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The Regulation Benchmarking Study  
Productivity Commission  
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Melbourne Victoria 8003

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Dear Productivity Commission

### **Performance Benchmarking of Australian Business Regulation – Discussion Draft**

Child Care New South Wales, on behalf of its approximately 700 childcare service-provider members, is pleased to offer our feedback to the Productivity Commission's Discussion Draft, *"Performance Benchmarking of Australian Business Regulation"*.

Our response addresses the two areas identified in your Discussion Draft:

- Feedback on the benchmarking approaches canvassed in the Draft, and,
- Feedback on the regulations to be given priority in any benchmarking.

### **Benchmarking Approaches**

Child Care New South Wales believes that the benchmarking approaches suggested in the Discussion Draft are soundly based, and, if followed, could help produce meaningful improvements in several important regulatory respects.

Child Care New South Wales believes a benchmarking exercise on the basis described in the Discussion Draft would be a sensible, cost-effective way to address important components of regulatory governance.

The Productivity Commission's main classification framework is:

‘Becoming and being a business’ (Administrative burdens)

‘Doing business’ (Approval processes)

‘Doing business interstate’ (Duplication and inconsistency)

The ‘quantity and quality’ of regulation.

Child Care New South Wales is comfortable with this framework. We suspect that it does have limitations, but we can't think of a better framework. We offer the following specific comments.

1. We refer to the links between 'Becoming a business' and 'Administrative burdens' on the one hand, and to the links between 'Doing business' with 'Approval processes' on the other hand.

Certainly in the childcare centre sector (and we assume for most small business operators), 'approval processes' are usually more of a problem at the 'becoming a business' stage than at the 'doing business' stage.

We offer the following New South Wales example. New entrants (and expanding operators) are reporting extensive delays in getting development approval. In our opinion, a key explanation for that delay is that changes to childcare regulations introduced in October 2004 transferred many of the long-standing assessment processes away from the regulator (Department of Community Services) to other parties, essentially to third-party certifiers and to local government. There is nothing wrong in principle with such a transfer in our view. However, the regulatory change was effected without any meaningful impact analysis. As a result, neither private certifiers nor local government officials were properly prepared or properly informed. Regulatory uncertainty is now endemic in this part of the system.

In a similar vein, 'administrative burdens' are, in our view, more typically experienced as part of 'doing business'.

We suggest that the relevant classification nomenclature could be improved.

2. We are also not completely comfortable with how the 'Doing business interstate' descriptor is linked with 'Duplication and inconsistency'.

We are not suggesting businesses trading interstate do not have problems with duplication. Our point is that duplication is not a major concern *only* for such providers. In other words, duplication and inconsistency are huge problems for childcare providers operating within states. Indeed, duplication between Commonwealth childcare regulation and NSW childcare regulation is what generated Child Care New South Wales' original submission to the Regulation Taskforce.

All we are suggesting here is that the language could probably be tighter to reflect the point we are making.

3. Your final key benchmarking-process component is 'The quantity and quality of regulation'.

Child Care New South Wales believes that it is feasible to measure the stock of centre-based regulation, and, more importantly, to compare childcare centre regulatory design, administration and enforcement against principles of best practice.

This part of any benchmarking, as we see it, would be the one most likely to generate the best return on the investment of time and effort. With that in mind, we would like to preface our comments about benchmarking quality with some contextual comments. What we are trying to do is link our member's problems with how benchmarking quality might address such problems. Child Care New South Wales members (and other early childhood professionals who made submissions to the Taskforce) continue to report that childcare centre regulation 'steals' valuable time. In addition, overly prescriptive, overly complex, and duplicated childcare regulations are undermining the professional autonomy of teaching staff, thus stifling best-quality service delivery, as well as inhibiting rather than promoting quality improvement.

Child Care New South Wales contends that those poor outcomes reflect inadequate regulation decision-making processes. In our view, the particular failings in the development of childcare regulations are the failings identified in “*Rethinking Regulation*”. Those inadequacies are - knee-jerk political responses, lack of analysis of costs and benefits, haphazard or limited consultation, and, a ‘regulate first ask questions later’ culture; a culture reinforced by a community perception that passing a new regulation always equates to solving the underlying problem.

In our view, a key reason why an attempt to benchmark the quality of childcare regulation-making process against best practice principles is important is because the poor childcare outcomes described above are happening *notwithstanding* the fact that all governments have decision-making requirements in place that require them to analyse the case for intervention and to assess the impacts of alternative options. All of this is then to be set out transparently for decision-makers, as well as for those directly affected and for the wider community, in a Regulation Impact Statement. In our experience, however, governments are not properly implementing such requirements. That is the issue, and, as we see it, this process inadequacy is particularly what benchmarking of quality can help to address and overcome.

We now offer the following comments and suggestions in relation to section 7.3.

We suggest rewording the first paragraph appearing on page 112 as follows:

‘Whether *timely* consultation was undertaken in completing prospective processes – consultation during the *design-stage of the regulation-making* should improve the process and the resulting regulation, which would reduce regulatory burdens.’

We believe that the possible indicators listed in table 7.3 could usefully be expanded.

We strongly agree that it is important to explore not just whether a RIS was used, but also whether such RIS was adequate. We accept that it is not appropriate to necessarily reassess the quality of prospective assessment processes. Nevertheless, we think it is important to ask specific questions about the adequacy of the RIS.

We would suggest the following for consideration:

Was an assessment of likely impacts undertaken?

Was an assessment of likely impacts on service-users undertaken?

Was an assessment of likely impact on service-providers undertaken?

Did the assessments include:

Likely cost-impact for service-users?

Likely cost impact for service-providers?

Likely cost impact for government?

We appreciate that these questions would need to be carefully framed to avoid reassessing the quality of the prospective assessment processes. Nevertheless, it seems to us that the particular facts of a particular RIS can and should be explored. Doing that does not involve a reassessment of the prospective assessment processes.

In the same vein, we would suggest that specific questions need to be asked about the *adequacy* of the consultation, not simply whether there was a consultation.

The questions in this context could include:

Was the consultation done at the design-stage?

What parties were consulted?

How much time was allowed for consultation?

There may be a benchmarking-process design principle at play here. Perhaps the ‘possible indicators – regulatory design’ should be designed around the theme of seeking to demonstrate *how* any particular RIS did or did not satisfy the COAG Principles of Good Regulatory Practice. Table 7.3 has already done that exercise to some degree. That design principle could usefully be expanded or given greater weight.

We make the further comments in respect of ‘Regulatory Administration’.

In New South Wales, administration of childcare regulations is a major concern. We are not convinced that your framework will necessarily address our understanding of the causes of those concerns.

In particular, members report the following:

Different Children’s Services Advisers adopt different interpretations of the same childcare centre-based regulations. (Unhappily, this problem with inconsistency then tends to lead to the mistaken view that the solution is to have ever-increasing levels of prescriptiveness in the regulations in an attempt to eliminate such subjective interpretations. That approach ends up making things worse rather than better.)

Regulation field-staff, because they are human, tend to concentrate their efforts on the ‘wrong’ providers. Instead of dealing with the relatively few poor-quality providers, the enforcement effort tends to go where it won’t encounter too much conflict. In other words, enforcement activity needs to be better focused on the priority areas.

There is still a strong perception that private sector providers are much more heavily targeted for enforcement activity than ‘not-for-profit’ childcare centres, and that such targeting reflects ideological preference rather than compliance performance.

There is also a strong perception that many new children’s services advisers are not sufficiently trained, not sufficiently inducted and supported, and not sufficiently resourced. In New South Wales, Children Services Advisers are often highly experienced and knowledgeable and yet are generally given insufficient weight in the design of either regulation content or regulation enforcement.

In New South Wales, regulatory administration and enforcement is conducted by the same agency (DoCS) that provides childcare services in competition with our members, and who funds our competitors.

## The Way Forward

An important matter for the Commission is to determine the highest priority areas or regulations to be benchmarked.

Your Issues Paper, at p 10, identified criteria on which priorities could be determined.

Centre-based childcare regulations satisfy those criteria.

The duplication between Commonwealth and state childcare regulation is already identified as needlessly burdensome. The extent of that particular duplication has been graphically highlighted by the New South Wales Independent Pricing and Regulatory Tribunal October 2006 Final Report, *"Investigation into the burden of regulation in NSW and improving regulatory efficiency"*. Appendix 6 is a desktop comparison of New South Wales' Children's Services Regulation with the Commonwealth's QIAS. That analysis demonstrates that there is either some overlap or significant overlap for approximately 83% of the Commonwealth requirements.

Your second criteria concerns 'productivity'. It is hard to think of any sector that has a greater impact on other businesses and industries. In addition, proper-quality child care centres are central to what might be termed personal productivity.

The Victorian Premier's *"A Third Wave of National Reform"*, 2005, at page 34, deals with this point:

"An important policy objective is therefore to ensure that every child, young person and adult maintains and builds not only skills, but also an engagement with learning.

A skilled workforce is critical to both labour force participation and improved productivity.

Research by the Melbourne Institute [2004]...suggests that raising educational attainment is the most important long-term policy to improve participation. It could raise the aggregate labour force participation rate by as much as five percentage points above what it would otherwise be in 2042.

Research on the drivers of economic growth has similarly shown that educational attainment is a significant determinant of productivity. Consistent with the 'new growth' theories popularised by economist Paul Romer, Dowrick concludes that educational attainment effects not only productivity levels, but productivity growth rates too.

With economic change placing an increasing premium on knowledge and skills, a more systematic approach to learning over the life cycle is required in the decade ahead.

Early learning opportunities should spark the interest of every child in a life of learning, as outcomes at an early age are closely related to later learning and work opportunities. All young people need strong foundations on which to build a life of learning".

The strategic social and economic importance of the early learning and care sector was further highlighted at a recent economics forum run by the Melbourne Institute of Applied Economic and Social Research, discussing the theme of a skilled workforce for the future. As reported at p. 9 in the Australian Financial Review of 22 November 2006, Treasury Secretary Ken Henry and DEWR Secretary, Peter Boxall, agreed that research showed "improving educational opportunities for young children was the most effective public spending on education".

"Asked in which education sector he would spend extra taxpayer dollars, Dr Boxall said all evidence showed the biggest returns came from investing in early childhood education, particularly for children aged under three".

Dr Henry supported this and added that "...the skills composition of the workforce affected not only its productivity, but also the levels of participation, and it was worth considering the quality of the market and non-market signals guiding skills acquisition".

What is the relevance of those important research findings and opinions for this benchmarking exercise?

Child Care New South Wales would contend that the connection to this benchmarking exercise is that optimising the regulatory operating environment for childcare centres is an economic and social priority. We think it is worth expanding on that claim. First, it is clear that raising educational attainment is an important policy to improve productivity. Second, the smartest part of the educational sector to invest in is – early childhood education. The evidence shows that the biggest returns would come from investing in child development and early-learning, particularly for under threes. Third, it is clear that improving the quality of childcare centre regulations would improve educational early-learning opportunities for children from 0 to 5 years. Fourth, it is very likely that improved regulatory decision-making would improve the quality of childcare centre regulation. Fifth, benchmarking the quality of childcare regulation decision-making is very likely to improve that decision-making process.

Dr Henry also visited similar themes in his address to the 2006 Economic and Social Outlook Conference in Melbourne on 2nd November. Dr Henry argued that there is a strong case for a policy focus on measures – "in the domains of population, participation and productivity – that expand the economy's supply potential."

Dr Henry considers job creation. He argues that creating a real employment opportunity should mean employing someone who would not otherwise be in the labour force. "Jobs are 'created' ... because the employment opportunity also lifts the rate of labour force participation".

"... useful job creation strategies include early childhood initiatives to improve the prospects of healthy mental and social development, and preventative health initiatives to reduce the incidence of chronic medical conditions that prevents active engagement in the labour force – and in life more generally". See, Ken Henry, Secretary to the Treasury, Address to the 2006 Economic and Social Outlook Conference, "*Managing Prosperity*", at pages 3 and 4.

The relevance for present purposes is of course that another reason for selecting childcare regulations as a priority benchmarking area is because improving the regulatory operating environment would be an important real job creation program.

Your third priority-selection criteria requires selection of regulations on the basis that they interact within or across levels of government to increase the burden on business.

As we indicated in our response to your Issues Paper, early childhood and parenting services (known as 'childcare centres') are necessarily owned in different parts of the policy world. Childcare is necessarily connected to and, in some senses, owned by education systems, health systems, crime-prevention systems, the parenting support system, and the workplace participation-support system. (Of course, most Australians wrongly perceive 'childcare' to be concerned only with the workplace participation support system.) The nature of our ownership dilemma is well-known. For example, Australian National University demographer, Professor Peter McDonald, was reported in the Sydney Morning Herald of 27 May, 2006 as saying that the "nature of Australia's childcare sector makes it difficult for any government to promote a comprehensive early childhood education program. Even though the private sector dominates the provision of long day care in particular, federal, state and local governments all have a role in funding, regulating and planning childcare".

“I once counted up and found 29 Commonwealth, State and Territory ministers across Australia with direct responsibility for some part of early childhood education”.

“Getting them all to agree on anything will be a very big challenge.”

Child Care NSW can confirm the size of that challenge. Meeting that coordination challenge could be greatly assisted by benchmarking centre-based childcare regulations and regulatory decision-making processes.

We urge you to see centre-based childcare regulations as worthy of benchmarking priority.

## **Concluding comments**

Child Care New South Wales appreciates the opportunity to share our ideas with the Productivity Commission’s Regulation Benchmarking Study.

We believe that Australia can be proud of how its public and private sectors have combined to create and operate strong and well-developed infrastructure for addressing the health, learning and developmental needs of young children, as well as addressing the workforce participation needs of parents and families.

Australia’s immediate concerns are not a lack of good-quality child care resources but a failure to coordinate existing resources effectively.

Child Care New South Wales believes that benchmarking of childcare centre regulations could be a vehicle for significant improvement in the coordination of regulation design and administration, leading ultimately to significant social and economic improvements for all Australians.

We would of course be pleased to elaborate on any aspect of our submission.

For and on behalf of Child Care New South Wales

Lyn Connolly  
President