Child Care New South Wales

17th August, 2006

Regulation Review
Independent Pricing and Regulatory Tribunal
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Dear Regulation Review Tribunal

Investigation into the Burden of Regulation in New South Wales and Improving Regulatory Efficiency

Child Care New South Wales, on behalf of its private centre owner members, is pleased to offer this response to the IPART Draft Report.

Child Care New South Wales welcomes and supports the Tribunal's draft findings and recommendations.

Child Care New South Wales agrees that regulatory reforms in the three broad priority areas identified by the Tribunal will help childcare providers, children, parents, staff, and the whole community.

We agree with the Tribunal's conclusion that the current New South Wales framework for regulatory process already includes the core elements of accepted good regulatory practice, and that, if regulators applied those New South Wales laws and guidelines more consistently, many of our member concerns would be addressed.

The Tribunal's draft conclusion is that consistent application of those rules is not happening at present. Child Care New South Wales strongly agrees with this conclusion. The relevant New South Wales rules for developing and enforcing childcare services regulation is not happening nearly as consistently as it could be and should be.

Having said that, Child Care New South Wales would want to emphasise that there are emerging signs that the Department of Community Services is trying to address the underlying cultural and resource issues.

Child Care New South Wales seeks a partnership with our regulator. We believe a partnership will produce a better outcome than when the public and private sectors operate separately from each other. We believe that the best outcomes for child-development, for parenting-development, and for parent workforce support will happen when the parties find a better way to blend their respective strengths.

Childcare New South Wales suggests that a good guiding principle is the one expressed by the leading Australian regulation design text:

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> "achieving regulatory effectiveness through a balance of control is not simply about striking a compromise of interests. It is about understanding each other's needs and then sharing ideas in the pursuit of risk management strategies that deliver acceptable protection at acceptable cost".[1]

In our opinion, New South Wales childcare regulation decision-making could be a lot better at:

- Understanding mutual needs,
- Sharing ideas, and,
- Understanding likely cost impacts, and factoring such understanding into the decision-making.

Child Care New South Wales hopes this IPART Review will help people see why good childcare regulation is important, and why good childcare regulation depends on good regulation decision-making process.

Child Care New South Wales has already tried to incorporate the IPART Review findings into its discussions with its Minister and Department. To give the Tribunal an insight into how we believe this Review can and will assist regulation decision-making, we enclose a copy of our letter of 26 July 2006 to the Minister for Community Services (see attachment A1). Also enclosed, (at attachment A2), is a copy of the previous Minister's letter of 9 September 2004 providing undertakings about the interpretation and enforcement of the Regulations introduced in 2004.

We are hesitant about sharing this correspondence with the Tribunal. We fear that sharing it may make it harder for us to negotiate solutions. We offer it as a way of deepening the Tribunal's understanding of the nature and extent of regulatory uncertainty that currently exists for our members, and for all Long Day Care operators, and how that uncertainty is, in turn, translating into higher costs for parents and higher levels of frustration for service-providers, as well as higher levels of workload and frustration for Children's Services Advisers.

We will comment on just one of the undertakings.

Because of the sub-optimal consultation and impact analysis done in the lead up to the introduction of the 2004 regulations, there were (and are) many unintended and counterproductive outcomes. A striking example concerns the problems with authorised supervisors, discussed in the Draft Report at page 106 and 107.

In response to the draft regulations, Child Care New South Wales pointed out that certain proposals were unworkable, including the proposal for certain authorised supervisors to be present for 50% of the time that the two services were open. This would have resulted in certain authorised supervisors being required to work a minimum of no less than 55 hours per week, clearly not practicable.

To their credit, the Department and the Minister's office recognised that the proposal was unworkable.

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[1] *"Responsive Regulation – Transcending the Deregulation Debate"*, Ian Ayres, John Braithwaite, Oxford University Press, 1992, at page 59

The practical problem was overcome (at least on an interim basis) by the undertaking set out in the attached letter from the Minister. In brief, the undertaking is that authorised supervisors in that position need work only 50% of *their* time in each of the two centres, and not 50% of the time that each centre is open.

This solved the practical problem, but created the situation where the law says one thing, and the Minister's undertaking contradicts the law. We are confident the Tribunal can imagine the sort of enforcement difficulties that are now being encountered in practice.

Our main concern here is not with the practical difficulties around authorised supervisors, as bad as those difficulties are. We are more concerned to devise a feasible method for resolving the system-level issues with all of the undertakings.

As we see it, the broad answer has always been to incorporate the various Ministerial undertakings in the Regulations. There should be no disparity between the two.

The Department, for understandable reasons, has been reluctant to embrace that solution. Doing so amounts to an implied acknowledgement of previous regulation decision-making inadequacies.

We are not asking the Tribunal to comment on these specifics in its final report.

On the other hand, we do want the Tribunal to be aware of these specifics as we go forward. As you will see from the correspondence, we are hoping that the Minister and the Department will regard the IPART Review as a new opportunity for them to finally resolve the numerous conflicts between the Regulations on the one hand, and the Ministerial undertakings on the other. In short, we believe that the IPART Review can lead to a new process that will allow these uncertainties to be addressed, but without embarrassing the Minister or the Department.

Enforcement of Regulation

Most of the current problems with the Children's Services Regulation can, in our view, be traced back to the initial decision-making process.

In addition to that, however, many of our member's concerns are related, not specifically to the design defects, but to the manner in which the Regulations are administered.

The Draft Report correctly concludes that a key element of good regulatory practice is the development of a strategy to implement, enforce and review the preferred regulatory action to ensure regulation is relevant and effective over time.

Child Care New South Wales believes that the major enforcement problem is that too many Children Services Advisers confuse regulatory compliance with management best-practice. A lot of Children Services Advisers seem to use regulatory enforcement in order to achieve what they regard as better management practice.

Running an early childhood and parenting service is like running a family. Every parent you talk to believes that their way of parenting is the best way. The sector is full of dedicated people with clear, but often divergent, views on the best way to provide services.

It seems to us that many Children Services Advisers use the language of regulatory breach when what they really mean to talk about is alternative (and sometimes arguably better) ways to manage risks.

We do not mean to suggest that the Tribunal is not already cognisant of problems with regulatory enforcement. What we are trying to do here is deepen the Tribunal's understanding of the practical significance of the enforcement issue, and to give you an insight into what we believe is one of the underlying reasons for enforcement difficulties.

With that in mind, we set out in Attachment B, copies of two 'live' examples of the enforcement problems we refer to. We have removed relevant identifying details, but would be happy to supply those details to the Tribunal upon request so that you can be satisfied that these are current and real.

There is another aspect of the enforcement regime we would like to refer to.

If a regulation is worth having, it is worth enforcing.

Good enforcement implies a well resourced enforcement system.

Because enforcement resources will always be limited, Child Care New South Wales believes that those resources should be effectively targeted to the greatest need. In short, enforcement resources should not be wasted by chasing providers who have proven track records. Enforcement resources should be targeted at poor performers, not good performers.

This translates to the proposition that people with good records should be rewarded with less onerous inspections. For example, proven performers could be rewarded with five year renewals instead of the current three-year maximum.

We would welcome the Tribunal endorsing that approach.

Encouraging Productivity Growth and Labour-Force Participation

Child Care New South Wales invites the Tribunal to use this Review as a vehicle to educate all Australians that the early-learning and parenting-support services known as 'childcare' are fundamentally concerned with both productivity growth and labour force participation.

Perhaps the biggest problem facing childcare centres is that most Australians don't yet understand what we offer to child development and to parenting-development. Most Australians, and most regulation decision-makers, don't fully understand what we offer to child and parent. Most Australians still see us as a service needed only by parents looking to combine a paid job with a family. Serving that parent need is of course core business for us, but not our primary business.

Those social and economic fundamentals make it even more important that the cost of childcare not be needlessly increased as a result of inadequate decision-making leading to sub-optimal regulation frameworks which end up stealing time from operators and adding needless costs for parents and for government.

Australia can be justifiably proud of its long day childcare systems. Our quality is acknowledged as being amongst the best there is. Regulations have to be able to

claim some of the credit for that, but the fact remains that the long day childcare sector is struggling to attract entry-level and more senior staff, and is already perceived by many to be prohibitively expensive.

In addition, Australia also has a relatively low number of hours worked by women in the paid workforce, and more than 40% of Australian female employment is part-time, one of the highest part-time incidences in the OECD.

Child Care New South Wales believes there are two central themes that the Tribunal could address more explicitly in its final report: protecting affordability, and promoting coordination.

First, the design of children's services regulation can not safely ignore the need to ensure a sensible balance between 'protection' and 'cost'.

Too often, however, attempts by the private childcare sector to ensure that cost impacts on families are properly analysed are either dismissed or not given adequate weight. A large part of the answer is good-quality impact analysis to help decision-making. But explaining to the audience what objective it is that proper regulatory impact analysis is trying to achieve, and why it is trying to achieve it, will help secure the necessary political ownership. Without that political ownership, proper regulatory impact analysis will not happen.

Second, the biggest generator of regulatory frustration for our members is the lack of coordination between regulators, especially the disconnect between industrial regulation and licensing regulation.

Australia's public and private sectors have built world-class infrastructure to address the health, education, and development needs of young children, as well as for addressing parent-support needs.

All Australian governments have helped build partnerships that combine public sector strengths in funding and in regulation with private sector strengths in customer-service delivery.

But what is lacking is a world-class system for coordinating the design of children's services regulations across different levels of government and between different 'owners' of the regulations.

We invite the Tribunal to reflect on why improved coordination is important, and how to improve it, especially between DoCS and State and Federal Industrial Tribunals and the new Australian Fair Pay Commission.

Child Care New South Wales supported the recent submission of our national industrial body, the Australian Childcare Centres Association, to the Australian Fair Pay Commission. That ACCA submission is available publicly and we invite the Tribunal to consider ACCA's submission as part of this response.

In particular, we invite this Tribunal to consider and comment on the need for improved regulation decision-making because of the connection between that regulation and employment opportunities in the early childhood sector, and on the cost of childcare services.

Child care New South Wales agrees with the view that, in a country (and in an industry) straining for new workers, a lower entry-level wage, supported by the tax system, is better than a zero wage, replaced by welfare.

We understand that IPART cannot solve the issue. But we do ask IPART to add its voice in support of the proposition that improved labour-market regulation will itself be more quickly achieved by improved regulation decision-making process more generally, including better cooperation and coordination between regulators.

Concluding Remarks

Child Care New South Wales offers the following reasons for why regulation reform in early childhood and parenting support services should be a priority.

The new COAG reform agenda recognises that Australia's prosperity depends on the ability of all governments to embrace reform that addresses the areas of participation and productivity.

Australia's early childhood development and parenting support systems (called childcare) are specialists in the business of improving participation and productivity.

If Australia can find ways to improve its already world-class childcare systems, those improvements will improve Australia's participation and productivity rates.

The Tribunal has rightly concluded that improved regulatory decision-making can provide significant immediate gains to the childcare sector and to the general community.

Child Care New South Wales agrees that improved regulation decision-making process can secure greater coordination and thus higher quality regulation that better understands and reflects the needs of child, parent, service-provider, and government.

We believe and we ask the Tribunal to endorse the notion that there is no more important place to improve regulation decision-making than with New South Wales' early child development and parenting support systems.

Thank you for this opportunity to express our views. We appreciate the courteous, open, and professional manner in which the IPART analysts have conducted the review. Child Care New South Wales would be pleased to respond to any questions the Tribunal may have.

Yours faithfully

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Lyn Connolly
President