Productivity Commission Early Childhood Education and Care Inquiry 2023
Submission by Mick Ogrizek

The Need for Red Tape Reduction

The Select Senate Committee on Red Tape on Childcare in 2019 raised some important issues in relation to the amount of red tape that the early childhood education and care (ECEC) sector is subject to. While some of the recommendations made by that Committee were somewhat superficial [1] it offered a useful description of what red tape is and the benefits of reducing it (on pages 2 and 3 of its final report):

"Excessive regulation or 'red tape' stifles job creation, reduces investment, lowers innovation and lessens productivity. Red tape refers to the counterproductive restrictions or reporting requirements placed on individuals, businesses and organisations that deliver less public benefit than the costs of complying with and enforcing those restrictions or reporting requirements."

It went on to say (at page 23):

"For this inquiry, the committee found a high level of in principle support for regulation in the childcare sector, but not necessarily for the volume and breadth of regulation. The committee agreed that wherever possible red tape should be identified and eliminated, especially as the recently introduced Child Care Subsidy scheme matures."

In addition, the annual surveys undertaken by ACECQA on regulatory burden repeatedly confirm that there is significant burden on approved providers under the NQF. Reducing this red tape burden will at least reduce cost pressures on approved providers. While ACECQA has made some moves to reduce red tape, I believe there is more that can be done to reduce the amount of red tape in the regulation of childcare, particularly within the areas outlined below (my primary focus in this submission is not on the Commonwealth Childcare Subsidy Scheme but the National Quality Framework (NQF)).

Red Tape and the Childcare Regulatory System

Although the introduction of the Education and Care Services National Law (National Law) in 2012 was a step forward, there are still a number of issues that need to be addressed to streamline the broader ECEC regulatory scheme:

- Elimination of two levels of childcare regulation. In many states and territories there are still two regulatory schemes in operation: the National Scheme, and a State Scheme.
- Streamlining of Building and Planning Requirements. Currently those building a new childcare centre (or renovating a building to convert it to a childcare centre) must comply with the National Construction Code, state/territory planning laws, local planning policies, and the National Law and Regulations. There is a need to consolidate these requirements or at least ensure all states/territories have common requirements, particularly in relation to planning, consistent with the National Law and Regulations. For instance, New South Wales has its own separate Child Care Planning Guideline that interprets and applies premises-related provisions of the National Regulations.
- Greater consistency between National Law and Commonwealth Childcare Subsidy Requirements. Although concerned with different aspects of childcare regulation (service provision versus

[1] See my article: 'Reducing the red tape around childcare', *The Sector*: https://thesector.com.au/2019/04/08/reducing-the-red-tape-around-childcare/. This submission is substantially based on that article.

payment of subsidies), the requirements of the two regulatory schemes overlap and cause confusion to approved providers and services in relation to their compliance requirements (particularly in relation to the maintenance of records). Where possible, there is a need for the National Law requirements and Commonwealth Government requirements to be consistent and compatible with each other.

Red Tape and the National Law and Regulations

Although some reform has taken place in this area (abolishing of certified supervisor certificates and streamlining of National Quality Standard in 2018), there is much that could be done to reduce red tape for approved providers, services and educators:

- Simplification. Some provisions in the National Law and Regulations are unnecessarily prescriptive, burdensome, and/or confusing. This results in non-compliance because provisions are either too difficult to understand or to comply with to the letter. For example:
  - Regulation 90: sets out the practices that the service's medical conditions policy must address. It is verbose (over a page), badly drafted, confusing and ambiguous. It would be more easily understood if it was written as a principle based provision.
  - Sections 173-174 and regulations 173-174: detail the matters that must be notified to the Regulatory Authority. The provision is inconsistently drafted, includes multiple cross references to other provisions, has a number of different timelines for notifications, and intermingles notifications involving risks to children (most important) with less urgent, administrative, notifications. In short, by simply reading the provisions (which are located in two locations: the National Law and Regulations) it is difficult, or at least time consuming, to work out what has to be notified and when.
  - Provisions relating to what records and documents are required to be kept by services are also onerous, confusing, duplicitous, located in multiple areas, and could be simplified. For instance, in the case of approved providers of family day care services, they are required to keep almost 50 separate pieces of information. The National Regulations are disproportionately preoccupied with prescribing documentation.
  - The Productivity Commission in 2015 identified the need to simplify the assessment and rating system, as it was seen as inflexible and complex, and some changes were introduced in 2018. That simplification has not gone far enough. The National Quality Standard (NQS) consists of seven quality areas, 15 standards, and 40 elements. With so many components to be assessed it is a challenge for both services and assessors. The current NQS still sets far too high a standard, particularly when services are struggling to comply with the minimum regulatory standards (refer to the ROGS report for breach and serious incidents data). ACECQA's annual Regulatory Burden Survey has also consistently indicated that approved providers see Quality Improvement Plans and the assessment and rating visits as the most burdensome administrative requirements.
  - The provisions relating to Early Childhood Teachers (ECTs) are confusing and burdensome. The requirements in regulations 129-135 are an attempt to regulate for quality by introducing the requirement to have ECTs, over and above other staff requirements. The National Regulations do not stipulate what the function of an ECT is and introduces additional ratio requirements. There is a need to clarify the role of ECTs and to integrate it with other staffing requirements. While some measures have been introduced to alleviate these requirements the fact remains that staffing waivers are at an all time high which indicates the current staffing requirements are burdensome.

- Reducing Inconsistency Between Jurisdictions. Inconsistency between jurisdictions is most evidenced in educator to child ratios (r.123) where a number of jurisdictions have different ratios and even where ratios are similar there are many jurisdiction specific exceptions and variations. For example, there are different provisions when educators are on "breaks". This must be particularly confusing and costly to those larger approved providers that operate across jurisdictions. Similarly, different requirements apply in regard to ECTs.

Need for Comprehensive Review Remains

To date there only has been tinkering with the NQF to streamline it. There is great scope to substantially improve the NQF by taking a more comprehensive approach to reducing NQF red tape. In this way, costs on approved providers and services would be reduced, while at the same time improving compliance with the National Law and Regulations, and increasing focus on the protection of the safety, health and wellbeing of children and on the educational and developmental outcomes for children.

My Background

I was Manager, Monitoring and Compliance, at the Victorian Regulatory Authority under the National Law (the Victorian Department of Education and Training) between 2012-2015. In that position I provided advice, assistance and training in relation to the application and interpretation of the legislation and was involved in investigations and taking enforcement action under the National Law. Subsequently, I have published a book on childcare regulation (*Australian Childcare Regulation*) and currently publish a blog by the same name (https://mog416.wixsite.com/auschildcarereg)