



Education
and Training

Children's Services Regulations 2020 Regulatory Impact Statement

Public Consultation Summary Report
April 2020

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INTRODUCTION

BACKGROUND TO CHILDREN'S SERVICES LAW REFORM

Where children receive education and care outside the care of their parents, these arrangements are generally regulated to protect the children's safety, health and well-being and promote their learning and development.

Most early childhood education and care services in Victoria are regulated under the National Quality Framework (NQF) (approximately 4,200 long day care, family day care, preschool and outside school hours care services).

The remaining approximately 315 children's services are, by definition, excluded from the NQF and continue to be regulated under the *Children's Services Act 1996* and Children's Services Regulations 2009 (current Regulations). Most of these services provide occasional care, where children attend for short periods of time.

The regulatory regimes are similar, but not consistent. Following a national decision to keep occasional care services outside the scope of the NQF, the Victorian children's services regulatory regime is being reformed to align it with the NQF, where appropriate. This will simplify arrangements for service providers and ensure more consistent minimum standards for all Victorian early childhood services. Further background to the reform is set out in **Appendix 1**.

The children's services sector was consulted on the proposed reform in mid-2019 (see **Appendix 2**). That consultation indicated broad support for the reform and informed the development of the amended legislation and the proposed Regulations.

The *Children's Services Amendment Act 2019* (Amendment Act) was passed by Parliament in November 2019. The Amendment Act will align the architecture of the licensing frameworks, requirements for provider accountability and oversight of services, principles for the safety, health and wellbeing of children, and the regulator's powers and duties with the NQF, where appropriate.

The operational detail required to support the Amendment Act is prescribed in regulations. The current Regulations are due to expire on 18 May 2020 and must be replaced before that date. Making new Regulations presents an opportunity to ensure best practice regulatory requirements, and lift the quality requirements for services where children may attend for relatively long hours, to be more closely aligned with the requirements for NQF services, where appropriate. The Regulations aim to:

- balance the impact and potential costs of changed regulatory requirements with the greater flexibility available under the NQF
- preserve the status quo where services may be unable to adjust
- ensure there are no adverse impacts on service provision, by setting appropriate regulatory requirements and providing transitional arrangements to allow services time to adjust.

PURPOSE OF THIS REPORT

This report provides a summary of the process for and outcome of the public consultation process conducted on the exposure draft Children's Services Regulations 2020 (Regulations) and Regulatory Impact Statement (RIS).

The Department of Education and Training (Department) would like to thank all those who participated in the consultation process, provided feedback and made submissions.

Overall, the consultation indicated broad sector support for the alignment of the children's services regulatory requirements with the NQF. Participants in the consultation particularly welcomed streamlining the licensing and regulatory requirements, seeing this as more efficient and less onerous for the provider. They also supported the reduction of seven licence types to two service approval types, and the proposed new fee structure. There was strong support for quality measures that aim to embed best practice into the sector, including staff qualifications and staff to

child ratios, and outdoor space requirements, as well as the measures to minimise the risks of harm to children in services. Feedback also confirmed support for the requirement in the Amendment Act for the educational program to be based on an approved learning framework.

The Amendment Act and the Regulations are expected to come into operation together on 17 May 2020.

The day before the close of the consultation period, on 16 March 2020, the Premier declared a State of Emergency in Victoria in relation to the coronavirus pandemic. At the time of preparing this report, children’s services are facing pressure due to the pandemic. It is likely that on the commencement date of the Regulations many children’s services will have suspended operation.

The Department will provide support and comprehensive resources to providers and services, take an educative approach during compliance visits, and exercise regulatory discretion, to enable a smooth commencement and transition.

CONSULTATION PROCESS

The public consultation on the RIS and proposed Regulations was conducted from 17 February 2020 to 17 March 2020 via the Engage Victoria online platform, which offered the ability to participate in a short online survey and make a written submission. The sector was informed of the consultation process through letters, emails to every provider, service and peak body, successive newsletters, the Department’s website and social media. Employee representative bodies were also informed of the consultation.

INFORMATION SESSIONS

Face-to-face information sessions were offered in ten locations across the State. The locations were selected based on the number of children’s services in any given location and attendance data from the previous consultation sessions held in 2019 on the children’s services law reform. Two scheduled information sessions were cancelled due to low registrations, and an alternative videoconference session was created to allow those in regional locations to attend remotely.

In total, nine information sessions were held over the course of the consultation period.

Feedback and questions raised during these sessions were addressed during the sessions or, where necessary, followed up afterwards directly with the person who raised the question. The Department encouraged participants to provide their feedback via Engage Victoria.

Location	Date	Session Type	
1. Bendigo 2. Melbourne CBD 3. Narre Warren	Monday 24 February 2020	Face to face	
4. Blackburn	Wednesday 26 February 2020		
5. Geelong 6. Preston	Thursday 27 February 2020		
7. Footscray	Friday 28 February 2020		
8. Wallan	Monday 2 March 2020		
9. WebEx Access	Friday 13 March 2020		Videoconference

ONLINE SURVEY AND WRITTEN SUBMISSIONS

Most consultation participants were early childhood educators and children’s services providers, including local government, not for profit entities, and operators of recreational facilities. 97 people participated in the face-to-face sessions. Two written submissions and 28 responses to the online survey were received. The two written submissions received were from a parent and the Municipal Association of Victoria Inc. (MAV) representing a number of local councils that provide children’s services.

The participant’s sector profile was captured via the Engage Victoria online platform. A total of 30 submissions was received, consisting of two written submissions and 28 responses to the online survey.

Stakeholder Type	Count	% of the total [#]
Current licensee and/or proprietor of children's services	13	43.3%
Approved provider under the NQF	3	10.0%
Prospective provider of children's services	0	0.0%
Early childhood educator	13	43.3%
Person undertaking early childhood studies	0	0.0%
Family and/or community member	2	6.7%
Peak body	1	3.3%
Other*	3	10.0%

*Other types included – Service Coordinator; Primary Nominee; Local Government; Early Childhood Blogger

[#]Totals more than 100 per cent because stakeholders could select more than one applicable option.

LIST OF SURVEY RESPONSES AND WRITTEN SUBMISSIONS

No.	Respondent
1	Municipal Association of Victoria
2	Parent
3	Selby Community House
4	Windy Hill Fitness Centre Essendon
5	Kensington Neighbourhood House
6	Murrumbeena House Occasional Care Centre
7	Australian Childcare Regulation Blogger
8	YMCA Victoria
9	FLC Early Learning Centre
10	Attwood House Community Centre

No.	Respondent
11	Berwick Genesis Fitness
12	Meredith Community Centre
13	Fitness First Bayside
14-20	Undisclosed
21-30	Confidential

CONSULTATION – KEY ISSUES

SUPPORT FOR REFORM

The responses indicated broad sector support for the alignment of the children’s services regulatory requirements with the NQF, where appropriate. Stakeholders particularly welcomed streamlining the licensing and regulatory requirements, seeing this as more efficient and less onerous for the provider. They also supported the reduction of seven licence types to two service approval types, and the proposed new fee structure. There was strong support for quality measures that aim to embed best practice into the sector, including staff qualifications and staff to child ratios and outdoor space requirements, as well as measures to minimise the risks of harm to children in services. Feedback also confirmed support for the requirement in the Amendment Act for the educational program to be based on an approved learning framework.

In its submission, MAV acknowledged the importance of best practice in early childhood settings, particularly by adequate staff to child ratios and the qualifications of educators setting. Additionally, MAV considers that aligning the Regulations with the NQF will minimise the risk of physical, developmental, social or emotional harm to children.

ISSUES RAISED IN FEEDBACK

The following are the key themes and issues that arose from the consultation. Responses to specific issues raised in the submissions and free text fields of the online survey are in the Statement of Reasons section below.

Impact of changes to staffing requirements

A large body of evidence underscores the critical importance of high-quality education and care to childhood development. In addition, there is sound evidence from research that the ratios of staff to children makes a positive difference in early childhood programs and particularly for children from birth to three years of age.

There was strong support for aligning the educator to child ratios, and qualifications requirements, with the NQF, as a key element of quality improvement in this reform. While many services would already comply with the new requirements based on their current staffing arrangements, some participants noted that the proposed changes would impact on their service.

The changes to staffing requirements are expected to have a differential impact on services, depending on the size of the service, and the number and mix of ages of children attending.

Educator to child ratios and qualifications are part of a package of staffing changes that also provides the flexibility to calculate the required qualifications across mixed age groups of children, include staff “actively working towards” their qualification in educator to child ratios, and which imposes less onerous minimum staffing requirements. For example, the previous minimum requirement for two staff members is replaced with a requirement for at least one educator whenever children are in attendance. This provides flexibility for services at the beginning and end of sessions of care. In addition, whereas before every staff member needed to hold current first aid and anaphylaxis training, in future services need only ensure that at least one staff member or nominated supervisor on the premises has the requisite training, providing much-needed flexibility for services engaging relief staff at short notice.

The Regulations defer the commencement of the new ratio and qualifications requirements to 1 January 2022 to give services 18 months to adjust. Service waivers from specific regulatory requirements may be available under appropriate circumstances.

New fee structure

There was strong support for the new streamlined fee structure to support the new processes in the Amendment Act. The fee structure will be simpler to navigate for new services entering the market and simpler for existing services because the current licence renewal process is being replaced by a proposed annual service fee paid on invoice. Many old fees will no longer apply (e.g. late fees for licence renewal, approval of new nominees, application to vary licence conditions).

For smaller services where previously a nil fee applied, the annual service fee will constitute a modest cost increase. However, this will be offset by the static or nil fee values that apply for other transactions, and a reduction in administrative effort due to no longer needing to apply to renew fixed term licences with associated costs such as providing updated police checks.

The Regulations provide that the annual service fee is not required to be paid in 2020. In addition, the Department will have a regulatory discretion to waive fees in appropriate circumstances.

Outdoor space requirements for services

In meeting one of the key objectives of the reform, all new services in the Occasional Care service category will be required to have outdoor space of 7 square metres per child to support quality educational and developmental opportunities for children. Existing services without outdoor space or access to community space will remain able to operate in accordance with previous limitations on the time children may attend. That is, the hours that the service educates and cares for each child will be limited to no more than 5 hours a day and 15 hours per week, effectively “grandfathering” the position of former limited hours type 2 services if they are unable to adjust.

MAV raised the issue of the availability of outdoor space for proposed new services to be operated by landlocked local councils, where planning for new services has already been undertaken based on current regulatory requirements. It is acknowledged that access to dedicated outdoor space can be difficult to achieve for services in inner city or multi-storey locations, as well as landlocked local councils. While it is expected that new services are designed to meet best practice space requirements, service waivers from outdoor space requirements may be available in extenuating circumstances.

Time and support to meet the new requirements

Many participants raised the need for time and support to meet the new requirements.

In implementing the reform, the Department will provide support and comprehensive resources to providers and services, take an educative approach during compliance visits, and exercise regulatory discretion, to enable a smooth commencement and transition.

Educational program based on an approved learning framework

Many participants expressed concern about their capacity to meet the new requirement in the Amendment Act for the educational program to be based on an approved learning framework.

The approved learning frameworks are the same frameworks as for the NQF:

- Victorian Early Years Learning and Development Framework (VEYLDF)
- Belonging, Being and Becoming: The Early Years Learning Framework for Australia
- My Time, Our Place: Framework for School Age Care in Australia.

While this requirement will be a step up for some services, the programming requirement need not be onerous and is proportional – that is, the program should be tailored to reflect the nature of the education and care being provided and the period of time that the children attend the service.

Similarly, documentation should be tailored to record only what is significant for each child's learning. For a child of preschool age or under, documentation must include:

- assessments of the child's developmental needs, interests, experiences and participation in the educational program
- assessments of the child's progress against the outcomes of the educational program.

For a child over preschool age, documentation must include evaluations of the child's wellbeing, development and learning.

The Department recognises that many occasional care services have limited programming resources, and therefore provides information and resources to help services develop programs appropriate to their service. [Educators' guides](#) are currently available to support the approved learning frameworks, including [resources](#) to support the VEYLDF.

The guide [Delivering a children's program in a limited hours service](#) is already available on the Department's website. This guide will be updated before the reform commences to reflect the current edition of the VEYLDF and ensure it provides best practice advice relevant to all children's services.

Policies and procedures

Some participants raised concern about their administrative capacity to implement the required additional policies and procedures by the proposed date of 1 January 2021.

In response to these concerns, and recognising the additional challenges faced by services due to the coronavirus pandemic, the commencement date for the additional policies and procedures required will be further deferred to 1 January 2022. This date aligns with the transitional period for new operational requirements for staffing.

The Regulations will be amended to continue the current requirements for information, policies and procedures to be made available by a service, during the transition period. The requirement for a comprehensive anaphylaxis management policy will continue. However, in recognition that existing services will already have an anaphylaxis management policy in place, the schedule reproducing prescriptive detail of the current requirement in will be removed.

The policies do not have to be in any particular style or format, and do not need to be titled to reflect the exact wording of the Regulations. Templates for policies, procedures and resources are readily available online and can be tailored to individual service needs. Resources are available at:

- Early Childhood Resource Hub: www.ecrh.edu.au
- ACECQA [Guide to the NQF](#).

Educators without approved qualifications

The current Regulations contain a transitional provision that applied to longstanding educators who in 2009 were without formal early childhood qualifications but had significant on-the-job experience. These educators did not have to meet the minimum training requirement of a Certificate III but could undertake a specific bridging course instead.

One participant alerted the Department to the need to continue this arrangement for a very small number of educators who are still working in the children's services sector.

A new transitional provision in the Regulations will continue to recognise the position of these educators if they met the previous transitional requirement and are employed in a service immediately before commencement date. For the purpose of the educator to child ratios they can be counted as if they hold a Certificate III level qualification.

The licensing that will be required for services to be eligible for funded three-year-old kindergarten

One issue raised, which is not relevant to the proposed Regulations, is whether licensed children's services will need to change to being regulated under the NQF in order to be eligible for funded three-year-old kindergarten. Questions about kindergarten funding policy are being responded to separately by the Department.

SUMMARY OF AMENDMENTS TO REGULATIONS

In response to the feedback, the proposed Regulations have been amended to:

- Extend the transitional period for existing providers to comply with the new requirements for services to have in place certain policies and procedures, from 1 January 2021 to 1 January 2022. This change also makes provision to continue the current requirements for information, policies and procedures to be made available by a service during the transition period. In recognition that existing services will already have an anaphylaxis management policy in place, the schedule reproducing the prescriptive detail of the current requirement will be removed.
- Continue to recognise the historical minimum training requirements for a small number of educators, who did not hold "approved" qualifications, whose training was recognised under the current Regulations.

STATEMENT OF REASONS

Question	Survey Responses		Comments/issues raised in survey responses and submissions	Department's Response
	Y (%)	N (%)		
1. Are there any impacts or opportunities that have not been identified in the Regulatory Impact Statement, which you think need consideration?	11	7	<ul style="list-style-type: none"> Reform should be full integration to NQF 	<p>Noted</p> <p>The first major review of the NQF was completed in 2017. The review considered bringing children's services within the scope of the NQF but decided against it due to the complexity of transitioning a diverse range of services (nationally) to the NQF.</p> <p>After this decision, the Victorian Government decided to reform the regulatory regime for to align it with the NQF, where appropriate.</p>
	61.1%	38.9%	<ul style="list-style-type: none"> Opposed to staff to child ratio changes, as it means losing enrolments and increase in staff. Proposed changes will have significant impact on financial viability of smaller services. 	<p>Noted</p> <p>There is sound evidence that the ratios of staff to children make a positive difference in early childhood programs and particularly for children from birth to three years of age.</p> <p>The changes to staffing requirements are expected to have a differential impact on services, depending on the size of the service, and the number and mix of ages of children attending.</p> <p>Educator to child ratios and qualifications are part of a package of staffing changes that also provides the flexibility to calculate the required qualifications across mixed age groups of children, include staff "actively working towards" their qualification in educator to child ratios, and which imposes less onerous minimum staffing requirements.</p> <p>The Regulations defer the commencement of the new ratio and qualifications requirements to 1 January 2022 to give services 18 months to adjust. Service waivers from specific regulatory requirements may be available under appropriate circumstances.</p>

Question	Survey Responses		Comments/issues raised in survey responses and submissions	Department's Response
	Y (%)	N (%)		
				<p>The Department will provide support and comprehensive resources to providers and services, take an educative approach during compliance visits, and exercise regulatory discretion, to enable a smooth commencement and transition.</p>
			<ul style="list-style-type: none"> • Impact of COVID-19 pandemic on service operations. 	<p>Noted and change made to Regulations</p> <p>The Department will provide support and comprehensive resources to providers and services, take an educative approach during compliance visits, and exercise regulatory discretion, to enable a smooth commencement and transition.</p> <p>The transitional period for existing providers to comply with the new requirements for services to have in place certain policies and procedures, will be extended from 1 January 2021 to 1 January 2022, to align with the transitional period for other changes.</p>
			<ul style="list-style-type: none"> • Educators with grandfathered qualifications under regulation 130 of the CS Regulations 2009 will still need to be recognised. 	<p>Noted and change made to Regulations</p> <p>The Regulations will continue to recognise the historical minimum training requirements dating from 2009 for a small number of longstanding educators with no qualifications but substantial on-the-job experience, who undertook a specific bridging course instead of a Certificate III. These educators do not hold an “approved” qualification, but their training was recognised under the current Regulations.</p> <p>A new transitional provision in the Regulations will continue to recognise the position of these educators if they met the previous transitional requirement and are employed in a service immediately before commencement date.</p>
			<ul style="list-style-type: none"> • Services should still keep to best practice model on qualifications. Certificate III educators are not trained to lead a service, particularly with limited hours care services. 	<p>Noted</p> <p>The minimum educator qualifications for the new Limited Hours service category is at least a Certificate III level qualification. The minimum staff member qualifications for</p>

Question	Survey Responses		Comments/issues raised in survey responses and submissions	Department's Response
	Y (%)	N (%)		
				<p>the previous Limited Hours Type 1 licence also did not require qualifications above Certificate III level.</p> <p>Services in the Occasional Care service category will require some staff with qualifications above Certificate III level.</p>
			<ul style="list-style-type: none"> • Confusion of difference between occasional care and long day care if there is no restriction on the maximum number of operating hours. 	<p>Noted</p> <p>In practice, "occasional care" refers to ad hoc or casual care, whereas long day care involves the regular attendance of children. Services that provide regular care are generally required to be regulated under the NQF.</p> <p>To provide greater flexibility for services and families, the new Occasional Care service category has no limit on the hours a child can attend. However, the attendance must still be on an ad hoc, occasional or casual basis in an approved service under the children's services regulatory regime.</p> <p>A small number of children's services that provide long day care, standalone kindergarten, or which are mobile services (former Budget Based Funded services) are excluded from the scope of the NQF.</p> <p>These services remain regulated under the children's services regulatory regime and their licences will be transitioned to the new "Occasional Care" service category, notwithstanding that they do not necessarily provide occasional care.</p>
			<ul style="list-style-type: none"> • Need clarification for services who currently deliver 3yo 'kinder' programs will be required to transition to the NQF or they will be eligible for subsidies under the proposed Occasional Care licence. 	<p>Noted</p> <p>The issue of which licensing will be required for services to be eligible for funded three-year-old kindergarten is not directly relevant to the proposed Regulations. Queries about kindergarten funding policy are being responded to separately by the Department.</p>

Question	Survey Responses		Comments/issues raised in survey responses and submissions	Department's Response
	Y (%)	N (%)		
<p>2. From the perspective of your workforce or organisation, do you have any other comments on the findings of the Regulatory Impact Statement?</p>	<p>13 65.0%</p>	<p>7 35.0%</p>	<ul style="list-style-type: none"> • Higher qualified staff and higher ratios may flag an additional cost burden to services, but this is helped by the 'Working Towards' qualification option. Despite this, there is still concern 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 supports and reiterates the importance of service waivers, as outlined in the RIS. 	<p>Noted</p> <p>There is sound evidence that the ratios of staff to children make a positive difference in early childhood programs and particularly for children from birth to three years of age.</p> <p>The changes to staffing requirements are expected to have a differential impact on services, depending on the size of the service, and the number and mix of ages of children attending.</p> <p>Educator to child ratios and qualifications are part of a package of staffing changes that also provides the flexibility to calculate the required qualifications across mixed age groups of children, include staff "actively working towards" their qualification in educator to child ratios, and which imposes less onerous minimum staffing requirements.</p> <p>The Regulations defer the commencement of the new ratio and qualifications requirements to 1 January 2022 to give services 18 months to adjust. Service waivers from specific regulatory requirements may be available under appropriate circumstances.</p> <p>The Department will provide support and comprehensive resources to providers and services, take an educative approach during compliance visits, and exercise regulatory discretion, to enable a smooth commencement and transition.</p>

Question	Survey Responses		Comments/issues raised in survey responses and submissions	Department's Response
	Y (%)	N (%)		
			<ul style="list-style-type: none"> • Higher ratios are more beneficial for the care of children and quality of programs. • The changes are going to benefit the occasional care sector and make them comply with strict laws as do long day care centres. The ratio change is excellent for the children and their development and learning. • Services are already meeting some of the proposed recommendations and proposed changes will be able to be implemented without too much hassle. 	<p>Noted The Department acknowledges the support from the sector for this aspect of the reform.</p>
			<ul style="list-style-type: none"> • Agree with allowing existing Limited Hours Type 2 licence, where the increased outdoor space requirements cannot be met, to continue to operate under savings provisions. 	<p>Noted The Department acknowledges the support from the sector for this aspect of the reform.</p>
			<ul style="list-style-type: none"> • Additional costs to services, and impending funding change to 3yr old kindergarten will impact on financial viability of services. 	<p>Noted The changes to staffing requirements are expected to have a differential impact on services, depending on the size of the service, and the number and mix of ages of children attending.</p> <p>Educator to child ratios and qualifications are part of a package of staffing changes that also provides the flexibility to calculate the required qualifications across mixed age groups of children, include staff "actively working towards" their qualification in educator to child ratios, and which imposes less onerous minimum staffing requirements.</p> <p>The Regulations defer the commencement of the new ratio and qualifications requirements to 1 January 2022 to give</p>

Question	Survey Responses		Comments/issues raised in survey responses and submissions	Department's Response
	Y (%)	N (%)		
				<p>services 18 months to adjust. Service waivers from specific regulatory requirements may be available under appropriate circumstances.</p> <p>The Department will provide support and comprehensive resources to providers and services, take an educative approach during compliance visits, and exercise regulatory discretion, to enable a smooth commencement and transition.</p> <p>The issue of which licensing will be required for services to be eligible for funded three-year-old kindergarten is not directly relevant to the proposed Regulations. Queries about kindergarten funding policy are being responded to separately by the Department.</p>
			<ul style="list-style-type: none"> • Outdoor space should be a requirement for all services, including limited hours service. 	<p>Noted</p> <p>All new services in the Occasional Care service category will need to meet the outdoor space requirements.</p> <p>Existing services without outdoor space or access to community space will remain able to operate in accordance with previous limitations on the time children may attend. That is, the hours that the service educates and cares for each child will be limited to no more than 5 hours a day and 15 hours per week, effectively “grandfathering” the position of former limited hours type 2 services if they are unable to adjust.</p> <p>Service waivers from specific regulatory requirements may be available under extenuating circumstances.</p>
			<ul style="list-style-type: none"> • Requirements to have programs in place and documenting development for each child is a huge undertaking for limited hours service. • Extra time is needed for the documentation of individual child requirement. 	<p>Noted</p> <p>The requirements for educational programming and documentation are broadly the same as current requirements. The key change under the Amendment Act is that the program must be based on an approved learning framework.</p> <p>While this requirement will be a step up for some services, the program requirement need not be onerous and is</p>

Question	Survey Responses		Comments/issues raised in survey responses and submissions	Department's Response
	Y (%)	N (%)		
				<p>proportional – that is, the program should be tailored to reflect the nature of the education and care being provided and the period of time that the children attend the service. Similarly, documentation should be tailored to record only what is significant for each child's learning.</p> <p>The Department recognises that many occasional care services have limited programming resources, and therefore provides information and resources to help services develop programs appropriate to their service. Educators' guides are currently available to support the approved learning frameworks, including resources to support the Victorian Early Years Learning and Development Framework (VEYLDF).</p> <p>The existing guide Delivering a children's program in a limited hours service will be updated before the reform commences to reflect the current edition of the VEYLDF and ensure it provides best practice advice relevant to all children's services.</p> <p>The Department will provide support and comprehensive resources to providers and services, take an educative approach during compliance visits, and exercise regulatory discretion, to enable a smooth commencement and transition.</p>
			<ul style="list-style-type: none"> • Requirement to update policies annually is onerous. 	<p>Noted</p> <p>The Regulations do not specify how often a policy must be reviewed. Service should develop a review schedule, where policies are prioritised according to how often the content is expected to change. For example, changes in legislation, or a serious incident at the service may trigger a review.</p>
			<ul style="list-style-type: none"> • Requirement for first aid training, anaphylaxis and asthma should be for all staff, not just 1 person on duty. 	<p>Noted.</p> <p>Currently, every staff member (on duty, counted in ratios and as minimum staff) must hold current first aid and anaphylaxis management training. The requirements in the proposed Regulations are more flexible – the approved</p>

Question	Survey Responses		Comments/issues raised in survey responses and submissions	Department's Response
	Y (%)	N (%)		
			<ul style="list-style-type: none"> • Risk of dropping quality in a service, particularly with situations where there may be no staff with first aid training available. 	<p>provider must ensure that there is <u>at least</u> one staff member or nominated supervisor who has current approved first aid qualification, anaphylaxis management training and emergency asthma management training. There is a further requirement that those staff be available in emergency situations.</p>
3. Do you support the reduction of seven (7) licence types to two (2) service approval types?	23 82.1%	5 17.9%	<ul style="list-style-type: none"> • Removal of limit on hours children cared for is an enormous benefit. • Licence change has made it simpler and easier to understand. 	<p>Noted</p> <p>The Department acknowledges the support from the sector for this aspect of the reform.</p>
			<ul style="list-style-type: none"> • Uniqueness of individual service needs to be considered. • Allowances need to be made to ensure changes not reduce children's access to services by way of cost increase and ratio reduction. 	<p>Noted</p> <p>The transitional period of 18 months will provide time for services to adjust to the changes.</p> <p>The Department will provide support and comprehensive resources to providers and services, take an educative approach during compliance visits, and exercise regulatory discretion, to enable a smooth commencement and transition.</p> <p>Service waivers from specific regulatory requirements may be available under appropriate circumstances.</p>
			<ul style="list-style-type: none"> • Reducing the licence types reduces complexity for councils and is consistent to the minimum standards across the state. It is also efficient and timely to eliminate licence types that are no longer operating in Victoria. • The initial administrative burden 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 	<p>Noted</p> <p>The Department acknowledges the support from MAV for this aspect of the reform.</p> <p>The transitional period of 18 months will provide time for services to adjust to the changes.</p> <p>The Department will provide support and comprehensive resources to providers and services, take an educative approach during compliance visits, and exercise regulatory discretion, to enable a smooth commencement and transition.</p> <p>Service waivers from specific regulatory requirements may be available under appropriate circumstances.</p>

Question	Survey Responses		Comments/issues raised in survey responses and submissions	Department's Response
	Y (%)	N (%)		
			with clear and realistic timeframes, guidance and support.	
4. Do you support the requirement for outdoor space for new Occasional Care services?	22 78.6%	6 21.4%	<ul style="list-style-type: none"> • Currently meeting this requirement and believe new services should also. • Children should be at facility with outdoor space, they need time to develop physical skills, get fresh air and get messy. • There should be an outdoor space and outdoor program but may need to adjust size depending on hours of operation. 	<p>Noted The Department acknowledges the support from the sector for this aspect of the reform.</p>
			<ul style="list-style-type: none"> • Some services will not be able to meet this requirement, such as councils. Will they be able to apply for a waiver? • Can local parks or other areas in close proximity be used to meet outdoor space requirements. 	<p>Noted All new services in the Occasional Care service category will need to meet the outdoor space requirements. Existing services without outdoor space or access to community space will remain able to operate in accordance with previous limitations on the time children may attend. That is, the hours that the service educates and cares for each child will be limited to no more than 5 hours a day and 15 hours per week, effectively "grandfathering" the position of former limited hours type 2 services if they are unable to adjust. Service waivers from specific regulatory requirements may be available under appropriate circumstances.</p>
			<ul style="list-style-type: none"> • MAV supports the proposed regulatory requirement around outdoor space for new services but has concerns in particular for some of the land-locked councils, who can't meet this requirement due to rate-cap and where planning is already underway. 	<p>Noted It is acknowledged that access to dedicated outdoor space can be difficult for services in inner city or multi-storey locations, as well as landlocked local councils. While it is expected that new services are designed to meet best practice space requirements, service waivers from</p>

Question	Survey Responses		Comments/issues raised in survey responses and submissions	Department's Response
	Y (%)	N (%)		
			<ul style="list-style-type: none"> 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. 	<p>outdoor space requirements may be available in extenuating circumstances.</p>
<p>5. Do you support the alignment of staffing requirements with the NQF?</p>	<p>18 64.3%</p>	<p>10 35.7%</p>	<ul style="list-style-type: none"> Type 1 limited hours ratio will change from 1 staff to 5 children (under 3yrs) to 1 to 4, which impact on offering limited places for children in a service. Increase in staff seems unnecessary as limited hours is quite different to long day care and expectations of staff are different. There will be a significant impact on services such as community centres and will need more support to meet the changes. May reduce costs for services to hire more staff but allowing services to just have one educator is a risk to child safety standards. 	<p>Noted</p> <p>There is sound evidence that the ratios of staff to children make a positive difference in early childhood programs and particularly for children from birth to three years of age.</p> <p>The changes to staffing requirements are expected to have a differential impact on services, depending on the size of the service, and the number and mix of ages of children attending.</p> <p>Educator to child ratios and qualifications are part of a package of staffing changes that also provides the flexibility to calculate the required qualifications across mixed age groups of children, include staff “actively working towards” their qualification in educator to child ratios, and which imposes less onerous minimum staffing requirements.</p> <p>The Regulations defer the commencement of the new ratio and qualifications requirements to 1 January 2022 to give services 18 months to adjust. Service waivers from specific regulatory requirements may be available under appropriate circumstances.</p> <p>The Department will provide support and comprehensive resources to providers and services, take an educative approach during compliance visits, and exercise regulatory discretion, to enable a smooth commencement and transition.</p>
			<ul style="list-style-type: none"> There should be higher qualified educator (above cert III). The requirements are less and drops quality of services. 	<p>Noted</p> <p>The minimum educator qualifications for the new Limited Hours service category is at least a Certificate III level qualification. The minimum staff member qualifications for</p>

Question	Survey Responses		Comments/issues raised in survey responses and submissions	Department's Response
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			<ul style="list-style-type: none"> MAV supports alignment of Children's Services with the NQF but is concerned that this will put strain on 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, especially smaller, services. 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. 	<p>the previous Limited Hours Type 1 licence also did not require qualifications above Certificate III level.</p> <p>Services in the Occasional Care service category will require some staff with qualifications above Certificate III level.</p> <p>Noted</p> <p>The Department acknowledges the support from MAV for this aspect of the reform.</p> <p>The Regulations defer the commencement of the new ratio and qualifications requirements to 1 January 2022 to give services 18 months to adjust. Service waivers from specific regulatory requirements may be available under appropriate circumstances.</p> <p>Workforce supply is not directly relevant to the proposed Regulations.</p> <p>Service waivers from staffing requirements may be available under appropriate circumstances.</p>
6. Are estimated time assumptions for tasks such as record-keeping and the development of additional policies and procedures, reasonable or accurate?	21 75.0%	7 25.0%	<ul style="list-style-type: none"> For some services, additional resources and expertise will be required to meet the January 2021 deadline. Depending on the nature of the service, some of these policies may already be in place (such as those in Kindergarten settings). However, for some services, additional resources and expertise will be required to meet the January 2021 deadline.(MAV) 	<p>Noted and change made to Regulations</p> <p>The Department will provide support and comprehensive resources to providers and services, take an educative approach during compliance visits, and exercise regulatory discretion, to enable a smooth commencement and transition.</p> <p>The transitional period for existing providers to comply with the new requirements for services to have in place certain policies and procedures, will be extended from 1 January 2021 to 1 January 2022, to align with the transitional period for other changes.</p> <p>Templates for policies, procedures and resources are readily available online and can be tailored to individual service needs. Resources are available at:</p>

Question	Survey Responses		Comments/issues raised in survey responses and submissions	Department's Response
	Y (%)	N (%)		
				<ul style="list-style-type: none"> • Early Childhood Resource Hub: www.ecrh.edu.au • ACECQA Guide to the NQF.
7. Do you support the proposed fee structure?	24 85.7%	4 14.3%	<ul style="list-style-type: none"> • Sustainability of cost increases for not for profit organisations. • 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 new to under the proposed regulations. • 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 	<p>Noted</p> <p>Fees for applications for approvals, and annual service fees, differ by service category and size (approved places). The fees recognise the nature of the sector, which consists of many not for profit and smaller services.</p> <p>The fee structure will be simpler to navigate for new services entering the market and simpler for existing services because the current licence renewal process is being replaced by a proposed annual service fee paid on invoice. Many old fees will no longer apply (e.g. late fees for licence renewal, approval of new nominees, application to vary licence conditions).</p> <p>For smaller services where previously a nil fee applied, the annual service fee will constitute a modest cost increase. However, this will be offset by the static or nil fee values that apply for other transactions, and a reduction in administrative effort due to no longer needing to apply to renew fixed term licences with associated costs such as providing updated police checks.</p> <p>The Regulations provide that the annual service fee is not required to be paid in 2020. In addition, the Department will have a regulatory discretion to waive fees in appropriate circumstances.</p>
8. Do you support the savings provisions for existing services?	25 89.3%	3 10.7%	<ul style="list-style-type: none"> • Definitely will need saving provisions in place to ensure that services are viable and allows ongoing ability to provide for quality children's programs. 	<p>Noted</p> <p>The Department acknowledges the support from the sector for this aspect of the reform.</p>
9. Do you think the transitional arrangements are reasonable?	23 82.1%	5 17.9%	<ul style="list-style-type: none"> • Longer time is required. 	<p>Noted and change made to Regulations</p> <p>The Department will provide support and comprehensive resources to providers and services, take an educative approach during compliance visits, and exercise regulatory</p>

Question	Survey Responses		Comments/issues raised in survey responses and submissions	Department's Response
	Y (%)	N (%)		
				<p>discretion, to enable a smooth commencement and transition.</p> <p>The transitional period for existing providers to comply with the new requirements for services to have in place certain policies and procedures, will be extended from 1 January 2021 to 1 January 2022, to align with the transitional period for other changes.</p>
<p>10. If the preferred option is adopted, would your workforce or organisation need support to meet the proposed requirements?</p>	<p>16 57.1%</p>	<p>12 42.9%</p>	<ul style="list-style-type: none"> • Support for educational program planning is required. • Need to have more resource and support for templates, guidelines for policies and procedures. • Need support for increased staff training and development. • Need support for implementation i.e. time, costs • MAV has identified several areas across the regulatory reform in which councils require support to meet the proposed requirements: 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. 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 	<p>Noted and change made to Regulations</p> <p>The Department will provide support and comprehensive resources to providers and services, take an educative approach during compliance visits, and exercise regulatory discretion, to enable a smooth commencement and transition.</p> <p><i>Programming</i></p> <p>The requirements for educational programming and documentation are broadly the same as current requirements. The key change under the Amendment Act is that the program must be based on an approved learning framework.</p> <p>While this requirement will be a step up for some services, the program requirement need not be onerous and is proportional – that is, the program should be tailored to reflect the nature of the education and care being provided and the period of time that the children attend the service. Similarly, documentation should be tailored to record only what is significant for each child's learning.</p> <p>The Department recognises that many occasional care services have limited programming resources, and therefore provides information and resources to help services develop programs appropriate to their service. Educators' guides are currently available to support the approved learning frameworks, including resources to support the Victorian Early Years Learning and Development Framework (VEYLDF).</p>

Question	Survey Responses		Comments/issues raised in survey responses and submissions	Department's Response
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			<p>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.</p> <p>Qualifications - 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.</p> <p>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.</p>	<p>The existing guide Delivering a children's program in a limited hours service will be updated before the reform commences to reflect the current edition of the VEYLDF and ensure it provides best practice advice relevant to all children's services.</p> <p><i>Policies and procedures</i></p> <p>In response to these concerns, and recognising the additional challenges faced by services due to the coronavirus pandemic, the commencement date for the additional policies and procedures required will be further deferred to 1 January 2022. This date aligns with the transitional period for new operational requirements for staffing.</p> <p>The Regulations will be amended to continue the current requirements for information, policies and procedures to be made available by a service, during the transition period. The requirement for a comprehensive anaphylaxis management policy will continue. However, in recognition that existing services will already have an anaphylaxis management policy in place, the schedule reproducing prescriptive detail of the current requirement in will be removed.</p> <p>The policies do not have to be in any particular style or format, and do not need to be titled to reflect the exact wording of the Regulations. Templates for policies, procedures and resources are readily available online and can be tailored to individual service needs. Resources are available at:</p> <ul style="list-style-type: none"> • Early Childhood Resource Hub: www.ecrh.edu.au • ACECQA Guide to the NQF.

APPENDIX 1

Background to Children's Services law reform

BACKGROUND

Quality early childhood education is important for early childhood development, educational outcomes, and whole-of-life achievement. Occasional care services play an important role in providing access to flexible and affordable care, particularly for regional and rural families.

It is important that services in the occasional care sector are underpinned by a quality, contemporary regulatory framework.

Most early childhood education and care services in Victoria are regulated under the National Quality Framework (NQF) (approximately 4,200 long day care, family day care, preschool and outside school hours care services).

The remaining approximately 315 children's services are, by definition, excluded from the NQF and remain regulated under the *Children's Services Act 1996* (CS Act) and Children's Services Regulations 2009 (current Regulations). Most of these services provide occasional care, where children attend for short periods of time.

Children's services include occasional care services providing care for limited hours on an ad hoc or casual basis (such as services provided by Neighbourhood Houses), activity groups for three-year-old children, services providing (adjunct) care at sports and leisure facilities, school holidays care services designed to care for children for short periods over the school holidays, short term services such as those provided seasonally by ski resorts, and 'wrap-around' care offered in conjunction with sessional kindergarten regulated under the NQF.

As at December 2019, there were approximately 315 children's services licensed to provide up to approximately 8,120 approved places of education and care, equating to eight per cent of early childhood education and care services in Victoria. Legislative and regulatory requirements for these services are currently contained in the *Children's Services Act 1996* and the *Children's Services Regulations 2009*.

The Secretary of the Department of Education and Training (Department) is the regulator for education and care services and children's services operating in Victoria across both the national and Victorian regimes. The functions and powers of the regulatory authority are largely delegated to the Quality Assessment and Regulation Division (QARD) of the Department to enable the administration and enforcement of the regulatory regime.

CHILDREN'S SERVICES LAW REFORM

The first major review of the NQF was completed in 2017. The review considered bringing children's services within the scope of the NQF but decided against it due to the complexity of transitioning a diverse range of services (nationally) to the NQF. The two regulatory regimes that apply in Victoria are similar, but not consistent.

After this decision, the Victorian Government undertook a reform of the regulatory framework for children's services to align it with the NQF, where appropriate.

The *Children's Services Amendment Act 2019* (Amendment Act) was passed by Parliament in November 2019.

The key alignment changes made to CS Act by the Amendment Act are in the areas of objectives and guiding principles; terminology and roles of key personnel; provider and service approval processes; compliance, monitoring and enforcement approaches; and educational program requirements. In addition, the (current) Children’s Services Regulations 2009 expire on 18 May 2020 and must be replaced with new regulations by that date.

The Children’s Service Regulations 2020 (Regulations) provide the operational detail to support the Amendment Act. The Regulations will impact on existing and future users and providers of children’s services, and on a range of groups in the community.

It is intended that the Amendment Act and the Regulations will come into effect together on 17 May 2020.

REGULATORY IMPACT STATEMENT

The *Subordinate Legislation Act 1994* (SLA) requires the preparation of a RIS for sunsetting regulations or any proposed regulations that impose a significant economic or social burden on a sector of the public, and for the public to review and comment on the proposed replacement regulations. Before new regulations are made, the SLA requires the steps illustrated at Figure 1 to be undertaken.

Figure 1. Making new regulations



The RIS presented regulatory options, quantifies the cost of proposed regulations to industry and government, includes economic analysis of costs and benefits, and invites public comment about the proposed regulatory options.

APPENDIX 2

Children's Services Law Reform 2019 Consultation Activity

In preparing this RIS, the Department has undertaken targeted engagement with key stakeholders and the sector in both the development of the *Children's Services Amendment Act 1996* (as part of the 2019 NQF Review process) and to canvas the key areas of regulatory alignment likely to impact the sector at an operational level, to determine the issues or concerns that needed to be addressed in the proposed Regulations, and to inform transitional arrangements and implementation plans.

- NQF Review and Children's Services Law Reform consultations took place in May and June 2019.
- Children's Services Law Reform information sessions took place in October and November 2019.
- RIS public consultations on the proposed Children's Services Regulations will take place in February 2020.

The Department website was updated to notify the Victorian early childhood education and care sector of the Children's Services Act and Regulations reform project (Children's Service Law Reform). This information included broad material on the proposed law reform and a detailed summary on the proposed changes (including what is not changing) aimed at aligning the Children's Services Act with the Education and Care Services National Law. The website also contained details on how the sector could get involved in the consultation on proposed changes.

All Victorian providers of children's services were advised via email of the opportunity to participate in consultation sessions on the proposed changes. The information on the proposed reform was also included in the Early Childhood Update that is emailed to the sector, in monthly QARD newsletters, as well as the Department's social media platforms.

There were 15 face-to-face consultation sessions, held across metropolitan and regional Victoria, during May to June 2019. People representing a range of service types and stakeholders attended the sessions and engaged well with the issues.

- 8 sessions held in May 2019: Melbourne CBD (x2); Warrnambool; Ballarat; Werribee (x2); Bendigo; and Moe
- 7 sessions held in June 2019: Ringwood (x2); Geelong; Dandenong (x2); Benalla; and Wodonga.

Attendees at the consultation sessions were invited to complete a feedback form, and 44 forms were received. No new issues were raised in consultations.

The following key stakeholders, peak bodies and multi-service providers were consulted via meetings and forums:

Internal Governance Groups	Stakeholders and Peak Bodies	Multi-Service Providers
Early Childhood Steering Committee Early Childhood Development Advisory Group Early Childhood Education Reform Stakeholder Group	Community Child Care Association Early Learning Association Australia Neighbourhood Houses Victoria Municipal Association of Victoria Occasional Child Care Australia	Victorian YMCA Community Programming Pty Ltd Goodlife Operations Pty Ltd Belgravia Health & Leisure Group Pty Ltd ATF Belgravia Leisure Unit Trust Uniting (Victoria and Tasmania) Limited

<p>QARD Early Childhood Education and Care Regulatory Reference Group Victorian Children's Council</p>	<p>Early Childhood Australia (Vic Branch) United Voice – Victorian Branch Australian Education Union Australian Childcare Alliance Victoria Victorian Aboriginal Education Association Inc. Playgroup Victoria</p>	<p>Oakleigh Occasional Care Co-operative Mallee Track Health and Community Service</p>
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Written submissions closed on 14 June 2019. No written submissions were received.

Neighbourhood Houses Victoria (NHV) hosted 10 information sessions (open to all children's services) on the Children's Services Law Reform.

- 5 sessions held in September/October 2019: Preston; Blackburn South; South Kingsville; Wallan; and Benalla
- 5 sessions held in November 2019: Narre Warren; Wyndham Vale; Ballarat; Moe (video conference); and Lara (Geelong).