CHILDREN’S SERVICES REGULATIONS 2009 – STATEMENT OF REASONS

The new Children’s Services Regulations 2009 comes into operation on 25 May 2009. In making the new regulations, I have given careful consideration to the wide range of issues raised by members of the community who commented on the draft regulations and Regulatory Impact Statement, which I released earlier this year.

In determining the key provisions of the new regulations, I have been particularly mindful of the Brumby Government’s commitment both to improved quality in children’s services and to maintaining affordability for Victorian families.

In this context, and consistent with the objectives of the Children’s Services Act 1996, I have decided on a number of key reforms to Victoria’s children’s services regulatory framework for the following reasons:

**Improved child/staff ratios in Long Day Care for children aged under three**

As proposed in the draft regulations, the prescribed staff/child ratio for children under three years of age in all standard licensed services will be changed from 1:5 to 1:4. This proposal was supported by the vast majority of respondents to the draft regulations. Of those who did not support the proposal, some preferred a more stringent ratio and some preferred no change or even more relaxed ratios than the current regulations primarily for reasons of cost. In maintaining the ratio as proposed in the draft regulations, I am confident that I have chosen a balanced approach that will significantly improve support for children in their earliest years, with minimal impacts on service affordability.

**No change to child/staff ratios for children aged three years and over**

As proposed in the draft regulations, there will be no change to the prescribed child/staff ratios for children aged three years and over. I acknowledge that a small majority of respondents to the draft regulations indicated a preference for improved ratios for this age group, particularly in standard licensed services, including Long Day Care and kindergarten. However, two factors have influenced my decision to prescribe no change to these ratios at this stage.

First, in recognition of work currently being undertaken at the Council of Australian Governments (COAG), and likely changes to national standards across all children’s services, I believe that it would be in the interests of services and families to wait for the outcomes of these COAG discussions before making any final determinations on new ratios for this age group.
Second, in consideration of the current financial burdens facing the community, I believe that it is important to prioritise quality improvement measures, and avoid the need for more change until the COAG outcomes are known. I therefore have decided that the more urgent need at this time is the improvement in ratios for younger children. This is reinforced by research that indicates that the benefits of quality intervention are greatest for younger children.

**Minimum training for all staff and carers**

I have decided to retain the proposed provisions of the draft regulations that all staff and carers must have a minimum training of a Certificate III in Children’s Services, or its equivalent.

This proposal was widely supported in public feedback. Some respondents also believed that the transitional provisions proposed were too long, particularly in relation to family day care. I have agreed with these arguments and have therefore decided that a shorter transition period will apply for minimum training for family day care carers, who will now all be required to have met the minimum training requirements by 1 January 2012. Requiring training for all staff working in children’s services is the first step towards creating a professional workforce and providing a career path for children’s services staff.

**Teachers in standard licensed services**

The draft regulations proposed a new requirement for a degree qualified early childhood teacher for all standard licensed services. While the majority of feedback supported this proposal, some concerns were raised regarding its affordability. However, the arguments put to me in favour of retaining the requirement as proposed were compelling, particularly in terms of the benefits that such a level of expertise would bring to all children, not only to those receiving a kindergarten program. I have therefore decided to retain the provision. The transitional provisions for this requirement are generous and will ease the regulatory burden.

**Minimum ages for staff and carers**

The draft regulations’ proposal that the minimum age for staff and carers (who are counted in child/staff ratios) be raised to 18 years was widely supported in the feedback. Some providers however commented that this will discourage services from employing young people, particularly those who may be considering a career in childcare and wish to explore that possibility when they leave school, but before committing to obtaining minimum training.
I considered this matter carefully and listened to the various views that were put. A number of factors persuaded me to retain the requirement as originally proposed in the draft regulations. This included the advice I received from services that any staff member who is counted in the child/staff ratios may, from time to time, be required to work with children unsupervised. Even for very short periods, I feel this is an unacceptable risk for children when the staff member is too young to undergo an assessment under Victoria’s Working With Children legislation.

Secondly, I was also convinced that the job of caring for and educating children is demanding and requires a level of maturity on the part of the carer. I believe it is unfair to place a high level of responsibility on a 16 or 17 year old.

**Child/staff ratios in mixed age groups**

The draft regulations included a new proposal that, wherever children are being cared for or educated in a mixed age group, the ratio of the youngest child is to apply across the whole group. There was considerable concern expressed about this proposal, particularly in terms of its implications for services that have only a small number of very young children mixed with a larger group of three and four year old children.

It would also disadvantage those services that care for and educate children in family groupings.

I have therefore decided to change the proposed regulation so that services may choose to apply it if they wish, or may calculate their child/staff ratios in the traditional way if they prefer to do so.

**Grandfathering provisions for existing staff**

The draft regulations proposed that staff who have been working a licensed children’s service continuously for 5 years full-time, or 10 years part-time, immediately prior to the commencement of the new regulations, are not required to obtain a minimum Certificate III training.

There was considerable feedback to this proposal, with a significant minority of respondents expressing reservations about it. In considering the issues that were raised on this matter, I gave careful consideration to the need to ensure quality through prescribed minimum training while recognising the valuable skills that staff acquire through experience. Along with these issues, I also gave consideration to the need to assist children’s services staff to maintain their positions wherever possible.

For this reason, I have decided to maintain the grandfathering provisions, but to complement them with a requirement that all grandfathered staff undertake a professional development course, as approved by the Secretary, by 2012.
Sun protection

The draft regulations did not prescribe any specific requirements around the protection of children from exposure to the sun. While section 26 of the Act requires that children are to be protected from hazards and harm at all times, some respondents felt that the regulations could be improved by including a specific reference to the issue of sun protection. I have considered this matter and have noted that other jurisdictions also include a regulation on this issue, and so have therefore decided to add a requirement for services to provide adequate shading in outdoor play areas to protect children from the harmful effects of the sun.

Family day care

Some feedback provided in response to the draft regulations expressed concern around the proposed requirement that family day care should be provided in the carer’s primary residence. I have given careful consideration to these concerns and wish to reiterate my commitment to promoting Family Day Care as a different type of care where children have access to a normal home in a small group. I wish to maintain the family day care philosophy as an alternative to centre-based care, which, as such, offers a genuine alternative to parents. I have therefore amended the regulations to include a condition on a family day care licence that where family day care is to be provided in the carer’s primary residence that children have access to the main living areas of the home.

I acknowledge some concerns that were raised in relation to proposals to allow In-Venue Family Day Care. I understand these concerns, but nevertheless consider In-Venue care to be an important option in rural areas where there are no centre-based alternatives and family homes are not suitable. It is only in these limited circumstances that I intend In-Venue care to be allowed under the new regulations.

Outside School Hours Care

The draft regulations proposed requirements for Outside School Hours Care that are consistent with the National Standards. They were widely supported in the feedback and I have therefore decided to maintain these requirements in the final regulations.

I have also listened to feedback in relation to the wide range of relevant training and qualifications that Outside School Hours staff bring to the job, and have therefore amended the minimum training requirements for this service type to accommodate this. The regulations now provide greater flexibility in recognising relevant training and qualifications for the Outside School Hours Care sector.
I also understand that some concerns were raised regarding the proposed minimum staff requirements for Outside School Hours Care. The draft regulations proposed that Outside School Hours Care service should be required to meet the same minimum staffing requirements of two staff that apply to all other centre-based services, except for certain Outside School Hours Care services in rural and remote areas, where this requirement would be unrealistic.

I have considered the concerns raised about this requirement, but stress that my primary concern is for the safety of children. I am convinced that a requirement of at least two staff is generally necessary in order to minimise risks of harm to children. I have therefore decided to retain the requirement as proposed in the draft regulations.

Costs and affordability

As noted elsewhere throughout this Statement, I have been very much concerned with providing a new regulatory framework that strikes an appropriate balance between service quality, affordability and viability. This was an issue that received considerable feedback during the consultation period.

I acknowledge that a large number of people felt that the new regulations would lead to some increases in fees. However, I also note that an equally large number felt that the proposed changes would lead to significant improvements in services. The majority of the feedback indicated that, on balance, the benefits of the proposed changes outweighed the anticipated costs.

I reiterate that the costs anticipated in the Regulatory Impact Statement that was released with the draft regulations estimated minimal cost impacts, once Federal and State government subsidies had been taken into account. For a child receiving 50 hours of Long Day Care per week, these impacts were estimated at an average of $0.52 per child per week in the first year of implementation through to $4.15 in the sixth year.

I have therefore accepted the argument that the costs of the proposed changes are outweighed by the benefits and have, on this basis, decided to maintain the substantive changes as proposed in the draft regulations.
Conclusion

Overall, the community’s feedback on the draft regulations was very positive. Where there was dissent from the proposals, this was invariably the minority position and usually itself markedly divided – with some respondents arguing for more stringent measures than those proposed in the draft regulations, and others arguing for less stringent alternatives.

I have also been advised that some concerns, particularly around the calculation of child/staff ratios, arose more out of misunderstandings regarding the precise meaning of some of the draft regulations, rather than their actual content. I believe that some of these matters have been clarified by the amendments in the final regulations, and will be further clarified through the training and resources that will be provided after the regulations commence. I have asked the Department to ensure that they provide sufficient guidance materials to support the implementation of the new regulations.

I am aware that the Government’s role in regulating children’s services is to strike the right balance between quality for children, affordability for families and viability for the industry. I believe that the new regulations strike this a balance appropriately, and will result in an improved children’s services sector for the children and families of contemporary Victoria.

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