programs Records of injury and treatment kept till child is 24, Death kept 6yrs, Treatment by staff kept 2yrs after staff leave. Advisers have authority to inspect records.	Requires: - Daily attendance records, retained for 7 years, - Admissions register, retained for 7 years - Parent permission, retained for 7 years. Inspection of records not specified.	Requires: - Attendance book, - Enrolment records, - Medication book, - Accident, injury and illness book, - Staff records Must be available for inspection, time retained not specified.	Requires: - Enrolment details, - Staff contact information, - Medical certificates, - Staff quals, - Details on vehicles used to transport centre children, - Attendance records, - Accident, injury and treatments, (kept till child is 21) - Inspection of records not specified	Requires: - Records must be kept up to date, safe, secure and confidential, - Enrolment forms, - Medication, kept for 2 years after staff leave, - Excursions, kept for 2 years from date of record, - Injury and treatments, kept for 30 years, - Death, kept for 6 years. Inspection not specified.	Requires: As for Tasmania	Requires: Records as for Tasmania, kept for a period of time as specified by the Director, (DG).	Requires: Records as for NSW. - Records for accident, injury, and treatment kept until child is 24 yrs of age. - Death of a child kept for 6 yrs. - Record of emergency procedure practice kept for 2 yrs from date of record.

MAXIMUM NUMBERS OF CHILDREN / MAXIMUM GROUP SIZES / EMERGENCY PLACEMENTS. 10.

NSW	ACT	VICTORIA	QUEENSLAND	TASMANIA	NT	SOUTH AUST.	WEST AUST.
Maximum No. 0-2 – 30 2-6 – 60	Maximum number not specified.	Maximum number not specified.	Maximum of 75 children.	Maximum number not specified.	Maximum of 75 children.	Maximum number not specified.	Maximum number not specified.
Maximum group sizes: 0-2 yrs – 10 2-3 yrs – 16 3-6 yrs – 25 Includes a definition of group.	Maximum group size not specified.	Maximum group size not specified.	Maximum group sizes: 0-2 yrs = 8 15m-2.5 yrs=10 2-3 yrs = 12 2.5-3.5 yrs = 16 3-5 yrs = 24 Mixed ages 0-3 yrs =10 (4 x 0-2) 0-5 yrs = 21 (4 x 0-2) (6 x 2-3)	Maximum group size not specified.	Maximum group size not specified.	Maximum group size not specified.	Maximum group sizes not specified as such but examples of ratios and staff required show 0-2 yrs = 12 2-3 yrs = 15 3-6 yrs = 30 Able to exceed licensed places by 25% for 1 hour per day.
Dept. is able to place 10% above licensed number for specific purposes.	Emergency placements not specified.	Emergency placements not specified.	Emergency placements not specified.	Emergency placements not specified.	Emergency placements not specified.	Emergency placements not specified.	Emergency placements not specified.

STAFF – MINIMUM AGE / SPECIFIED DUTIES / 2 PRESENT AT ALL TIMES 11.

NSW	ACT	VICTORIA	QUEENSLAND	TASMANIA	NT	SOUTH AUST.	WEST AUST.
Minimum age is 18 years.	No more than one third of staff can be under 18. Staff cannot be under 16 yrs. Staff between 16-18 yrs must have appropriate skills and be adequately supervised by senior staff.	Minimum age 15 years.	Staff must be adults (18), or if in training can be 17 yrs. Functions for group leader are specified. Staff must provide Medical Certificate every 2 yrs.	Minimum age not specified, but junior staff, (according to the award) must be supervised. All staff and students must undergo CRC	Minimum age is 16 yrs. For each staff under 18 there must be at least 2 staff over 18.	Minimum age is 15, but must be gaining quals if under 18. Licensee must be satisfied that staff do not have a CR, staff provide a Stat Declaration and permission for a check.	Minimum age not specified. Must employ one staff over 18 for each staff under 18.
Staff must not perform other duties while supervising children.	Staff may not be engaged in ancillary duties.	Staff must be caring for or educating children whenever children are present.	Staff duties not specified. Director must be present during core hours, and outside hours if	Staff must be supervising children and not undertaking other duties when children are present.	Staff duties not specified.	Staff absent from children for more than 10 minutes are not included in the ratios.	Staff duties not specified.
Must be at least 2 staff on premises at all times when ch'n are present.	Must be at least 2 staff on the premises at all times, one must be qualified.	Must be at least 2 staff on duty whenever children are present.	14 or more children are present. 2 staff required, one must be Director or group leader.	Must be 2 staff present when numbers exceed 6 children.	Must be at least 2 staff present, one must be qualified.	2 staff not specified.	More than 5 ch'n, must be 2 staff-1 over 18. Less than 5, 1 staff over 18.

STAFF RATIOS 12.

NSW	ACT	VICTORIA	QUEENSLAND	TASMANIA	NT	SOUTH AUST.	WEST AUST.
0-2 = 1:5 2-3 = 1:8 3-6 = 1:10	0-3 = 1:5 3-6 = 1:11 Ratios must be maintained at all times.	In services of less than 15 children: 0-3 = 1:5 3-6 = 1:15 In services of more than 16 children: 0-3 = 1:5 3-6 = 1:15	0-2 = 1:4 15m-2.5 = 1:5 2-3 = 1:6 2.5-3.5 = 1:8 3-5 = 1:12	0-3 = 1:5 3-6 = 1:10	0-3 = 1:5 3-5 = 1:11	0-2 = 1:5 2-4 : up to 8 ch'n - 1 up to 20 ch'n-2 over 20 ch'n- 1:10 school aged: 1:15 or part thereof	0-2 = 1:4 2-3 = 1:5 3-6 = 1:10 <hr/> FDC = 1:5 <hr/>

STAFF QUALIFICATIONS 13.

NSW	ACT	VICTORIA	QUEENSLAND	TASMANIA	NT	SOUTH AUST.	WEST AUST.
Qualifications: 2, 3, or 4 year quals. 2year qual or nurse must be in attendance at premises when children under 2 are present. 3 or 4 year quals are required as follows: Places: Teachers 0-29 - 0 30-39 - 1 40-59 - 2 60-79 - 3 80+ - 4	One in every 2 primary contact staff must be qualified. Qualifications must be at least 2 years.	Services of less than 15 children: must have at least 1 qualified staff member. Services of more than 15 children: 0-4 1 qualified staff member for each 15 children 3-6 1 qualified staff member for each 30 children Qualifications must be at least 2 years or other quals as approved by the Department.	Services of less than 30 children: Director must have at least a 2 year qual. Services of over 30 children: Director must have at least a 3 year qual. Assistant Director must have at least 2 year qual and 2 years experience. Must be a qualified group leader for each group (minimum 2 year quals)	Qualifications: 2, 3, or 4 year quals as appropriate. 0-5 1 qualified staff member for every 10 ch'n, 3-6 1 qualified staff member for every 20 ch'n, Mixed age 1 qualified for each 15 ch'n Qualified Director must be replaced if absent for 5 or more days.	Qualifications: 2 or 3 year quals or as approved by the Minister. 0-4 1 qualified staff member for each 10 ch'n, 3-5 1 qualified staff member for each 22 ch'n.	Qualifications: Tertiary qualifications in child care or early childhood education. 0-2 1 qualified staff member for each 20 ch'n, 2-5 1 qualified staff member for each 35 ch'n, School aged 1 qualified staff member for each 30 ch'n.	Qualifications: 2,3, or 4yr quals and Mothercraft Nurse. At least 1 qual staff with each age group. Qualified staff working with 0-2's must have completed a course with specialist 0-2 component, including 100 hours of practicum.

SPACE REQUIREMENTS / LAUNDRY / CRAFT / TOILET FACILITIES

14.

NSW	ACT	VICTORIA	QUEENSLAND	TASMANIA	NT	SOUTH AUST.	WEST AUST.
Indoor space: 3.25 sqm per ch. Outdoor space: 7 sqm per ch.	Indoor space: 3.25 sqm per ch. Outdoor space: 7 sqm per child	Indoor space: 3.3 sqm per ch. Outdoor space: 7 sqm per child	Indoor space: 3.25 sqm per ch. Outdoor space: 7 sqm per child - 2 sqm shaded	Indoor space: 3.25 sqm per ch. Outdoor space: 7 sqm per child – 2 sqm shaded	Indoor space: 3.25 sqm per ch. Outdoor space: 14 sqm per child	Indoor space: 3.25 sqm per ch. Outdoor space: 7 sqm per child	Indoor space: 0-2 = 4.25 sqm 2-6 = 3.25 sqm Outdoor space: 9.3 sqm per child.
Laundry service can be on or off the premises. If on the premises the facilities must meet BCA.	Laundry services can be on or off the premises. If laundry on the premises, must meet BCA.	No requirements for laundry facilities (would be captured under BCA).	Laundry must have a tub and storage for soiled clothes, and a washing machine if necessary.	Laundry facilities as for NSW.	Full laundry facilities if laundry is done on the premises, otherwise not required.	Must have laundry arrangements on or off the premises, and hygienic storage soiled clothes	Must have laundry area with hot water, trough/sink and washing machine.
Separate sink for craft preparation	Craft sink not specified.	Craft sink not specified.	Craft sink not specified.	Craft sink not specified.	Craft sinks not specified.	Craft sink not specified.	Craft sink not specified.
Bathrooms: Toilets and handbasins 1:15, all bathroom facilities must meet BCA.	Bathrooms: Toilets, 2-5 yrs - 1:15 Potties, 0-3 yrs - 1:5 Handbasins, Temperature controlled taps, individual hand drying facilities.	Bathrooms: Must be at least 2 toilets, separated by partitions, and 2 handbasins or troughs.	Bathrooms: Toilets, 15m-6 yrs-1:10 (Must have 2) Can be a potty for 15m-2.5 yrs.	Bathrooms: Toilets, 1 for each 15 children, can be a potty for children under 3 Must have regulated hot water and non-slip surfaces.	Bathrooms: 1 toilet for each 15 children over 2 yrs, 1 potty for each 5 children under 2 yrs.	Bathrooms: Not specified.	Bathrooms: 1 toilet and handbasin for each 10 ch'n over 2 15 ch'n under 2 1 potty for each 5 ch'n under 3. 1 toilet and handbasin for each 10 staff.

NAPPY CHANGE / SLEEPING / STORAGE FACILITIES

15.

NSW	ACT	VICTORIA	QUEENSLAND	TASMANIA	NT	SOUTH AUST.	WEST AUST.
Nappy change: Fixed nappy change bench for every 10 ch'n under 3 yrs. Handbasin in the immediate vicinity, infant bath, sluice.	Nappy change: 1 bench/mat for each 10 children under 3 yrs, sink/trough bath, handbasin in or adjacent to nappy change with non-contact taps, sluice.	Nappy change: If children under 3 attend, must have appropriate facilities.	Nappy change: One table for each designated group of children under 2.5 yrs. 1 bath for each 8 children under 2.5, sluice, handbasin.	Nappy Change: 1 bench or mat for each 10 children under 3 trough bath with hot and cold water, sluice with hose spray, viewing panels.	Nappy change: 1 bench or mat for every 10 children under 2 Sink type bath in nappy change area, sluice.	Nappy change: 1 bench or mat for every 10 children under 3 sink type bath in nappy change area, hand drying facilities.	Nappy change: 1 bench or mat and 1 sink type bath with hot and cold water if ch'n under 3 are present.
Sleeping: Under 2 – 1 cot per child. Over 2 must have adequate no. beds or mattresses.	Sleeping: Under 2, 1 cot per place, over 2 1 bed for every 2 places.	Sleeping: Must have adequate numbers of suitable cots, beds, stretchers or mattresses.	Sleeping: Must have a cot or stretcher for each child, space for staff to walk between beds.	Sleeping: Under 2, 1 cot per place, over 2 1 bed for every 2 places. Specifies sleeproom sizes.	Sleeping: 1 bed or cot for each licensed place. Must be arranged to allow easy access.	Sleeping: 1 cot or appropriate bedding for each child under 2, 1 for every 2 children over 2.	Sleeping: Not specified.
Storage: Secure and inaccessible for dangerous goods, ch'n's personal belongings, indoor/outdoor equipment.	Storage: As for NSW.	Storage: Not specified.	Storage: As for NSW.	Storage: As for NSW.	Storage: As for NSW	Storage: As for NSW	Storage as for NSW.

FENCING / PLAY EQUIPMENT / POOLS

16.

NSW	ACT	VICTORIA	QUEENSLAND	TASMANIA	NT	SOUTH AUST.	WEST AUST.
Fencing: 1200mm for outdoor play areas. 1500mm pool fencing if access to hazards, self locking gates.	Fencing: 1200mm for all outdoor playspaces, 1500mm if access to hazards, self locking gates.	Fencing: Fence or barrier at least 1500mm, ch'n must not be able to go over, under or through a fence or gate.	Fencing: Effective barrier 1200mm, self closing gates. Pool type fencing if accessible to hazards.	Fencing: As for ACT.	Fencing: Fenced with 1500mm which prevents ch'n scaling or crawling under, child proof latches at 1.4m.	Fencing: 1200mm fences and gates which prevent egress of ch'n, 1500mm pool fencing if hazards	Fencing: Premises of service must be fenced with 1200mm fences and gates with self locking mechanisms.
Play equipment: Must not constitute a hazard etc. (Nat. standards) Softfall must meet Aust. Standards. All equipment must meet relevant standards.	Play equipment: Must provide a range of appropriate equipment, must meet Australian Standards and must not constitute a hazard etc. Soft fall not mentioned.	Play equipment: Children must have access to suitable equipment.	Play equipment: Equipment must be adequate, appropriate, useable and safe.	Play equipment: As for ACT.	Play equipment: Must comply with Aust. Standards, must not constitute a hazard etc (statement from Nat. Standards).	Play equipment: Must have furniture and equipment to support curriculum and meet developmental needs of ch'n.	Play equipment: Must have adequate equipment to meet the developmental needs of ch'n. Equipment must meet the Dept guidelines. Trampolines supervised.
Pools: Must have Aust. Standard fencing. Wading pools emptied after each use.	Pools: Must have appropriate fencing, wading pools emptied after each use.	Pools: Not specified.	Pools: Pools on the premises must meet relevant Aust. Standards.	Pools: Pools must be fenced with fences and gates meeting Aust. Standards.	Pools: Must have Aust. Standard fencing.	Pools: Paddling pools emptied and stored appropriately.	Pools: Must have fences meeting Building Regulations.

FIRST AID TRAINING / GLASS / TELEPHONE

17.

NSW	ACT	VICTORIA	QUEENSLAND	TASMANIA	NT	SOUTH AUST.	WEST AUST.
First Aid: Must have a F/A trained person on the premises at all times. Resuscitation chart on display.	First Aid: Must have a F/A trained person on the premises at all times.	First Aid: Must have a F/A trained person whenever ch'n are present. Regs require particular subjects.	First Aid: All contact staff must have first aid training.	First Aid: At least 1 trained staff member at all times service is operating.	First Aid: All contact staff must have first aid training.	First Aid: At least 1 trained staff member on duty when children are present.	First Aid: At least 1 trained staff member in attendance when ch'n are present.
Glass: Must be safety glass in areas accessible to children.	Glass: Must be safety glass or appropriately guarded if not.	Glass: Not specified	Glass: Not specified	Glass: Must have safety glass at child height	Glass; Must have safety glass installed.	Glass: Not specified.	Glass: Must have safety glass up to 75cm from floor level.
Telephone: Services must have an operating telephone (or two way radio) accessible to staff.	Telephone: At least 1 phone in working order, accessible to staff.	Telephone: Staff should have access to an operating phone or other device when they are in and out the service.	Telephone: As for ACT	Telephone: As for ACT	Telephone: As for ACT	Telephone: Must have readily accessible, operating phone located in centre	Telephone: Must be connected to a telephone service, or DG can exempt for remote areas if suitable arrangements are in place.

SIGN IN /OUT / AUTHORITY TO REFUSE ACCESS / PARENTAL ACCESS.

18.

NSW	ACT	VICTORIA	QUEENSLAND	TASMANIA	NT	SOUTH AUST.	WEST AUST.
Sign in/out: Parents sign ch'n's arrival and departure.	Sign in/out: As for NSW	Sign in/out: As for NSW, but can be signed in by staff	Sign in/out: As for NSW	Sign in/out: As for NSW	Sign in/out: As for NSW	Sign in/out: As for NSW	Sign in/out: As for NSW.
Authority to refuse access: Must attempt to have alternative arrangements in place before the child leaves the premises.	Authority to refuse access: Not specified	Authority to refuse access: Not specified	Authority to refuse access: Alternative arrangements must be in place before child is permitted to leave the centre.	Authority to refuse access: Not specified	Authority to refuse access: Must make alternative arrangements as per QLD.	Authority to refuse access: Must make alternative arrangements as per QLD.	Authority to refuse access: Not specified.
Parental access: Parents can have access to the centre while child is in attendance. Parents can exchange information about their child with staff.	Parental access: Parents can have access at any time during normal operating hours.	Parental access: Parents can have access during opening times.	Parental access: Not specified.	Parental access: Enter premises at any time during operational hours. Centre must have a policy on visiting rights of non-custodial parents.	Parental access: Parents can have access at any time.	Parental access: Parents can have access at any time.	Parental access: Parents can have access to the service at any reasonable time.

FOOD/DRINK / PROGRAM / INTERACTIONS 19.

NSW	ACT	VICTORIA	QUEENSLAND	TASMANIA	NT	SOUTH AUST.	WEST AUST.
Food: Menu displayed. Food and drink must be consistent with the Dietary Guide, adequate, nutritious, and varied, meeting individ needs.	Food: Requirements for menu as for NSW. Premises must be registered with the Dept Health.	Food: As for NSW.	Food: Similar to NSW, perishables must be stored in the fridge. Drink must be offered frequently.	Food: As for NSW.	Food: As for NSW. Must have a policy on meeting individual food requirements. Water must be available at all times.	Food: As for NSW.	Food: Must be nutritious and varied, weekly Menu must be on display.
Program: Developmental+ appropriate program addressing individual needs, balance of indoor and outdoor and offering choice.	Program: Written program as for NSW, program and routines must be displayed.	Program: Written program as for NSW.	Program: Written program similar to NSW.	Program: Written program as for NSW. Must have policy on how individual needs will be addressed through the program.	Program: Written program as for NSW.	Program: Program must meet Dept guidelines, centre must have a curriculum implementation policy.	Program: Must be developmentally appropriate.
Interactions: Staff interactions specified.	Interactions: Mentioned in behaviour management.	Interactions: Mentioned in behaviour management.	Interactions: Mentioned in positive guidance.	Interactions: Similar to NSW.	Interactions: As for NSW.	Interactions: As for NSW.	Interactions: Implied in discipline.

ILLNESS/ACCIDENT/INFECTIOUS DISEASES/MEDICATIONS 20.

NSW	ACT	VICTORIA	QUEENSLAND	TASMANIA	NT	SOUTH AUST.	WEST AUST.
Illness/accident: Child given all necessary treatment, parents contacted, a record is given to parents.	Illness/accident: As for NSW.	Illness/accident: As for NSW.	Illness/accident: As for NSW.	Illness/accident: As for NSW, and requires a register of medications to be kept and will be inspected on visits.	Illness/accident: As for NSW.	Illness/accident: As for NSW.	Illness/accident: As for NSW.
Infectious diseases: Policy must outline exclusion practices. Info on outbreaks given to parents.	Infectious diseases: As for NSW.	Infectious diseases: Must adhere to guidelines provided by the Dept.	Infectious diseases: Must have most up to date information and policies, must adhere to Dept requirements.	Infectious diseases: Requires parents to be given exclusion policy at enrolment, strict notification of diseases.	Infectious diseases: As for NSW.	Infectious diseases: Health policies, incl exclusions, must be based on 'Staying Healthy in Child Care'.	Infectious diseases: Centre must refuse access to any child with a communicable condition, must abide by Dept. guidelines.
Medications: Written authorisation from parents, original packaging with child's name. Administration checked.	Medications: Not specified.	Medications: As for NSW, except original packaging.	Medications: As for NSW, except original packaging.	Medications: As for NSW.	Medications: As for NSW.	Medications: As for NSW.	Medications: As for NSW.

SCHOOL AGED CHILDREN 21.

NSW	ACT	VICTORIA	QUEENSLAND	TASMANIA	NT	SOUTH AUST.	WEST AUST.
School age children: School aged allowed if: - service, staff and programs for younger children are not impinged upon - total number of school ch'n does not exceed 10% of licensed numbers unless separate facilities are used.	School aged children may only attend licensed child care centres until the age of 8 years. <u>All regulations in centres apply to school aged children.</u> School aged children must be cared for in a separate room and a staff: child ratio of 1:11 applies. Children over the age of 8 years must be cared for in a OSHC service, which are legislated for separately.	Condition on license – total number of children aged 6 yrs or more, does not exceed 30% of the total number of places.	School age children: - must be cared for in an area separate from other children - must have a group leader - must have a ratio of 1:12 - maximum of 24 children.	School aged children <u>must be accommodated within licensed numbers.</u> If cared for in a mixed group of, say, 3 plus year olds, then staff:child ratios for the younger children apply. In this case, it would be 1:10	School aged children not specified in Regs.	School aged children allowed, no requirement for % or separate facilities. <u>Must be accommodated within the licensed numbers.</u> If in a mixed group of 2 plus year olds, then a staff:child ratio of 1:10 applies. If the group is school aged only then a ratio of 1:15 applies.	School aged children may be present at service if: (1) <u>the total number of children on the premises does not exceed the licensed number.</u> (2) staffing and other requirements of the Regulation are met for the total number of children in care.

Appendix B

Outline of Further Consultation Process

Following the completion of the RIS, it and the regulation will be printed and formally released in a consultation booklet. DoCS will distribute the draft Regulation and the RIS to peak bodies, other government agencies, other interested stakeholders for comment. Face to face meetings are planned with the major peak bodies.

A number of public forums to discuss the regulation will be held in the Sydney region in February 2003 at the following locations:

4/2/03	Parramatta RSL Club Macquarie St, Parramatta, Ph: 9633 5177	1.00pm to 4.00pm
6/2/03	Gordon Sports & Social Complex Level 4, Cnr Albert Ave and Victor Street, Chatswood, Ph:9904 8688	10.00am to 1.00pm
	Campbelltown Catholic Club 20 Camden Street Campbelltown, Ph: 4625 9755	1.00pm to 4.00pm
7/2/03	Asquith Leagues Club Alexandria Street, Waitara, Ph: 9487 1066	10.00am to 1.00pm
10/2/03	Penrith Panthers Mulgoa Road, Penrith, Ph: 4720 5511	1.00pm to 4.00pm
11/2/03	Ashfield Catholic Club 5 – 7 Charlotte Street, Ashfield, Ph 9798 6344	10.00am to 1.00pm
13/2/03	Blacktown RSL Club Second Ave, Blacktown, Ph: 9622 5222	1.00pm to 4.00pm
17/2/03	Sutherland United Services Club 7 East Parade, Sutherland, Ph: 9521 4700	1.00pm to 4.00pm
19/2/03	Bondi Junction-Waverley RSL Club 1 Gray St, Bondi Junction, Ph: 9387 4795	10.00am to 1.00pm
20/2/03	Mt Pritchard & District Community Club 101 Meadows Rd, Mount Pritchard Ph:9610 1555	1.00pm to 4.00pm

Forums will also be held in regional NSW during February and March 2003 at:

7/2/03	Queanbeyan RSL Memorial Bowling Club Yass Road, Queanbeyan, Ph: 6297 2344	10.00am to 1.00pm
11/2/03	ClubNova Panthers Newcastle King Street, Newcastle West, Ph: 4926 2700	1.00pm to 4.00pm
12/2/03	Central Coast Leagues Club Dane Drive, Gosford, Ph: 4325 9888	10.00am to 1.00pm
	Bega RSL Club Auckland Street, Bega, Ph: 6492 1055	10.00am to 1.00pm
13/2/03	Illawarra Leagues Club 97 Church St, Wollongong, Ph: 4229 4611	1.00pm to 4.00pm

Appendix C

Parties Consulted

The Minister for Community Services, the Hon Carmel Tebbutt MLC, announced a timeframe for the implementation of the regulation, which is scheduled to commence on 30 June 2003.

The draft Regulation was forwarded to peak organisations on a strict "in confidence" basis to facilitate some preliminary discussions to assist with the completion of the Regulatory Impact Statement (RIS), which is required to be produced under the *Subordinate Legislation Act 1989*. These discussions were not intended to replace or compromise the consultations on the regulation overall.

Members of the Assessment Team consulted the following organisations in preparing this RIS with respect to general matters regarding overall regulatory approaches (not specific provisions of the draft Regulation):

- Aboriginal and Torres Straight Islander Early Childhood Support Unit;
- Association of Childcare Centres of NSW;
- Australian Early Childhood Association, NSW Branch;
- Australian Liquor, Hospitality and Miscellaneous Workers' Union;
- Community Child Care Co-op Ltd.
- Country Children's Services Association;
- Federated Municipal and Shire Council Employees' Union of Australia;
- KU Children's Services;
- Local government and Shires Association;
- Mobile Resource Services Association;
- NSW Children's Services Forum;
- NSW Family Day Care Association;
- NSW FDC Carer's Association;
- NSW Independent Education Union;
- NSW Teachers' Federation;
- Occasional Child Care Association;
- Office of Child Care, Department of Community Services;
- Quality Child Care Association;
- SDN Children's Services Inc.; and
- Uniting Church Children's Services Forum.

Limited preliminary discussions were held with some peak organisations on the basis of an "in-confidence" pre-release of the draft Regulation.

CONSULTATION ARRANGEMENTS AND HOW TO COMMENT ON THE CHILDREN'S SERVICES REGULATION 2002 AND REGULATORY IMPACT STATEMENT (RIS)

DoCS is currently working towards the implementation of Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998*, dealing with children's services. When a new regulation is proposed, the *Subordinate Legislation Act 1989* requires that the responsible agency prepare a RIS. The RIS considers the regulation in order to determine if the anticipated economic and social benefits outweigh the costs. The RIS also considers alternatives to a statutory-based regulation.

Any organisation or individual that wishes to make comment on the proposed regulation may do so. Copies of the draft regulation and Regulatory Impact Statement (RIS) are available on DoCS Website.

A number of specific changes have been proposed to the statutory arrangements as set out in the draft Regulation. The proposed changes include a number of relaxations with respect to:

- use of mobile phones for service providers;
- requirements for nappy change services only where children wear nappies;
- age appropriate barriers on stairs only where necessary;
- child restraints only required in vehicles seating less than 9 persons;
- mixing school aged and younger children in before and after school care;
- elimination of the flyscreen requirement; and
- easing of the softfall requirement for family day care.

These relaxations are not significant changes to the overall regulatory framework however they are expected to provide increased flexibility and reduced costs without a discernible impact on the quality of services provided.

The majority of changes proposed under the Children's Services Regulation relate to increased requirements. A number of these changes may have a material "financial" cost impact on service providers. Consequently these may impact on the availability of places and ultimately on children and parents who wish to use those services. These issues include:

- the location of craft sinks not being adjacent to nappy change facilities or toilets;
- a reduction in the staff : child ratio from 1:5 to 1:4 for children under 2 years of age; and
- application of the youngest child's age when determining staff:child ratios in mixed age groups.

These last two changes may benefit children's development over the long term, as brain research has linked smaller class sizes with better learning outcomes for children. However, it is not clear that these proposals will have a net public benefit if the result is fewer places or less flexible drop off and pick up times.

You are invited to submit any comment on the draft *Children's Services Regulation 2002* by **28 March 2003**. Submissions should be sent to:

Jann Rowe
 Manager
 Legislative Review Unit
 Department of Community Services
 Level 1, St James Centre
 107 – 111 Elizabeth Street
 SYDNEY NSW 2001

A number of public forums will be held in the Sydney region and in regional NSW during February and March 2003. The consultation process will provide a forum for more detailed consideration of the impact of the proposals.

4/2/03	Parramatta RSL Club Macquarie St, Parramatta, Ph: 9633 5177	1.00pm to 4.00pm
6/2/03	Gordon Sports & Social Complex Level 4, Crn Albert Ave and Victor Street, Chatswood, Ph:9904 8688	10.00am to 1.00pm
	Campbelltown Catholic Club 20 Camden Street Campbelltown, Ph: 4625 9755	1.00pm to 4.00pm
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13/2/03	Illawarra Leagues Club 97 Church St, Wollongong, Ph: 4229 4611	1.00pm to 4.00pm

18/2/03	Country Comfort Wagga Wagga Cnr Morgan and Tarcutta Streets Wagga Wagga Ph: 6921 6444	1.00pm to 4.00pm
19/2/03	Dubbo RSL Club Cnr Wingewarra and Brisbane Street, Dubbo Ph: 6882 4411	1.00pm to 4.00pm
20/2/03	Orange Ex Services Club 231 – 243 Ansom Street, Orange, Ph: 6362 2666	10.00am to 1.00pm
24/2/03	Armidale Ex services Club Dumaresq Street Armidale, Ph 6772 1366	1.00pm to 4.00pm
25/2/03	Kempsey RSL Club 1 York Lane, Kempsey, Ph 6562 6900	10.00am to 1.00pm
26/2/02	Grafton RSL Club Mary Street, Grafton, Ph 02 664 220 66	1.00pm to 4.00pm
27/2/03	Ballina RSL Club 240 River Street Ballina, Ph 6686 2544	1.00pm to 4.00pm
10/3/03	Walgett Council Chambers 77 Fox Street Walgett, Ph 6828 1399	10.00am to 1.00pm
11/3/03	Broken Hill DoCS Room, 270 Crystal Street, Broken Hill. Ph 08 8087 2844	5.00pm to 8.00pm

If you wish to discuss any aspect of the consultation process please contact Jann Rowe, Manager, Legislative Review Unit on 8255 8183.

Roderick Best
Director
Legal Services