

**Submission to the Early Childhood  
Education and Care (ECEC) Inquiry**

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## 0.1 Introduction

Child care affordability has been a long term problem in Australia. Despite heavy subsidies from both the federal and state government every year, child care services are still not affordable to many families. There are two reasons for this - the lack of child care places in our communities, and the increasing costs in building centre-based facilities, especially costs for gaining approvals. These two problems can be solved by one single action - to simplify the approval process.

In this Early Childhood Education and Care (ECEC) submission, I will provide more details based on my own experience as a centre-based facility user and as a potential centre-based facility provider.

## 0.2 Relevant experience

Firstly, I have two school-aged children who went through the child care system in NSW. My own experience was that there were not enough child care places before my children were old enough to go to school. After they went to school, there were not enough after-school care places in their school. As a parent, what I was looking for was a care facility that has the following characteristics.

1. safe environment
2. quality programs that supplement my children's learning in school
3. affordable
4. near where we live
5. flexible hours that suit my work schedule

When I couldn't find a facility that has the above characteristics, I tried to set up one by retrofitting my property to a preschool. It turned out that the process was complex, bureaucratic, costly and time consuming.

Despite strong community demands, there is still no preschool after trying for four years. As a potential service provider, I was looking for the following characteristics in the approval process.

### *0.3. THE EFFECT OF LOCAL GOVERNMENT POLICIES ON ECEC SERVICES*<sup>9</sup>

1. a uniform, transparent approving process
2. a supportive government / government agency with accountability

The main lesson learnt in this process is that the approval process needs to be simplified while maintaining the quality control. In particular, the local government's involvement in the approval process should be removed or reduced.

### **0.3 The effect of local government policies on ECEC services**

There are national laws and regulations setting the requirements for children's care services.

In NSW, the Children (Education and Care Services) National Law (NSW) empowers the Department of Education to assess child care service applications based on the requirements. This is an effective approval model.

In practice, however, potential service providers have to obtain council approval before applying to The Department of Education. The downsides of local government's involvement are the following.

1. The legal requirements are unnecessarily repeated at the local government level. Almost all local government's Development Control Plan (DCP) has a section specifying the requirements for child care centres. However, the DCP requirements largely echo what has already been specified by the national laws and regulations. Repeating the requirements is not necessary.
2. Local government' involvement creates conflicting interpretations of the legal requirements. In a development application, what is seen as a merit by the applicant's town planner might be seen as a flaw by a local government's town planner(s). For example, a site that is 200m from a local school and is one street away from a natural reserve might be an ideal site to some town planners but not all other town planners in a local government.

3. Local government's involvement adds a level of bureaucracy in the application process. Local government can refuse a child care service application by picking very minor issues that are not proportionate to the main goal of the application.

The *Zaki v City of Parramatta Council* case, for example, shows that one of the refusal reasons was that the council disagreed with the calculation of the unencumbered indoor space for sliding doors ( see <https://www.caselaw.nsw.gov.au/decision/1797c794b4cb21479ff25caa>).

What would be ideal is that if issues are raised by a local government, then the local government is required to work with the applicant to find ways to resolve the issues rather than refusing the applications.

4. There is no accountability at local government level. When a local government refuses a service application due to its mis-interpretation of the legal requirements, there is no negative impact on the local government or the accessors. The local government would rather be conservative and refuse applications than to approve applications. The applicant, on the other hand, would waste tens of thousand dollars spent on preparing the development application.

When a development application is refused, the applicant can appeal to the Land and Environment Court (LEC) in theory. But in practice, this is not an option for most people because taking legal action requires a large amount of money.

For those who can afford the legal costs, which can be over one hundred thousand dollars in most cases, if their appeal was upheld in LEC eventually, it is not surprising that they will pass the legal costs to the end users. This would be another reason for unaffordable child care services.

In this section, I have explained why the local government's involvement in the child care facility approval process adds no benefits, but costs, to the ECEC industry. To move forward, the following changes are suggested.

#### *0.4. THE EFFECT OF STATE AND FEDERAL GOVERNMENT POLICIES ON ECEC SERVICES*<sup>11</sup>

1. to remove and/or reduce local government's involvement in the approval process;
2. to establish a transparent approval process by the Regulatory Authority of the participating jurisdiction;
3. to allow independent, professional bodies, such as private certifiers, to participate in the approval process;
4. to allow potential ECEC service providers to apply to the Regulatory Authority of the participating jurisdiction before applying to local government;
5. to provide conditional approval with written comments to potential ECEC service providers regarding their applications; and to give them opportunities to correct minor mistakes in their applications;
6. to provide a fast, low-cost arbiter avenue for potential service providers to review local government's decisions.

### **0.4 The effect of state and federal government policies on ECEC services**

The section outlines the areas of improvement for ECEC support policies.

#### **0.4.1 Policies for more affordable places close to home**

Quality ECEC education does not have to be unaffordable. Prices will drop if there is enough supply to meet demands. The government must cut red tape and create policies that allow more ECEC facilities to be built easily and quickly. The government should develop policies to encourage retrofitting existing residential buildings to ECEC facilities.

#### **0.4.2 Policies supporting flexible hours**

Data from the Australian Bureau of Statistics show that more and more women are joining the workforce, and at the same time, there is a large population working between 19 and 34 hours per week (see <https://www.abs.gov.au/articles/insights-hours-worked>; last accessed on 7 April

2023). This means that more and more families require flexible hours of ECEC services. ECEC care providers should provide flexible care programs in addition to the traditional long day care model.

State and federal government should support ECEC care providers to meet demands. One of such support is to ease the car park space to place ratio. Currently, the general requirement is that there needs to be 1 car space for every 4 places. If an ECEC service provides flexible programs, then not every family will come to the facility at the same time. The use of car spaces will be spread out throughout the day. Hence, each car space can accommodate more than 4 places.

#### **0.4.3 Policies supporting more ECEC places - the issue of parking space**

The general requirement for parking space is 1 car space for every 4 children. This ratio was set long time ago when Australia's population was small, and it has not been reviewed for a long time.

Take Sydney as an example. According to the Australian Bureau of Statistics, Sydney's population was around 3.5 millions in the 1980s and 1990s. Sydney's current population is over 5 millions (<https://www.abs.gov.au/ausstats/abs@.nsf/2f762f95845417aeca25706c00834efa/924739f180990e34ca257000000000000?OpenDocument>; last access 20 March 2023). As the Australian population grows, this ratio becomes inefficient. If we don't relax the children-to-car-space ratio, then the parking space will become the bottleneck in making more ECEC places available.

A number of factors should be considered when setting a new ratio. If a child care facility is within a walking distance to public transportation, including frequently serviced bus routes, then the children-to-car-space ratio should be higher. If a child care facility is within a walking distance to a school, public or private, then the children-to-car-space ratio should be increased, because families with school-aged and before-school-aged children don't need to park their car twice.

In NSW, there is no children-to-car-space ratio requirement for primary

schools, which have hundreds of students on average. Parents use street parkings near school grounds. For an average ECEC service that has less than 50 children, street parking should not be an issue. The government should consider removing the children-to-car-space ratio, and use the indoor and outdoor space requirements to control the number of places an ECEC facility can have. Alternatively, the government should relax the ratio substantially to 1 car space for every 25 children.

#### **0.4.4 Policies supporting more ECEC places - accessible parking space**

Meeting the car space requirement is the most challenging task in designing an ECEC facility, due to limited space. It is also an area of inconsistency where some local governments make it compulsory and some don't. An accessible car space takes up twice the amount of a normal car parking space. This might mean 25% of the total parking space for a small ECEC facility. In practice, the demand for accessible parking is very low.

The state and federal government should look into this issue and give clear guidance to the ECEC approving authorities. As a suggestion, the government can implement the following policies.

1. to make the requirement of providing accessible car space optional for private ECEC services, and
2. to provide incentive for making accessible car space available. For example, if a child care facility provides accessible parking, then every accessible car space counts as three car spaces.

#### **0.4.5 Policies for simplifying the approval process**

In NSW, SEPP 2017 and chapter 3 of SEPP 2021 simplify the planning processes by allowing more ECEC facilities to be built without a development application to a local government. These are effective policies. However, the current policies are applicable to schools, TAFE and University only. The NSW government should consider expanding the exempt development to the private sector allowing more ECEC facilities to be built.

#### **0.4.6 Combining provider approval and service approval to a single approval**

Currently, the national laws and regulations specify that a centre-based facility must obtain both provider approval and service approval. This dual approval process seems counterproductive. It would be ideal to see these two processes combined into a single approval process - at least for the small centre-based facility operators.

#### **0.4.7 Policies for attracting highly qualified educators**

Research shows a positive correlation between teacher qualification and the quality of the ECEC environment (see in <https://www.acecqa.gov.au/sites/default/files/2018-02/ECG-Manning-Teacher-qualifications.pdf>). The government should give incentives to people with postgraduate qualifications to teach young children. Currently, there is no policy in this regard.

If I entrust my children to an after-care-facility, I'd like them to learn something that is a supplement to the school's curriculum. Examples of this include learning a musical instrument, learning how to draw, and getting academic tutorials. Currently, the federal and state governments are reluctant to fund these activities, due to a myth that the activities may create gaps among young children. This is an area that deserves an independent investigation.

It would be nice to see that the state government encourages educators with postgraduate degrees to enter into the ECEC industry by waiving the requirement of an undergraduate degree in Education.

#### **0.4.8 Policies for keeping the public informed**

The ECEC industry evolves very quickly. The regulations, the approval process and the reporting requirements have been updated constantly. Stakeholders such as building designers, traffic engineers, acoustic engineers, stormwater engineers, landscape architects, town planners and potential ECEC providers cannot access up-to-date information from a centralised government source.

The government should provide regular information sessions, updating the public with the latest changes, and at the same time, get feedback from the public regarding issues in practice. The Regulatory Authority of the participating jurisdiction should be able to provide training courses explaining the legal requirements of running an ECEC service.

#### 0.4.9 Review of the implementation of SEPP in NSW

The NSW government introduced Educational Establishments and Child Care Facilities State Environmental Planning Policy (SEPP) in 2017, which came with a Child Care Planning Guideline. The SEPP was updated in 2021. The goal of the SEPP was to meet strong child care demand by making it easier to build child care facilities while maintaining high qualities. To meet this goal, the NSW government allowed centre-based facilities to be built in R2 low density residential land. Previously, such land use was permissible by some, but not all, local governments. The SEPP also specified a list of complying and exempt development that ECEC facilities to be built or added on easily.

The SEPP was a great initiative that could address the child care affordability issue if it were implemented effectively. However, the SEPP created many interpretation issues at the local government level. Local governments tend to ignore concessions specified in SEPP. For example, SEPP states the following in relation to car parking.

*A reduction in car parking rates may be considered where:*

- *the site is in proximity to high frequency and well connected public transport*
- *the site is co-located or in proximity to other uses where parking is appropriately provided (for example business centres, schools, public open space, car parks)*
- *there is sufficient on street parking available at appropriate times within proximity of the site*

In most local governments, this SEPP recommendation was not considered in any of its ECEC applications since the introduction of SEPP. On the

other hand, there were plenty of examples where local governments selectively use the SEPP's Child Care Planning Guideline to find flaws that may not exist. For example, the SEPP wants to ensure that the child care facility is compatible with the local character and surrounding streetscape. While defining streetscape is a subjective exercise, SEPP recommended the recognition of qualities such as building form, scale, materials and colours. For a retrofitting project that did not propose to change any of these qualities, a local government managed to find it violating the surrounding streetscape.

In my last attempt to establish a child care facility in 2019, tens of thousands of dollars were spent on obtaining professional reports required by a local council. These included a land survey, design drawings of the ECEC facility, an acoustic report, a soil assessment report, an arborist report, a traffic design certification, a traffic impact report, a landscape report, a stormwater, a waste management report and a statement of environmental effect report. The time, money and effort spent on these reports for a development application only resulted in requesting more information by the local government. The requested information was the local government's own selection of the many recommendations in the SEPP design guide. When the requested information was provided, more information was requested by the local government. After a few rounds of request of information, my development application was refused. This expensive, time consuming, and energy draining experience is an example of ineffectiveness of local government. It shows why small potential ECEC providers would rather not go through the process of setting up child care facilities.

When the SEPP was first introduced in 2017, the NSW government projected demand for 2,700 more long day care centres by 2036. More than five years have passed (i.e. 25% of the projected period), NSW has not had 25% of the 2,700 long day care centres built to date.

To truly achieve the results that SEPP was designed for, the SEPP should be modified in the following way.

- to remove distinctions between privately owned ECEC facilities and ECEC facilities owned by schools, universities and TAFE by allowing the same set of complying and exempt development rules;

- to remove ambiguities, inconsistent interpretations and even arbitrary refusal grounds by allowing private certifiers to participate in the approval process;
- to improve the approval process by allowing potential ECEC providers to lodge a preliminary application describing what they plan to do, so that they can receive early feedback before spending more time and money in preparing a formal development application. That way, the process becomes cheaper and faster.
- to improve bureaucracy in the approval process by not refusing ECEC applications immediately if the issues can be overcome. Instead, give feedback, and allow design changes to be made to reflect the feedback;
- to encourage retrofitting existing buildings to ECEC facilities, because doing so allows more ECEC facilities to be built sooner and cheaper. This, in turn, would address the child care affordability issue.

## 0.5 Conclusion

This document discusses some of the issues causing child care unaffordability. The main obstacle identified is the local government's involvement in the approval process. The current approval model is bureaucratic and expensive for small operators to set up new ECEC centres. By replacing local government's approval roles with a transparent and standardised approval process, more ECEC facilities will be available. The result, in turn, will make child care places more accessible and affordable.