

**Submission to the
Independent Pricing and Regulatory Tribunal
in response to the Draft Report on the
Burden of Regulation in NSW**



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1. ABOUT NCOSS

The Council of Social Service of NSW (NCOSS) is the peak body for the social and community services sector in New South Wales. NCOSS works with its members on behalf of disadvantaged people and communities towards achieving social justice in NSW. It was established in 1935 and is part of a national network of Councils of Social Service, which operate in each State and Territory and at the Commonwealth level.

NCOSS membership is composed of community organisations and interested individuals. Affiliate members include local government councils, business organisations and Government agencies. Through current membership forums, NCOSS represents more than 7,000 community organisations and over 100,000 consumers and individuals. Member organisations are diverse, including unfunded self-help groups, children's services, youth services, emergency relief agencies, chronic illness and community care organisations, family support agencies, housing and homeless services, mental health, alcohol and other drug organisations, local indigenous community organisations, church groups, and a range of population-specific consumer advocacy agencies.

NCOSS provides an independent voice on welfare policy issues and social and economic reforms. It is the major coordinator for non-government social and community services in NSW.

2. INTRODUCTION

In our submission made to the Tribunal in February 2006, NCOSS outlined the regulatory burden in the areas of funding administration for not-for-profit human services sector, consumer protection, and planning and development. A submission from the Children's Service Forum, convened by NCOSS, focussed on the regulation of children's services.

In this submission, NCOSS comments on the Tribunal's draft findings and recommendations in relation to:

- children's services (section 5.4 of the Tribunal's draft report);
- consumer protection (section 5.5);
- grants administration (section 5.11); and
- planning and development assessment (section 5.20).

3. CHILDREN'S SERVICES

Accessibility and interpretation of the Children's Services Regulation 2004

NCOSS agrees with the Tribunal's finding that the current regulation for children's services in NSW is overly complex in its generic form, particularly for Family Day Care providers and for mobile services for which much of the centre based regulation is irrelevant. A list of service type specific obligations would be

helpful; however, NCOSS does not believe that providing additional interpretation should be necessary. Where regulations are so unclear that they require interpretation or are variably interpreted, they represent poor regulation and need to be amended. NCOSS does not believe that there are substantial areas of the regulation that fall into this category. The example of safety glass and Family Day Care is one such area.

Authorised supervisor obligations

NCOSS agrees with the tribunal that there is a serious problem with a regulation that imposes responsibility for what happens to a service with an authorised supervisor who is on leave and has no control over the circumstances.

However, NCOSS does not support the Tribunal suggestion that it is impractical to have an authorised supervisor present more than fifty percent of the time. The whole point of having an authorised supervisor is to have someone responsible on the premises for as great a proportion of the opening hours as possible. Where a service operates over extended hours, we would suggest that it is only possible for there to be a full-time authorised supervisor and that extending one person's responsibility to another service as well is irresponsible on the part of the licensee. We do not support this recommendation to review this part of the regulation.

Group sizes and definition of “group of children”

While the current definition of group size is problematic under particular circumstances, this was subject to considerable consultation at the time the regulation was developed. It now appears that there has been a common sense application of the regulation and we are unaware of it continuing to cause concern.

Streamlining responsibility for standards in children's services

NCOSS is extremely concerned by the proposal in this section to adopt one system of regulation for children's services across levels of Government. We would argue that until such time as the Commonwealth and the State and Territory Governments can reach agreement on a national system for children's services – a time we believe is still a long way off – then a dual system is both necessary and desirable.

Moreover NCOSS argues that these systems do not duplicate and that they serve distinctly different purposes. This does not represent inefficiency. Regulation in NSW is concerned with providing a minimum set of standards to be met by all services in order for them to be licensed. They serve to provide guidance around basic health, safety, and children's well-being; to ensure that facilities are appropriate, well designed and compliant with building codes and standards; and to ensure that staffing is appropriate. Very few of these issues are incorporated into an accreditation system which is designed to assume such things are already in place and being monitored. In NSW services are regularly

monitored for breaches of these regulations, and visited by children's services advisers who have both a monitoring and an advisory role. Children's services advisers have an ongoing relationship with groups of services in their area.

Accreditation does not usually apply to a service until it has been up and running for at least 12-18 months when it must become registered. Accreditation is about quality improvement and focuses on how staff interact with children to produce good developmental outcomes. Services are subject to validation and moderation, but there is no ongoing relationship between the service and NCAC.

NCOSS does not believe that the level of monitoring of services and standards would be effectively carried out at just a Commonwealth level. In addition, NSW would risk losing elements of the regulation that sets NSW apart from other states – particularly the requirement for early childhood teacher qualifications in services with more than twenty-nine children. This regulation is the basis for the NSW provision of early childhood education (preschool program) to around thirty-four thousand four year olds in long day care.

It is unclear how or why Commonwealth regulation would also deal with over one-thousand services (community preschools, public school based preschools, occasional care) that are not Commonwealth funded.

For these reasons we believe it is a waste of effort to review current processes, and that the direction taken by Council of Australian Governments (COAG) will and should inform any future reviews.

4. CONSUMER PROTECTION

NCOSS supports the Tribunal's finding that the Government pursue greater uniformity in consumer protection laws across Australia. However, NCOSS is concerned that greater uniformity may come at the cost of consumer protection with the Ministerial Council on Consumer Affairs adopting a lowest common denominator approach.

The Tribunal should make strong recommendations to enhance consumer protection legislation in order to address consumer advocates' concerns that there are gaps in the existing consumer protection framework resulting from emerging industries and technologies that require.

NCOSS has also argued, in our submission to the Tribunal, that in certain essential services industry specific regulation is necessary and can improve the operations of the market and better balance the needs of consumers and providers. In particular, vulnerable consumers need better protection from unscrupulous business operators in essential services. The Tribunal has not sufficiently addressed this issue.

5. GRANTS ADMINISTRATION

Accountability and reporting issues were the main focus of the “not-for-profit regulation” section of the NCOSS submission to this Review. We argued for improved and streamlined reporting requirements with funding bodies focusing on service standards and client outcomes with financial accountability being located in the Office of Fair Trading under the *Associations Incorporations Act 1984*.

The Tribunal has decided not to pursue these options but has focussed on the Grants Administration Review being led by the Premier’s Department. NCOSS recognises the work of the Grants Administration Review; however, we are concerned that it has been running for a number of years and progress has been slow. NCOSS supports the Tribunal’s recommendation that the Government accelerate the work of the Grants Administration Review but we feel a lot more work will be required before significant efficiencies arise.

6. PLANNING AND DEVELOPMENT ASSESSMENT

NCOSS, in its submission to the Tribunal argued for changes to legislations to require local government to include social infrastructure development and social planning in their Local Environment Plans. Further, improved planning by the NSW Government should ensure better social outcomes by establishing benchmarks and performance reporting for social infrastructure to drive better performance.

The Tribunal has recommended that the Government continue to implement its planning reforms and commence further reforms to the system. NCOSS believes that it is premature to try to reach agreement on a further round of planning reforms while so much of the current reform agenda is just being bedded down.

For example, the new standard Local Environment Plan (LEP) was gazetted on 31 March 2006. This will require all councils to prepare a replacement single zoning plan for their area over the next two to five years. This is a massive undertaking. Furthermore, the Minister for Planning, the Hon. Frank Sartor, MP (with limited input from the LGSA) has implemented a new reporting system to monitor the performance of councils in discharging their planning functions. The first returns from councils, for 2005-06, are due with Planning on 31 August 2006.

It is true, as claimed by industry, that the rationalisation of Regional Environment Plans and State Environmental Planning Polices has not been completed but we understand this is happening. The cuts to the Department of Planning’s operational expenses in the 2006-07 Budget have not helped.

NCOSS believes that the Tribunal’s should simply recommend that the Department of Planning give priority attention to the implementation of the

reforms already agreed by the Government (to replace the draft recommendation on p.178-9 of the draft report). NCOSS does support a post-implementation review of the reforms within three to years (as per the Tribunal's draft recommendation on p. 179), with this review being conducted in conjunction with relevant stakeholders, including NCOSS.

7. CONCLUSION

In this submission NCOSS has provided comments on the Tribunal's draft findings and recommendations in relation to four areas.

NCOSS has expressed some concerns over the direction the Tribunal has taken in relation to removing the regulation of children's services. In particular, we have concerns about the Tribunal's views on the authorised supervisor obligations and the proposal to adopt one system of regulation for children's services across levels of Government.

NCOSS is concerned that the Tribunal has taken a limited view of consumer protection by focussing only on the cross jurisdictional matters. While, NCOSS supports greater uniformity across the states and territories, a more active approach to consumer protection is required to protect vulnerable consumers.

NCOSS supports the Tribunal's recommendation that the Government accelerate the Grants Administration Review but we are concerned that these reforms will not yield significant efficiencies.

NCOSS does not support another significant round of planning and development assessment reforms at this stage. NCOSS does support a post implementation review of this round of reforms before further significant changes are implemented.