



SUBMISSION TO NSW IPART REVIEW

Review into New South Wales' early childhood education and care affordability, accessibility and consumer choice

31 May 2023

www.nsw.childcarealliance.org.au

About Us

The Australian Childcare Alliance (ACA) NSW is the peak body for privately-owned predominantly small to medium-sized family-owned and operated businesses who provide early childhood education and care services in New South Wales.

We provide advocacy, policy and regulatory support and advice, industrial and member support, as well as professional development for our members across the state.

ACA NSW members operate over 1,600 early childhood education and care services, employ over 25,000 employees, and are committed to providing excellence in early childhood education and care for the more than 125,000 children and their families.

ACA NSW actively engages with the NSW Government, the NSW Minister for Education and Early Learning, the NSW Shadow Minister for Education and Early Learning, the NSW Department of Education, the NSW Office of the Children's Guardian, Members of the Parliament of New South Wales as well as Planning NSW, NSW Health and local governments. ACA NSW is also an active participant in the NSW Department of Education's Early Childhood Advisory Group, the Funding and Commissioning Sub-Group, the Child Safety Working Group and the Data Sub-Group.

ACA NSW hosts sector engagements between the regulators and our members and non-members through our (metropolitan) Inner Circle events, our (regional) Hub Huddles and our What's the Buzz meetings. We also host the annual Excellence in Early Childhood Education Awards, Wheels on the Bus tours of exceeding services, and providing regulatory, legal and commercial training through our Quickies (ie training in 2 hours or less) with our trusted partners.

We are a member of our national body (the Australian Childcare Alliance (ACA)), who actively engages with the Federal Government, the Federal Minister for Education, the Federal Minister for Early Childhood Education, the Federal Shadow Minister for Early Childhood Education and the Federal Department of Education.

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1. Overview

This ACA NSW submission to NSW IPART discusses the Review's areas of focuses of affordability, accessibility and consumer choice of the NSW version of early childhood education and care by:

- outlining the impact of high-quality early childhood education and care;
- highlighting the consequences of regulatory compliance;
- demonstrating the impact of higher regulatory requirements than other jurisdictions;
- considering the unintended consequences of competition and the absence of a planning system for supply of new services; and
- reflecting on the need for a level-playing field for all NSW-based services.

2. Impact of High-Quality Early Childhood Education and Care

The then Federal Minister for Early Childhood and Youth (the Hon Peter Garrett MP) quoted an out-of-pocket cost of about \$8-\$9 per week for full-time long daycare in 2014-2015¹ (or \$9.19-\$10.34 in 2021-22² terms). This was conveyed despite then prophetic public concerns over increasing fees, curtailing of costs as well as reduction of places and programs.

Despite such warnings, the NSW Government agreed to implement its (higher) version of the national early childhood education and care framework, law and regulations to achieve its twin aspirations for children aged 0-5 years old as well as for their parents' workforce participation.

It is important to reflect the past regulatory impact statements for the insufficient consideration of consequential downstream costs to services and ultimately parents/families that were to arise from the National Quality Framework, their regulations and practices and their subsequent changes:

- Regulation Impact Statement for proposed changes to the National Quality Framework (November 2014)³
- Decision Regulation Impact Statement for changes to the National Quality Framework (January 2017)⁴
- Decision Regulation Impact Statement of the 2019 National Quality Framework (July 2022)⁵

And while the NSW Regulatory Authority relied on the Federal Department of Education for the assessment of regulatory impact, it remains unclear whether the NSW Department of Education made

¹ The National Quality Framework for Early Childhood Education and Care, the Commonwealth Parliamentary Library (19 December 2011) ([https://www.aph.gov.au/About Parliament/Parliamentary Departments/Parliamentary Library/FlagPost/2011/December/The National Quality Framework for Early Childhood Education and Care](https://www.aph.gov.au/About%20Parliament/Parliamentary%20Departments/Parliamentary%20Library/FlagPost/2011/December/The%20National%20Quality%20Framework%20for%20Early%20Childhood%20Education%20and%20Care))

² Inflation calculation by the Reserve Bank of Australia (<https://www.rba.gov.au/calculator/annualDecimal.html>)

³ Regulation Impact Statement for proposed options for changes to the National Quality Framework, Education Council (November 2014) (<https://www.acecqa.gov.au/sites/default/files/acecqa/files/Reports/COAGReviewConsultationRegulationImpactStatement.pdf>)

⁴ Decision Regulation Impact Statement for changes to the National Quality Framework, Education Council (January 2017) ([https://oia.pmc.gov.au/sites/default/files/posts/2017/03/changes to the national quality framework decision ris.pdf](https://oia.pmc.gov.au/sites/default/files/posts/2017/03/changes%20to%20the%20national%20quality%20framework%20decision%20ris.pdf))

⁵ Decision Regulation Impact Statement, 2019 NQF Review, Education Council (July 2022) ([https://oia.pmc.gov.au/sites/default/files/posts/2022/07/Decision%20-%202019%20NQF%20Review Decision%20Regulation%20Impact%20Statement.docx](https://oia.pmc.gov.au/sites/default/files/posts/2022/07/Decision%20-%202019%20NQF%20Review%20Decision%20Regulation%20Impact%20Statement.docx))

its own assessments of regulatory impact since 2012 in accordance with the NSW Government's Guide to Cost-Benefit Analysis⁶.

Correspondingly, as a proxy, it is also important to reflect the complexity and operational load of the National Quality Framework and National Quality Standard since its implementation on 1 January 2012 from the perspective of services, their educators and teachers:

Date	Guide to the National Quality Framework	Guide to the National Quality Standard
October 2011	18 pages ⁷	208 pages ⁸
September 2013	14 pages ⁹	200 pages ¹⁰
January 2017		201 pages ¹¹
February 2018	636 pages ¹²	
March 2023	648 pages ¹³	

⁶ NSW Government Guide to Cost-Benefit Analysis (TPP17-03), NSW Treasury (2017-2022) -

<https://arp.nsw.gov.au/tpp17-03-nsw-government-guide-cost-benefit-analysis>

⁷ Guide to the National Quality Framework, ACECQA (October 2011)

(<https://web.archive.org/web/20111024014640/http://www.acecqa.gov.au/storage/1%20Guide%20to%20the%20NQF.pdf>)

⁸ Guide to the National Quality Standard, ACECQA (October 2011)

([https://web.archive.org/web/20120227073026/http://acecqa.gov.au/storage/THREE Guide to the National Quality Standard.pdf](https://web.archive.org/web/20120227073026/http://acecqa.gov.au/storage/THREE%20Guide%20to%20the%20National%20Quality%20Standard.pdf))

⁹ Guide to the National Quality Framework, ACECQA (September 2013)

(<https://web.archive.org/web/20150228064723/http://files.acecqa.gov.au/files/National-Quality-Framework-Resources-Kit/NQF01-Guide-to-the-NQF-130902.pdf>)

¹⁰ Guide to the National Quality Standard, ACECQA (September 2013)

(<https://web.archive.org/web/20150227010201/http://files.acecqa.gov.au/files/National-Quality-Framework-Resources-Kit/NQF03-Guide-to-NQS-130902.pdf>)

¹¹ Guide to the National Quality Standard, ACECQA (January 2017)

(<https://web.archive.org/web/20170616234436/http://files.acecqa.gov.au/files/National-Quality-Framework-Resources-Kit/NQF-Resource-03-Guide-to-NQS.pdf>)

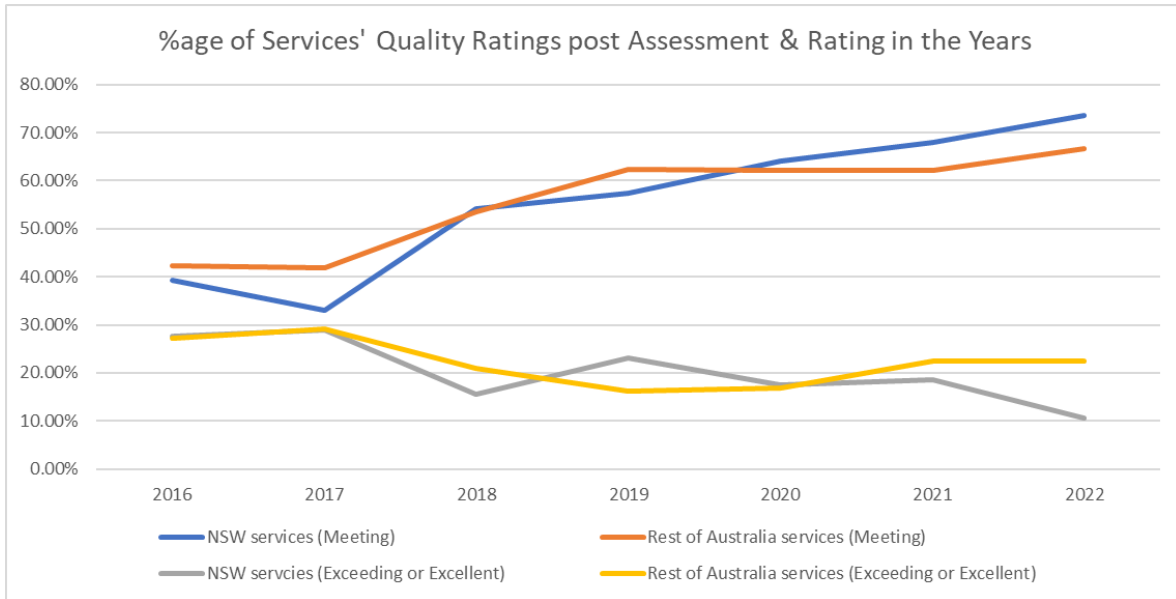
¹² Guide to the National Quality Framework, ACECQA (February 2018)

(<https://web.archive.org/web/20180325051026/http://files.acecqa.gov.au/files/NQF/Guide-to-the-NQF.pdf>)

¹³ Guide to the National Quality Framework, ACECQA (March 2023)

(<https://www.acecqa.gov.au/sites/default/files/2023-03/Guide-to-the-NQF-March-2023.pdf>)

The following graph provides a perspective of the impact of the result of changes to the regulatory framework as expressed through their Quality Ratings in NSW compared to the rest of Australia:



SOURCE: Australian Children's Education and Care Quality Authority's National Registers (2016-2022)¹⁴

Although the percentage of services achieving Meeting the National Quality Standards, this graph also shows the impact of increasing complexities/operational load on services, educators and teachers, thus leading to their increasing abandonment of ambitions to achieve Exceeding the National Quality Standards or Excellent rating.

This diverging trend away from achieving higher quality ratings also coincide with the increasing skilled labour shortages both in terms of the quantum of candidates completing their qualifications, the number of students who do complete their qualifications as well as the increased rate of attrition from the early childhood education and care workforce due to vocational dissatisfaction.

Even prior to COVID, there had already been signs of skilled labour shortages with ACECQA conservatively predicting a need of 39,000 additional educators and teachers by 2023¹⁵. This is particularly significant given a least 60%-70% of operational costs relate to the payroll of qualified educators and teachers. Such predictions would increase operational costs as all services compete for a limited pool of human talent.

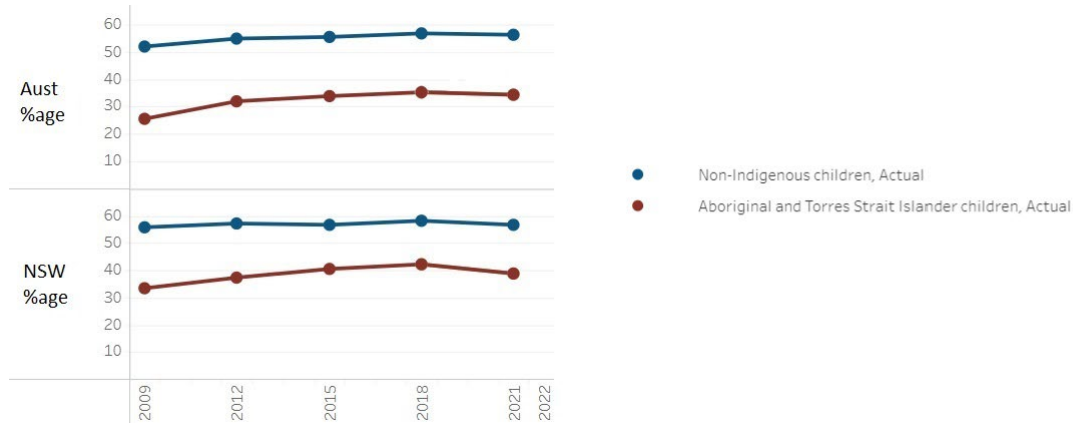
¹⁴ Australian Children's Education and Care Quality Authority's National Registers (2016-2022) (<https://childcarealliance.sharepoint.com/:x/s/SharedDrives/EV7Bo3-LBGLCqIKdvHF73f4BSK9juO-8ZMQIKJSk0oD9NQ?e=AEcKdq>)

¹⁵ Australian Children's Education and Care Quality Authority's Workforce Report (November 2019) (<https://www.acecqa.gov.au/sites/default/files/2022-01/ProgressingNationalApproachChildrensEducationCareWorkforce.pdf>)

Since COVID, ACECQA's Shaping Our Future national children's education and care workforce strategy¹⁶ confirmed declining enrolments and 11.7% of long daycare services already had a temporary waiver to address the unavailable early childhood teachers.

Although pay is a contributing factor toward increasing labour shortages, it is also the regulatory and operational conditions on educators and teachers that equally if not more so led toward the labour shortages.

This ever-increasing impost to achieve high-quality early childhood education and care should also be contrasted against the NSW Department of Education's as well as the Federal Minister for Education's direct and indirect concerns that 40%¹⁷-45%¹⁸ of children were not developmentally on track upon starting school.



SOURCE: Productivity Commission's Closing the Gap Information Repository (2018-2021)¹⁹

The NSW Regulatory Authority's and the Federal Minister's remarks appear to be predicated on the Productivity Commission's report that span 2009 to 2021 and the use of the Australian Early Development Census²⁰ which both pre-dates and overlaps the existing National Law, National Regulations, the National Quality Framework and the National Quality Standards that govern the current delivery of early childhood education and care.

¹⁶ Australian Children's Education and Care Quality Authority's Shaping Our Future (September 2021) (<https://www.acecqa.gov.au/sites/default/files/2021-10/ShapingOurFutureChildrensEducationandCareNationalWorkforceStrategy-September2021.pdf>)

¹⁷ NSW Department of Education's The Early Years Commitment: Where are we now and where to next? (12 September 2022) (<https://bit.ly/43eAxHs>)

¹⁸ Federal Minister for Education's [Speech to the Early Childhood Australia National Conference](#) (6 October 2022)

¹⁹ Productivity Commission's Closing the Gap Information Repository (2018-2021) (<https://www.pc.gov.au/closing-the-gap-data/dashboard/socioeconomic/outcome-area4>)

²⁰ Australian Early Development Census (AEDC) (<https://www.aedc.gov.au/>)

It should also be noted that the then Federal Minister for Education and Youth, the Hon Alan Tudge MP, established an Expert Advisory Group in September 2021 to formally report on what preschool children's outcomes and measures be by early 2022²¹. This reporting requirement was removed in September 2022 when the Preschool Outcomes Measure Expert Advisory Group's terms of reference²² was revised.

While it should be universally accepted that high-quality early childhood education and care must be supported by an associated cost, our collective expectations for the public good should also more be accurately predicted in terms of the accepted associated cost, and what expected outcomes are to be overtly delivered (including workforce participation as well as children's outcomes relative to local, interstate and international benchmarks) that have impact on children and their parents and families.

²¹ Media Release by the Federal Minister for Education and Youth (10 September 2021)
(<https://ministers.dese.gov.au/tudge/supporting-children-focus-preschool-expert-advisory-group>)

²² Preschool Outcomes Measure Expert Advisory Group Terms of Reference (14 September 2022)
(<https://www.education.gov.au/early-childhood/resources/preschool-outcomes-measure-expert-advisory-group-terms-reference>)

3. Regulatory Compliance

The safety and well-being of all children especially those 0-5 years old is and has always been paramount. This is best evidenced by the number of deaths of children in NSW since 2012 and NSW-based early childhood educators and teachers being deemed Authorised Workers and then Critical Workers even during the COVID pandemic.

Year	# of Deaths (NSW)	# of Deaths (0-2)	# in LDCs (NSW)	# in FDCs (NSW)
2012	0	0	0	0
2013	0	0	0	0
2014	0	0	0	0
2015	0	0	0	0
2016	0	0	0	0
2017	0	0	0	0
2018	1	1	1	0
2019	1	1	0	1

SOURCE: NSW Department of Education

That said, it is also worth considering the consequential impact of and remedial actions to the regulators' issuing of breaches and non-compliances, especially when compared per capita against other jurisdictions.

Year	Breaches (NSW)	NSW as %age of Australia	Breaches (Rest of Australia)
2016/2017	3,797	24.9%	11,424
2017/2018	7,865	39.7%	11,943
2018/2019	7,773	36.9%	13,309
2019/2020	13,673	54.4%	11,468
2020/2021	17,616	65.3%	9,376

SOURCE: Productivity Commission's Reports on Government Services²³

Given the increasing number and percentages of breaches in NSW compared to the rest of Australia, the level of prosecutions and enforcement actions should also be contrasted against:

	2016/2017	2017/2018	2018/2019	2019/2020	2020/2021	2021/2022
Prosecutions	2	10	0	20	36	11

SOURCE: NSW Department of Education's Published Enforcements and Decision Actions²⁴

²³ Reports on Government Services, Productivity Commission (<https://www.pc.gov.au/ongoing/report-on-government-services>)

²⁴ Published Enforcements and Decision Actions, NSW Department of Education (<https://education.nsw.gov.au/early-childhood-education/regulation-and-compliance/published-enforcement-and-decision-actions>)

4. NSW's Higher Regulatory Requirements than other jurisdictions

Since its implementation on 1 January 2012, the NSW version of the [Children \(Education and Care Services\) National Law](#) and its complementary [Education and Care Services National Regulations](#) have come under review and criticisms by the NSW Productivity Commission:

- the Green Paper 2020 – Continuing the productivity conversation²⁵
- the White Paper 2021 – Rebooting the economy²⁶
- the Evaluation of NSW-specific early childcare regulations²⁷

The NSW Productivity Commissioner stated that:

- “*educational outcomes of children in NSW are not any better than comparable states*”
- “*costs of the stricter regulatory requirements likely exceed the benefits*”; and
- “*The cost of NSW maintaining requirements above the national standards equates to around \$3,000 a year for each child attending ECEC*”.

And despite the higher qualified staffing requirements, NSW's long daycare services have been unable to consistently demonstrate superior quality results compared to other jurisdictions, for example in terms of Quality Area 1 (Educational Program and Practice)²⁸, overall Quality Ratings and comparisons against comparable states like Queensland and Victoria²⁹.

It should be noted that as the national regulator, the Australian Children's Education & Care Quality Authority, has recently initiated in April 2023 a public review of existing staffing and qualifications regulations³⁰.

²⁵ NSW Productivity Commission's Green Paper (August 2020) ([https://www.productivity.nsw.gov.au/sites/default/files/2020-08/Productivity Commission Green%20Paper_FINAL.pdf](https://www.productivity.nsw.gov.au/sites/default/files/2020-08/Productivity_Commission_Green%20Paper_FINAL.pdf))

²⁶ NSW Productivity Commission's White Paper (May 2021) (<https://www.productivity.nsw.gov.au/white-paper>)

²⁷ NSW Productivity Commission's Evaluation of NSW-specific childcare regulations (December 2022) (<https://www.productivity.nsw.gov.au/sites/default/files/2022-12/20221207-evaluation-of-nsw-specific-early-childcare-regulations-nsw-productivity-commission.pdf>)

²⁸ 2022 comparisons of Quality Area 1 and Overall Quality Ratings of NSW vs all other states (https://childcarealliance.sharepoint.com/:x/s/SharedDrives/EWFRVFC7emxLqWavcybGTIkB9Ec2E-TxRLO4I_tm1ITYsg?e=WHV2eH)

²⁹ NSW vs Queensland's vs Victoria's 2017 and 2022 comparisons of Quality Ratings (https://childcarealliance.sharepoint.com/:x/s/SharedDrives/EWFRVFC7emxLqWavcybGTIkB9Ec2E-TxRLO4I_tm1ITYsg?e=GoMGX0)

³⁰ ACECQA's Review of NQF Staffing and Qualifications Regulations Public Consultation (April 2023) (<https://www.acecqa.gov.au/sites/default/files/2023-05/Public-Consultation-document.pdf>)

5. Supply of Early Childhood Education and Care Services

The supply of additional long daycare (LDC) services and places that has consistently been increasing at faster rates than NSW's population and the relatively stable birth dates:

NSW	2014	2015	2016	2017	2018	2019	2020	2021	2022
New LDC Services	89	110	120	95	136	133	113	80	108
% increase	3.6%	4.3%	4.5%	3.4%	4.7%	4.4%	3.6%	2.5%	3.3%
Additional Places	6,644	7,833	7,905	7,563	10,655	9,378	7,717	5,493	8,233
% increase	5.3%	5.9%	5.6%	5.1%	6.8%	5.6%	4.4%	2.9%	4.4%

Supply of Early Childhood Education and Care services and places in NSW³¹

NSW	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
Population	7.51m	7.62m	7.73m	7.87m	7.98m	8.09m	8.16m	8.19m	8.15m
% increase	1.41%	1.44%	1.53%	1.75%	1.43%	1.34%	0.95%	0.3%	-0.5%

Population Time Series of NSW³²

NSW	2014	2015	2016	2017	2018	2019	2020	2021	2022
Births Registered	91,074	100,079	96,083	96,591	107,343	98,906	95,459	100,332	TBA
% increase	-9.3%	9.89%	-3.99%	0.53%	11.13%	-7.85%	-3.49%	5.10%	TBA

Births registered in NSW³³

The rates of annual supply of both long daycare services and their places are significantly higher than the population increases in New South Wales. Please note that the number of children born in NSW on annual average has been 98,234 at least over the last 8 years.

Hence, it is argued that the supply of new early childhood education and care services and places have tended to be commercially speculative. This is because the market does not have access to the true enrolment and attendance data as re-confirmed by the Federal Minister for Early Childhood Learning³⁴ despite such information being collected every week by the Federal Government.

³¹ Australian Children's Education & Care Quality Authority - <https://www.acecqa.gov.au/resources/national-registers>

³² Australian Bureau of Statistics' Population Time Series - <https://www.abs.gov.au/statistics/people/population/national-state-and-territory-population/jun-2022>

³³ Australian Bureau of Statistics' Births - <https://www.abs.gov.au/statistics/people/population/births-australia/latest-release#data-downloads>

³⁴ Letter from the Hon Dr Anne Aly MP, Federal Minister for Early Childhood Learning (9 May 2023) - https://childcarealliance.sharepoint.com/:b:/s/SharedDrives/Eer7D7o6RQ9PpQk8FJcqeL0BnP-5bft_52Aijm-rl-fCjA?e=7frbZO

This issue of aligning supply to real and projected demand with the right quantity of places was recently and partially addressed by the NSW Parliament's [Childcare and Economic Opportunity Fund Act 2022](#).

Although its first bi-annual Market Monitoring Report is yet to be published, it is anticipated that such Reports will primarily identify areas and regions where public interventions are required to overcome demands that are commercially unjustifiable. It is also hoped that both the NSW Treasury and the NSW Department of Education (as legal stewards of the \$5 billion Childcare and Economic Opportunity Fund) will ensure such Reports will also include information so as to assist in guiding new services toward real and reliably projected demand without public interventions.

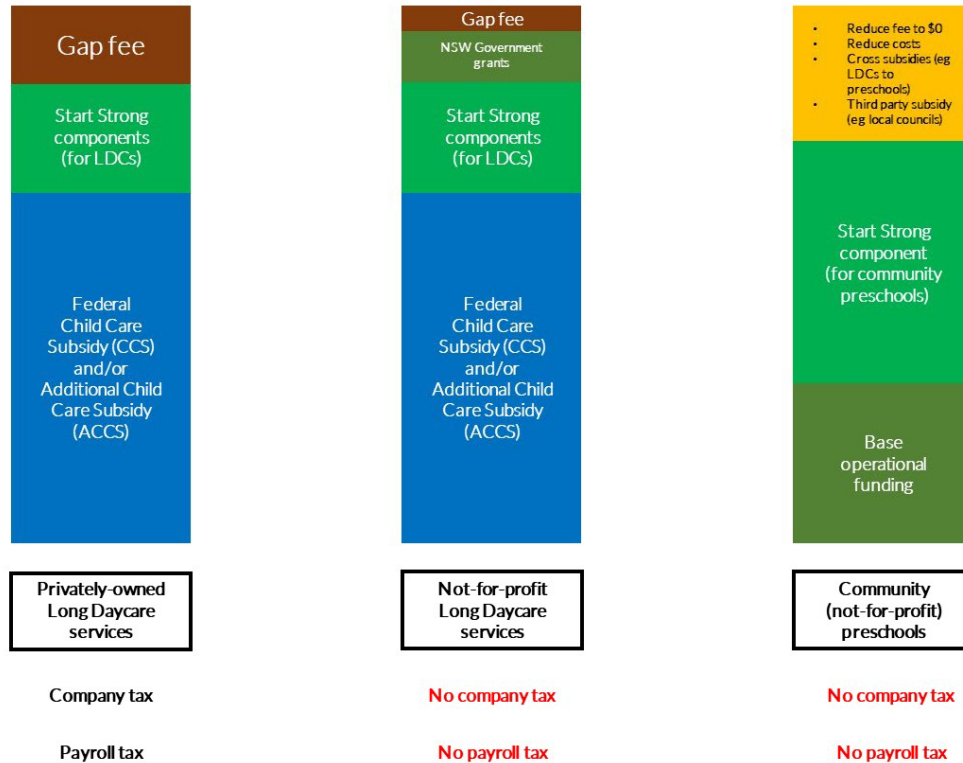
Otherwise, there will again be oversupply of services and places in a number of areas that ironically increase fees. Such oversupply and corresponding increases in fees³⁵ occurred especially during 2017 to 2020.

In NSW, such oversupply was also fuelled by the wholesale removal of local councils' local regulatory functions over early childhood education and care services by the introduction of the *NSW State Environmental Planning Policy (SEPP) (Educational Establishments and Child Care Facilities) 2017*. This SEPP has since been updated and further liberalised through the [NSW State Environmental Planning Policy \(Transportation and Infrastructure\) 2021](#).

³⁵ "Why your childcare fees aren't falling in an oversupply", Australian Financial Review (5 September 2018) (<https://www.afr.com/companies/healthcare-and-fitness/why-your-childcare-fees-arent-falling-in-an-oversupply-20180905-h14y02>)

6. A level-playing field for all NSW-based Early Childhood Education and Care services

The sector is also complex due to its different governance structures as well as the number of services each legal entity has responsibility over, for example privately-owned, multinational, publicly listed, corporatised, franchise, not-for-profit and government owned.



With about 71% of all long daycare services being small-medium sized family-owned entities, it is important to appreciate their financial obligations in terms of company taxes and NSW Payroll Taxes.

Such obligations are not required of not-for-profit entities, yet they can also source additional financial revenues from government grants that are not available to small-medium sized services that are privately-owned, for example NSW Department of Education's Early Childhood Education and Care Grants³⁶ (which was \$408,064,246 for 2020/2021).

Given the Federal Government legally requires services to always have a gap fee when receiving Child Care Subsidies, this places some services being able to reduce their fees even to \$0 when many others cannot.

³⁶ 2020-2021 Annual Report's Table 52, Early Childhood Education and Care Grants, NSW Department of Education ([https://education.nsw.gov.au/content/dam/main-education/en/home/about-us/strategies-and-reports/annual-reports/DOE Annual Report 2021 20220531.pdf](https://education.nsw.gov.au/content/dam/main-education/en/home/about-us/strategies-and-reports/annual-reports/DOE%20Annual%20Report%202021%2020210531.pdf))

And while ACA NSW does not seek any reductions in funding for not-for-profit services, it does ask for attention as to the fairness and effectiveness of government funding and its distribution given the impact of company tax and NSW Payroll Tax, especially when considering fee affordability for parents.



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