



**Children's Services Regulations 2020 –
Regulatory Impact Statement (RIS)**

March 2020

The Municipal Association of Victoria is the peak representative and advocacy body for Victoria's 79 councils. The MAV was formed in 1879 and the *Municipal Association Act 1907* appointed the MAV the official voice of local government in Victoria.

For further information contact [Redacted]

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1 Introduction

The Municipal Association of Victoria (MAV) is the legislated peak body for local government in Victoria. Victorian councils remain critically interested and involved in the provision of early childhood education and care services. MAV has been working closely with the Victorian and Australian Governments to ensure the successful implementation of key national reform priorities in early childhood since the Child Care Act of 1972. MAV welcomes the opportunity to provide a response on behalf of local government to the *Children's Services Regulations 2020 – Regulatory Impact Statement (RIS)*.

Governments have a mutual interest and responsibility for improving the outcomes for Australian children in all areas of their lives including health, wellbeing and education. The evidence and research are overwhelming and points to strong links to a nation's economic prosperity.

Councils are a significant provider of early years education and care services and a major provider of early years infrastructure in Victoria. All Victorian councils are committed to the aim of providing children in the municipality with the best possible start in life through effective planning, development and provision of services that improve health, connectedness, education and care of children and their families. Local government has responsibilities for local planning around all these services as well as providing a strong local early years' platform that includes Maternal and Child Health, Municipal Early Years Plans and provision and support of early years' services.

The work local government has undertaken particularly over the last ten years with the implementation of universal access to 15 hours of kindergarten along with the implementation of the National Quality Framework (NQF) has shown that the provision of early childhood education and care (ECEC) in Victoria is a core part of the economic and social fabric of communities and municipalities. There is a substantial body of research that points to the important benefits of early childhood education on a child's trajectory throughout life, particularly for children who experience disadvantage.

MAV continues to demonstrate a strong commitment to the early years and to local government with its most recent and critical partnership commitment to the rollout of three-year-old kindergarten across Victoria.

2. Children's Services in Local Government

Local government in Victoria delivers approximately 20 per cent of Early Childhood Education and Care (ECEC) services with many councils delivering early childhood education services and programs such as three-year-old kindergarten and occasional care. In addition to this Victorian councils invest in early years planning, community capacity building and infrastructure provision.

Reference to *Children's Services* in this paper can be defined as services that are regulated under the Victorian *Children's Services* Regulations. These Victorian regulations are due for renewal May 2020. Examples of such *Children's Services* are Outside School Hours Care, Occasional Care and other short term, occasional or adhoc types of care. *Children's Services* are often run out of Neighbourhood Houses, Recreation and Leisure Centres. These services are often low-fee, compared to child care provided in Long Day Care settings, for example. For this paper, *Children's Services* do *not* include, for example, sessional or subsidised kindergarten or Long Day Care (childcare). Long Day Care and Kindergarten services are regulated under the *National Quality Framework* (not the *Children's Services* framework)

Children's Services meet the needs of a cohort in the community for whom short term, occasional and adhoc hours of care is required.

Children's Services have an important place in the market. They alleviate pressure on the broader early childhood service sector, such as Long Day Care services and they provide critical support for and across the early years for families who may not otherwise have access to suitable childcare arrangements. *Children's Services* are mostly unique to other childcare and early childhood educational setting, providing support for families requiring:

- Occasional or weekly 'respite' due to health issues and appointments
- Child care whilst they attend training or study, either frequent short amounts of time or infrequently
- A childcare option because they are geographically isolated, with no alternative childcare options
- Childcare for school holidays only
- Low-fee child care and who don't meet the Mutual Obligation requirements
- Families with health issues – whether temporary or ongoing and need to access childcare to attend medical/health appointment.
- Are socially or geographically isolated and need 'time out' for an activity – eg gym class and would like a socialization opportunity for their child

In small and rural municipalities *Children's Services* may be the only provider of early childhood programs for families, playing an integral role in supporting families. For children and families experiencing geographic or social isolation *Children's Services* programs provide opportunities for children to play, learn and socialise with other children and with other adults. Participation in occasional care programs can also allow families time to attend appointments, meet casual or alternative hours work commitments and participate in social or recreational activities.

The MAV understands the importance of best practice care and education in early childhood settings and the compelling research that shows that outcomes of children’s early childhood experiences are matched by the quality of care they receive. This is influenced by adequate staff to child ratios and the qualifications of educators setting in which the learning takes. The MAV has worked in close partnership with governments for decades to lift the standard of early childhood education to world-class standard and to embed best practice into early childhood settings, within a strong policy framework.

Additionally, aligning the *Children’s Services Regulations* with the *National Quality Framework* will minimise the risk of physical, developmental, social or emotional harm to children while they are not in the care of their parents, guardians or families.

3. Response to Proposed Regulatory Changes

The *National Quality Framework* sets a benchmark for early childhood care and outside school hours care across Australia. The MAV acknowledges that some *Children's Services* providers and programs may be operating at a level that is not best practice nor is providing an appropriate level of quality in early childhood education. Aligning *Children's Services Regulations* with the NQF will drive quality and improve outcomes for children in *Children's Services* programs.

MAV also understands that many occasional care programs have originated from the 'grass roots' of a community, out of a need for families to access occasional care for their children. Committees are often comprised of voluntary community members with a range of skills sets, but not necessarily in early childhood education. These *Children's Services* programs have filled a much-needed gap in the community. However, MAV supports the timely review of the regulatory framework for these services and the intention to build in practice improvements that will protect children, their families and the services and provide the quality care and early education for the participating children.

With the pressures on councils to prepare and implement the statewide three-year-old kindergarten reform, and now with the COVID-19 implications, the MAV seeks to advise the Department that councils may need additional support than is outlined in the RIS, to adopt the proposed changes to the Children's Services Regulations 2020, particularly in relation to workforce and change management.

A benefit of aligning *Children's Services* programs is to reduce the complexity of the regulatory frameworks and the quality of service delivery across the state. The early childhood sector is a tapestry of private, public and not-for-profit players under two regulatory regimes – the *Children's Services Regulations* and the *National Quality Framework* – with two sets of licensing, staffing, qualifications and regulations.

Aligning the *Children's Services (CS) Regulations* to the *National Quality Framework* will reduce service delivery complexity and regulatory *difference* for councils who deliver early years services across both CS and NQF regulations. For example, a council might provide an Outside Hours School Care (OHSC) program and provide Long Day Care (LDC) service – both under different regulatory frameworks and guidelines. The OHSC sits under the CS Regulation and the LDC is under the NQF. Aligning Outside Hours School Care programs to the NQF will reduce the *difference* in regulations for staffing ratios and qualifications and health and safety requirements. Aligning all services to the NQF will drive quality and smooth-out administrative complexity.

4. Responses to Regulatory Impact Statement Questions

The MAV advocates for the *Children's Services Regulations 2020* to align with the *National Quality Framework* (NQF). Comment and recommendations on this, as follows:

Questions:

Q1. Are there any impacts or opportunities that have not been identified in the Regulatory Impact Statement, which you think need consideration?

The MAV supports regulatory alignment to the NQF, however the RIS does not offer information or acknowledgement of the cohort of services currently delivering three-year-old kindergarten programs under the *Children's Services Regulations* and who may wish to continue to do so as funded programs, as part of the three-year old kindergarten reform.

In addition to this, MAV requests DET provides a clear statement on what provisions, transitional arrangements and allowances will be made for operators and services, should they need to transition to the NQF in order to deliver funded 3-year-old kindergarten programs. These services will need additional support including time, funding and regulatory guidance to undertake the significant transition.

The impact on resource-poor services who are unable to or choose not to make the transition to the NQF, if this is required, may be significant. Three-year-old 'kinder' programs are integral to the business models of many smaller *Children's Services* across the state and they would struggle to survive in the competitive market where three-year-old kindergarten could well be free or very low-cost for the market segment that would ordinarily be attracted to their service. Their programs will most likely be deemed uncompetitive in a market where most other child care services are offering subsidised three-year-old kindergarten.

If services who are intending to deliver subsidised three-year-old kindergarten are not eligible under the *Children's Services Act* and need to transition to the *National Quality Framework*, MAV considers that these services will need to be supported with a fair and reasonable transition plan, factoring cost, Departmental support and time which may include both extensions in time and contact support time from the Department.

MAV agrees that the new regulatory requirements for service approvals increases efficiencies and reduces paperwork overall. For councils managing more than one service, such as some of the larger Early Years Managers, aligning service and licence approval processes will make for a simpler and more streamlined process. This will be a particular benefit where operators run services under both regulatory regimes, hence bringing them

The MAV seeks direction from Department of Education and Training (DET) as to whether services who currently deliver three-year-old 'kinder' programs and are planning to deliver subsidized three-year-old kindergarten, will be required to transition to the NQF or with they be eligible for subsidies under the proposed Children's Services Occasional Care Licence?

The MAV requests time extensions and additional departmental support IF transition to NQF is required, as above.

Q2. From the perspective of your workforce or organisation, do you have any other comments on the findings of the RIS?

It is anticipated that significant workforce shortages will come in to play across the state, with the roll-out of subsidised three-year-old kindergarten. The challenges for services and councils in recruiting and retaining staff are already well known, with workforce incentives and scholarships in place in preparation for the rollout of this reform.

The RIS states that whilst higher qualified staff and higher ratios may flag an additional cost burden to services the actual impact will be flattened out by the 'Working Towards' qualification option. Despite this, the MAV is concerned that this assumes a range of staffing choices for services, which will in fact not be the case for many of the smaller and/or rural services in particular. MAV therefore supports and reiterates the importance of service waivers, as outlined in the RIS.

MAV supports the transparency around service waivers and fees, as proposed in the 'alignment' option. Whilst it is reasonable that the Minister maintains the authority to provide service exemptions the MAV supports principles of transparency and fairness.

The MAV seeks reassurance from DET that Children's Services will be adequately and appropriately supported by the Department, especially given the existing challenges to meet workforce supply, attraction and retention across the sector, with the rollout of state-wide subsidised three-year-old kindergarten. The MAV requests support for the sector, in terms of ratio and staffing waivers, where appropriate.

Q3 Do you support the reduction of (7) licence types to two (2) service approval types?

The MAV acknowledges that the licensing and approval processes are currently complicated and that they pose an administrative burden and unnecessary complexity on licence holders and services.

Reducing the licence types from seven to two reduces complexity for councils and is consistent to the minimum standards across the state. Furthermore, of the seven current licence types, four of these appear to not be operating in Victoria at the time of the RIS consultation process. It is efficient and timely to eliminate licence types that are no longer operating in Victoria.

The initial administrative burden however, for existing licence holders, may be significant. MAV suggests that the transition to the new frameworks will need to be well supported and that services will need to be provided with clear and realistic timeframes, guidance and support. There will be some services where this might be particularly challenging, such as those that are resourced by voluntary committees, where an operator has multiple services or if they are planning for the implementation of three-year-old kindergarten.

Again, MAV seeks clear guidance from the Department in relation to subsidised three-year-old kindergarten. Which, if either, licence type will services need to be registered under? If neither a Limited Hours or an Occasional Care licence deems these services eligible for

three-year-old kindergarten funding will the Department support services to transition to the NQF? Service transition to the NQF will impact on services planning across the four pillars of the reform - infrastructure considerations; workforce; service quality; and change management practices with staff and community.

MAV supports a 'once' off service application, with annual licencing fees as outlined in the Alignment option. This will reduce administration for all services. Larger operators with multiple services will benefit from this, with a reduction in annual and repetitive paperwork. For Operators with services under both regulatory regimes, aligning these administrative tasks is particularly efficient. Smaller services will also benefit from this simpler process.

Services in remote, rural or small councils will benefit from the extended hours proposed for Limited Hours or Occasional Care service type, offering families a more flexible care option for their children.

The MAV reiterates it needs advice from the Department in relation to which licence services will need to register under if they plan to deliver subsidised three-year-old kindergarten.

The MAV seeks additional support and waivers for staffing and deadlines if providers need to transition to the NQF.

Q4 Do you support the requirement for outdoor space, as for new Occasional Care services?

The MAV supports in principle alignment to NQF regulations where access to the outdoors is mandatory.

The MAV recognises that quality early childhood education includes a mix of indoor and outdoor play and learning opportunities for children. Engaging with nature and exploring physical boundaries through outside play is critical to emotional and physical wellbeing of children. The MAV supports in principle alignment to NQF regulations where access to the outdoors is mandatory. MAV also recognises that the proposed alignment is for new services only.

MAV supports the Alignment proposal for new Occasional Care services understanding that where services don't own the land themselves, they may be able to utilise neighbouring public spaces, such as parks and school playgrounds, recognising too that many existing services utilise public play spaces.

MAV supports the proposed regulatory requirement around outdoor space for new services, however does so with some reservation and with concerns in particular for some of the land-locked councils. For land-locked municipalities where planning and business modelling for recreation and leisure (and child care services) may be well-progressed, the option to include seven metres per child of outdoor space, may be challenging as these councils are also operating in a rate-capped environment where the purchase of additional land and the change to building design (including underground car parks and multi-story options to accommodate greater outdoor play space) is not an option that can be considered.

The MAV requests the Department address the issue and considers waivers for land-locked councils for whom the provision of outdoor space under the proposed new guidelines, is not possible.

Q5. Do you support the alignment of staffing requirements with the NQF?

The MAV supports alignment of Children's Services with the NQF agreeing that it will drive quality improvements, particularly in relation to pedagogical practice.

Aligning staffing qualifications is certainly consistent with all the research that clearly identifies that child-staff ratios and higher qualification levels relate to better outcomes for all children, including those with additional needs or a diagnosed disability. Research also shows that for infants and toddlers, stronger staff to child ratios allow for more responsive and sensitive levels of care, which improves outcomes and experiences for children in this age range.

Evidence shows that early childhood qualifications are important measure of the quality of care children receive. Educators with qualifications almost always have a deeper understanding of early childhood development, are equipped with skills and capacity to support children and provide an enriched and caring learning environment than their unqualified counterparts.

The MAV is concerned however that aligning to the NQF will put strain on smaller services, those in small rural communities where workforce shortages continue to be an issue. As the three-year-old kindergarten reform rolls out across the state this issue will intensify and will be critical concern for many services.

MAV requests that DET provides an outline of the change management strategies that will be put in place throughout the transition period (January 2022). With Departmental resources focused on the kindergarten reform, the MAV is concerned that smaller services will miss out on much-needed Departmental support. Smaller *Children's Services* may find themselves competing for the attention of DET Regional Staff when change management focus will be with the kindergarten reform. MAV is concerned that councils will be called in to disproportionately support smaller service because of a potential lack of support from DET Regional teams during critical transition periods to the new regulations.

Aligning the regulations with the NQF is imperative for operators whose core business isn't in childcare services but in recreation and leisure, for example. Taking up almost 40% of the market share of occasional care services, it is imperative that these operators ensure quality supervision and care is provided to the children in their care. For services in council-owned buildings, alignment to the NQF ensures quality standards and investment in children attending the services, decreasing the level of risk to council associated with current standards of care and practice across *Children's Services* in recreation and leisure facilities. Similarly, with Community and Neighbourhood houses taking up approximately 47% of the market share of occasional care, where early years' services are not the core business of these organisations, regulations that reflect best practice also reduces the risk to councils.

For small, rural communities occasional care programs are vital part of the social and emotional fabric of the community, promoting health and wellbeing in children and families and playing a key role in building aspiration, social connections, self-esteem, and other

contributors to positive health, wellbeing and life outcomes. MAV is concerned about the transition plans for rural and vulnerable communities with small occasional care *Children's Services* and how they will meet the new staffing ratios and qualifications. It is acknowledged that improved qualifications and staffing ratios will protect some of the most vulnerable cohorts in the community, such as services within rural and aboriginal communities, however MAV is concerned that some of these services will struggle to exist under the new regulations which will cause a significant gap in the service system for those communities.

For hard-to-staff services and volunteer based organisations this could signal the end to these services that won't have the financial structures to carry the proposed additional fees in order to minimise the impact for these vulnerable families. For families in these communities, there may not be other service options or other culturally appropriate options. Municipalities where this is the case may feel the pinch of the flow-on effect of the breakdown of these services..

The MAV requests a tailored response to councils and services for which staffing alignment will put their service at financial risk, due to increased staffing costs.

Q6. Are estimated time assumptions for tasks such as record-keeping and the development of additional policies and procedures reasonable or accurate?

MAV requests the Department considers and allows for the impact on council resources to undertake the proposed alignment of regulations, of which will be heightened as councils plan for the implementation of three-year-old kindergarten.

Services that are required to have a number of additional policies and educational program documentation in place will have approximately eight months to meet the January 2021 deadline. Depending on the nature of the service, some of these policies may already be in place (such as wrap around care in Kindergarten settings). However, for some services, additional resources and expertise will be required to meet the January 2021 deadline. Whilst supporting the rationale for this change and the need to have these policies and documentation in place as soon as possible, MAV would advocate for specific and targeted support and resources be provided to individual services to support their successful transition to the new requirements by January 2021. In addition, whilst MAV fully supports the requirement for services to consult with families as part of their policy review and implementation processes, the reality of the need to increase administrative time for staff to do so may also result in additional costs to the service which may then be passed on to families.

MAV considers the 19-month timeframe for services to introduce increased staffing requirement as adequate all things being equal. However, there is concern that these services will be required to commence new staff ratios in the same time period that the majority of communities (across 59 municipalities) will be accessing five hours of three-year-old funded kindergarten in 2022. Given that there is an expectation for significant staff shortages for this initiative, there is a possibility that attraction and retention of both the number and appropriately qualified staff required may be a significant challenge. Many services operate at a very basic budgetary level and may not have the capacity to attract suitable staff in this competitive environment.

MAV suggests that further consideration be given to how the transition to meeting new staff ratio and qualification requirements could be supported should this issue be identified by individual services.

Q7. Do you support the proposed fee structure?

The MAV agrees that the current fee structure should fit within the new proposed regulatory changes around licensing, with some fees being abolished as they are no longer relevant once the proposed introduction of just two service types is implemented, under the proposed 'alignment' model.

However, the MAV requests additional support and consideration to small and rural services who are most at risk of decline with the introduction of additional fee structures. These services play an integral role in the community and need support. It is important that families are not hit with additional flow-on fees as a result of the proposed new or additional regulatory fees. Whilst the MAV concedes that under the current *Children's Services* Regulations there has been an incentive for smaller services to maintain less than 15 approved places, as they incur 'nil' renewal fee, MAV identifies that there are indeed small rural services where less than 15-place approved service is ample for their small population. The proposed new fees may have detrimental consequences to their business models and a flow on cost to their families and communities.

MAV agrees with the principle of services incurring a late payment fee on the annual service fee, where providers do not comply with payment deadlines. Failure to make fee payments, particularly ongoing, can be indicative of poor business management which ultimately has a flow on impact on communities - to both the families attending the services and other services within a municipality.

MAV supports the proposed fee waiver for services, at the discretion of the Department and trusts this will apply to small, rural services, particularly for example services that provide care for families experiencing vulnerability and/or marginalisation.

MAV supports the 'once off' application process for new services so that provider approval occurs only once and that service approvals are costed per service. This will be beneficial for some of the larger Early Years Manager councils, who may have several *children's services*, so will be assessed for fees per service according to approved places. Some of these councils too, may be operating services both under the NQF as well as services under the *Children's Services* Regulations. The proposed amendment to align service and provider approvals streamlines the process so that these councils can operate a number of services under the one Provider Approval and across both regulatory settings, those being the NQF and the *Children's Services* Regulations.

The MAV requests that the Department provides additional support and consideration to small and rural services who are most at risk under the proposed fee structure, particularly services providing for under 15 children, of whom a licence fee will now be new to under the proposed regulations.

Q8. Do you support the savings provisions for existing services?

On the whole the MAV accepts the savings provisions for existing services, however as mentioned above is concerned that for smaller services these savings be irrelevant if the service can't meet new staffing ratios and qualifications because it is deemed unaffordable or they can't attract appropriately qualified staff.

Do you think the transitional arrangements are reasonable?

MAV requests that the Department outlines specific details of the one-to-one departmental support available to providers and services should they be resource and/or time poor and unable to meet the timeframe and other transition requirements without incurring significant cost and disruption to their services.

For services who may already comply with the proposed changes around ratios, qualifications and outdoor spaces the transitional arrangements are relatively straightforward and not onerous. MAV understands that while this may be the case for many services across the state it is important that the Department is aware of administrative burden of the transition in the context of the three-year-old kindergarten reform. Whilst the alignment of *Children's Services* to the NQF may not in itself be particularly burdensome, it will feel significant when paired with the impact of the introduction of three-year-old kindergarten. Additional workload pressures, issues and costs will be incurred by councils and services as a result of these two significant regulatory reforms.

As stated above MAV advocates for flexibility around ratios and qualifications initially, in light of the increasing workforce pressures that will come in to play as the kindergarten reform takes shape across the state, from 2022 in particular.

MAV acknowledges that the Department will support services to transition to the amended NQF aligned regulations.

Q9. If the preferred option is adopted would your workforce or organisation need support to meet the proposed requirement?

MAV has identified several areas across the regulatory reform in which councils require support to meet the proposed requirements, as follows:

- Training - councils and in particular smaller and less resourced councils will require the Department to provide tools and training to support staff to make the regulatory transitions to the new framework. For volunteer-based or community and not-for-profit organisations the burden on volunteer staff may well be particularly onerous.
- Whilst larger and council-run services may have the infrastructure to support the transition, it is critical that they are also well-supported and that it is recognised that other regulatory reforms are also placing burdens on councils. These services and organisations will need to be able to access training to support them through the transition.
- Qualifications – as mentioned above many services will be stretched to meet the proposed regulatory requirements around qualifications and ratios. It is critical that these services are supported with waivers and other support as required, until such time as they can meet the regulatory standards.
- Understanding their compliance requirements – with so much change occurring in the sector it is important that services are well-informed of their compliance requirements. Again, the smaller services in rural municipalities will be more vulnerable to this.

5. Conclusion

Council processes will vary across the state, in terms of decision-making processes, timeframes around this and how councils attend to regulatory changes. It is important that the Department is aware of any barriers or time-lags that councils may experience in terms of transitioning to the new regulations and service delivery decision-making. For small councils operating limited hours' services, for instance, councils may need to make decisions as to whether they continue to deliver services, or if non-council run services decide not to continue service delivery, councils will need to decide whether or who and if to pick up on this service delivery.