

**Australian Education Union**

**Submission to the Victorian Government**

**Review of the Children's Services Act 1996  
and  
Children's Services Regulations 1998**

**April 2007**

## **A. PREAMBLE**

The Australian Education Union (AEU) is a federally registered union that represents the public education sector throughout Australia. The AEU Victorian Branch has members employed in government schools, TAFE, Disability services, Adult Migrant Education Services and in Early Childhood. AEU members include Principals, Teachers, School Services Officers, and Early Childhood Education Assistants.

Our submission focuses on the key issues from the AEU's perspective rather than respond specifically to the questions as contained within the discussion paper and feedback form. The structure of the submission however follows the structure of the discussion paper.

The AEU welcomes this once in a decade opportunity to address issues which support the provision of quality in early childhood education and care services. Regulations are an important part of what the AEU regard as a suite of measures which go to achieving and maintaining this objective including:

- A quality assurance system
- An early childhood curriculum framework
- Mechanisms to address the under-supply of early childhood teachers and childcare workers employed to educate and care for young children
- A system of teacher registration for early childhood teachers and professional accreditation for qualified childcare workers, and certification for unqualified staff
- Adequate government funding of early childhood programs

Within this framework, regulations should be set at optimum levels rather than at a minimum so that the "baseline" in children's services is improved. Accordingly there is much to that can be achieved in the current Act and Regulations to improve standards.

## **B. CONTEXT OF THE REVIEW**

The AEU notes the Context of the Review as articulated at Chapter 4 of the discussion paper, including:

- the development of the Act and Regulations;
- the growing appreciation of early childhood experiences in the home, within families and in formal early childhood education and care settings for children's later life;
- the importance for quality early childhood experiences and the role of regulations play in underpinning that quality;
- the intersection of the National Reform Agenda with this process;
- and Government policies and legislation which guide the development, design and delivery of services for children and their families.

The AEU believes however that the context for this review is broader than that described above. This important review takes place in a climate where:

- There is a serious shortage of appropriately qualified staff. Both attraction and retention are existing problems for the sector;
- The federal industrial relations legislation impacts on the career choices of potential Early Childhood Education and Care (ECEC) staff;
- Access to children's services is impacted by the cost to families and shortage of supply of places generating waiting lists in some areas and for some age groupings;
- The increasing privatisation of child care services;
- The reported incidence of developmental, learning, health and medical issues amongst young children appears to have increased;
- The availability, accreditation and cost of training creates impediments or barriers to career path formation and attraction and retention;
- The early childhood education and care sector is still awaiting progress of the development of a curriculum framework;
- Pressure on parents capacity to maintain a work/life balance;
- Issues concerning the quality (and therefore the cost) of education and care for young children are inseparable from the way in which services are funded. Funding levels therefore are a significant context for this review.

The Review also sits within a history of regulation of children's services in Victoria. The Victorian Government introduced regulations for preschools in 1951. This was followed by the development of the Child Minding Centres (Health Act) Regulations in 1965, the development of the Children's Services Centres Regulations 1988 and then the Children's Service Act 1996 and Children's Services Centres Regulations 1998.

In the review of the 1988 Regulations, leading to the development of the current Act and Regulations, a discussion paper was developed in the same way as is occurring now. In that discussion paper the then Director, Primary Care Division of the Department of Health & Community Services, Karen Cleave, asked those considering the matters of legislation and regulation to "be mindful of broader issues for children's services." The discussion paper identified some of these issues as: co-ordination and flexibility in service provision; affordability of services; current trends in the utilisation of children's services; the Commonwealth accreditation system; National Standards, and relationships and responsibilities of and between different levels of Government for Children's Services.

These issues are echoed in the discussion paper associated with the current review, in particular the issues of coordination and flexibility, the impacts of national agendas and the relationships, responsibilities and partnerships of and between levels of Government. The AEU acknowledges that children's services is a complex and growing sector. We recognise that the provision of children's services throughout Australia is in a state of ongoing change. Changing community needs and perceptions, generated by economic and social factors have raised numerous issues upon which the AEU has cause to form a view. Greater government and public understanding and appreciation of the importance of early childhood years also impacts on this.

Often the issues of quality service provision and economic stringency conflict. Nevertheless, there are certain tenets to which the AEU holds firmly, some of which have particular relevance to this Review. The AEU believes that:

- There should be a range of high quality, accredited, affordable and accessible children's services
- The links and coordination between early childhood services must be developed and supported to provide a more seamless continuum of education and care from birth to 8 years and beyond.
- Children's services should address the emotional, physical, social, intellectual and cultural needs of children
- Programs should be non-sexist and culturally and linguistically relevant
- Quality services are characterised by appropriate child:staff ratios, and group sizes, appropriately qualified and trained staff, and enriching, well equipped, caring and secure environments. These should be defined and enforced in regulation.
- Services should be conducted in approved and accredited locations.

In our view, the changes to the sector as described at page 19 of the discussion paper (in particular the significant privatisation of long day care services), in no way lessens the need for regulations. In fact, it could well be argued that these are reasons for the strengthening of the regulations and their monitoring and enforcement.

In every debate on quality of service provision, the issue of the cost of quality is raised. This Review will be no different. The AEU is cognisant of the fact that the children's services sector is not in the position to afford the additional costs involved in improvement of regulatory standards. Affordability of services to users is already an issue of extreme concern and any additional costs which would be passed on to users would seriously jeopardise the viability of many services as well as putting such services beyond the means of more users. The cost of the essential improvements to regulatory levels must be recognised and accommodated by increased Government funding to services.

The AEU believes that the State and Commonwealth Governments have a shared responsibility for funding early childhood education and care. Such funding should accommodate the provision of elements which contribute to the quality of service provision – particularly those noted in research as key issues, including but not limited to, qualified staff, staff:child ratios and group size.

Accordingly the AEU's response is set in this much broader context.

The AEU's response is also underpinned by the belief that throughout this process, existing standards as set by regulation should in no way be diminished but rather should be enhanced.

### **C. COVERAGE OF THE ACT AND REGULATIONS**

The AEU welcomes the Government's commitment to extend regulation to Family Day Care (FDC) and Out of School Hours Care (OSHC). We believe FDC and OSHC should be regulated for the same reasons as it is appropriate and responsible to regulate centre-based children's services. At the same time we are concerned to see that in varying the Act and Regulations to accommodate this improvement that unintended consequences do not impact on currently regulated services. The AEU strenuously opposes any lessening of regulatory provisions.

#### Definition of Children's Service

Children's service is defined in the Act as meaning:

*"a service providing care or education for 5 or more children under the age of 6 years in the absence of their parents or guardians-*

*(a) for fee or reward; or*

*(b) while the parents or guardians of the children use services or facilities provided by the proprietor of the service."*

With recognition that the Children's Services Act 1996 and the Children's Services Regulations 1998 provide a minima rather than optimum standard; and particularly in the acknowledged context of the growing appreciation of the impact of early childhood experiences on children's outcomes in later life; alteration to the definition of 'children's service' should in no way reduce existing standards.

On this basis, any change should not:

- provide for or facilitate the expansion of the model of single-staff services;
- increase the minimum number of children who can be cared for or educated before regulation applies (for example current 5 children as provided in the Act to the current FDC maximum of 7 children per Carer at any one time);
- alter the "ordinary sense of the word" use of 'absence' in relation to parents to enable services currently providing regulated care to be outside the regulations.

#### Restricted licence services

When the regulations were reviewed in 1988, the then Kindergarten Teachers Association of Victoria (KTAV) (predecessor to the AEU) expressed concern at the concept of Class 2 centres (now known as Restricted Licence services), based on the belief that they are not ideal for children. However it was also recognised that economic pragmatism had dictated their provision and continuance. The KTAV saw it as imperative that the application of this classification be tightly restricted to services providing short term care (neighborhood houses, sporting and fitness centres).

The AEU notes the reference in the discussion paper to "current patterns of usage" of restricted licence services (page 27) and agrees that it is anomalous that restricted children's services can operate in the same way as many services with standard licences (hours per day/per week). Accordingly the AEU would endorse the abolition of the concept of restricted licence children's services in the Regulations and point to the capacity to manage legitimate issues presenting in these services through Ministerial exemptions from various provisions.

## Family Day Care

The AEU notes that the Department of Families, Community Services and Indigenous Affairs describes In-venue FDC as “ a form of Family Day Care where the care is delivered in a facility other than a family home – usually a school or community hall. It was established to trial alternative ways of delivering Family Day Care in small regional and remote towns where care could not be delivered in the carer’s home and there is not alternate child care service available.”

Further, having reviewed FDC In Venue Care, it was found that there “is a legitimate need for an innovative type of child care services in some small outer regional and remote areas, where other mainstream child care services are not available or viable. In particular, the review found that Family Day Care In Venue Care fulfils a need for child care in regional and remote areas where there is demand for child care, no suitable domestic premises and no alternative child care service.”

The AEU recognises the potential benefits to families and children in rural and regional Victoria of in venue-FDC as a response to the tyrannies of distance. The AEU however notes that operation of in-venue FDC is not solely the province of rural Victoria. Municipalities such as Yarra and Stonnington (to name but two) advocate for and/or advertise in-venue FDC. This seems to be at odds with the position articulated by FCSIA, particularly the articulated requirement “that no other care is available or possible within a reasonable traveling distance for families” and “the site is located in a regional and remote area.”

The AEU is concerned about the inequities which arise if a single-staff model is allowed to operate at non-residential premises, particularly where it appears that the operation of these programs is not strictly limited by the Commonwealth or State as the description of the program would suggest. We reiterate our absolute opposition to any extension of the single-staff model to any other service other than FDC operating in carer’s homes. The AEU believes that the regulations should ensure that these services are limited to very specific circumstances and in rural and remote areas of Victoria only.

Secondly the AEU views with concern an apparent conflict between the current provisions of the Children’s Services Act (which requires registration and regulation of centre-based services where there are 5 or more children in attendance in the absence of their parents for fee or reward) and current In-venue FDC services. Many of the programs advertised on the web indicate they take up to a maximum of 7 children. This is of course consistent with the provisions governing in home FDC but at odds with the requirements of the Children’s Service Act. This could be seen as a mechanism to undermine the provisions of the Act and further provide an uneven playing field in comparison to other centre-based services. As indicated earlier, the AEU would oppose any increase in the minimum number of children who can be cared for or educated before regulation applies.

## Out of School Hours Care

The Department of Families, Community Services and Indigenous Affairs describes Out of School Hours Care as services “which provide care mainly for primary school children before and/or after school and during vacation time.” Services “focus on stimulating

developmental, social and recreational activities for children, while meeting the care requirements of families” and “are usually set up in or close to primary schools”.

The question of the necessity to include a maximum age appears to be largely dependent upon;

- whether the demand for care for children outside primary school age warrants it; and
- the manner in which other aspects (staffing, program etc) of the regulations are dealt with.

In relation to the first issue, the experience of the AEU is that there is little or no demand for care of children older than primary school age. However given the requirement for the attendance of such children to be discussed with FCSIA, data should be available to the department on this matter.

If issues of staffing, program, equipment, facilities are addressed in a manner which ensures that the varying needs of children of various age groupings/developmental levels are addressed it may not be necessary to include a maximum age. This would also be the case in relation to the maximum number of school aged children.

#### Options for regulation

Our consideration of the three main options, as presented in the discussion paper, for regulating FDC and OSHC (page30/31) is influenced by our concern that the extension of the regulations does not lead to the reduction of existing standards.

The three options that are proposed in the discussion paper need to be considered in light of the opportunities and limitations they would engender now and into the future.

Option 1 (regulation by service type i.e. centre-based, FDC, OSHC) is portrayed as being limiting in its capacity to support multi-service provision. As an example of this, it is asserted that FDC providing school care to school-aged children could not be accommodated (page 30). However, FDC currently is able to provide care to primary school aged children and in fact in 2004, 24% of children enrolled in FDC were aged 6 years or older (page 112 of discussion paper). It is also described as being “inconsistent with Victoria’s performance-based approach to regulation”. However the current regulations are constructed on this basis for centre-based services. Further, it is argued that this model requires more prescription to be in legislation to capture all the service types and their different compliance requirements. The AEU would argue that dealing with these issues is of secondary importance to that of ensuring the establishment and maintenance of appropriate standards and quality of services across all service types.

Option 2 (regulation on the basis of whether the service is home based or centre based) carries the disadvantage of being described as having “a premises focus rather than a child focus”. Whilst acknowledging that this model recognises the uniqueness of FDC, it also raises the question of how to deal with in-venue FDC which is a hybrid service – a ‘home based model’ delivered in a ‘home-like environment’ in a service-based location.

Option 3 ( regulated by service’s license capacity) is portrayed as the most flexible model of regulation and “one which focuses on the child rather than the premises or service type.” However, it contains the prospect of both increasing the minimum number

of children that can be cared for before regulation applies; accommodates the restricted children's service model and has the potential to lead to the expansion of the single-staff model.

It is AEU's belief that delivery of flexible and responsive children's services is not predicated on lessening or eliminating regulated standards which establish the pre-conditions of quality service provision. The AEU believes that a combination of Options 1 and 2 above may be necessary. Services should be principally regulated on the basis of whether they are home based or centre-based but there will need to be the capacity within this structure to provide for some service type specific provisions, for example in-venue FDC and OSHC.

The AEU believes this model of regulation does not inhibit the development of multi-service types. Various centre-based programs (preschool, long day care, occasional care, OSHC) could be able to co-locate in any combination and could be joined by a FDC service (co-coordinating unit).

With the Victorian Government's articulated policy of co-location and integration of services and the increased provision of multi-service children's centres on school sites, the capacity to provide for the future mixes of services relies more on the Government's preparedness to fund this than with the model of regulation (i.e. capital infrastructure designed to support such integration and optimum standards and funding to support appropriate qualified staffing levels; staff:child ratios and group sizes.)

## **D. REGULATORY POWERS**

*R 51 Complaints* provides for the making of a complaint. We recognise its purpose as being to respect and protect the rights of children and service users by having a procedure in place by which complaints are made.

However it is the AEU's position that many of the powers established under the provisions of the Act and Regulations associated with the implementation of this regulation (such as the process of investigation, collection of information and questioning etc) often offend the principles of natural justice.

Natural justice is a legal principle which underpins the determination of just, or fair processes in legal proceedings. Natural justice includes the notion of procedural fairness and may incorporate the following guidelines:

- A person accused of a crime/misconduct, or at risk of some form of loss/penalty, should know of the allegations being made against them.
- A person who makes a decision should be unbiased and act in good faith.
- Proceedings should be conducted so they are fair to all the parties.
- The person subject to the investigation should have the right to a support person throughout the process.
- Each party to a proceeding is entitled to be heard in respect to the allegation/s and to ask questions and contradict the evidence of the opposing party.
- A decision-maker should take into account relevant considerations and extenuating circumstances, and ignore irrelevant considerations.
- The process should be undertaken and completed in a timely manner.
- Justice should be seen to be done.

Actions for breaches of a statute carry either criminal or civil penalties. The Children's Services Act 1996 refers to offences which relates to criminal convictions and the Regulations to penalty points which are a civil penalty. Many of the provisions of the Act and Regulations therefore hold the potential for an employee (primary nominee, nominee or staff member) to be accused of a crime or at risk of some loss.

This may be in the form of a penalty, as is the case with *S26 Protection of children from hazards*, *S27 Inadequate supervision*, and *S28 Discipline of children* of the Act and many of the regulations. It may also be in the form of the potential removal of the prospect of current and future employment within the children's service sector through the application of *S11 Fit and proper person*.

Under the first principle of natural justice, the person under investigation should be provided with the details of the allegation/s. However, when investigating alleged breaches, Authorised Officers of the Department (CSAs) do not as a rule provide details of the allegations to the employee prior to the formal interview they conduct. Fairness would provide that this should occur in order that the primary nominee/nominee/staff member (employee) has the opportunity to consider the allegations and any response

they may make prior to the interview. Failure to do this adds to the stress placed on the staff member being interviewed and this has the capacity to impact on the ability of the individual to respond in a considered manner ensuring accurate and comprehensive responses.

*S54 Immunity* provides immunity to complainants (i.e. persons who notify an alleged breach) whereby it is illegal to provide any identification of that person unless a Court orders this be done, or if the complainant agrees in writing. The guarantee of immunity is absolute, even to the extent that a witness in a legal proceeding may refuse to answer a question if the answer might lead to the identification of the person who notified the alleged breach of the Act and/or Regulations.

This has potential terrifying consequences for employees (primary nominees/nominees/staff member) where their capacity to provide a defence to the allegation(s) is prevented because the details of the particular circumstances cannot be provided as it might lead to the identification of the notifier. The potential impacts of this are twofold. Firstly under *S11 Fit and proper person (1)(b)*, the Secretary may revoke the employees fit and proper person status. This would result in the cessation of employment. Secondly, a logical industrial consequence could be the termination of employment as a result of the inability to mount a full defence. Particularly under the Work Choices legislation, the capacity to redress a harsh, unjust or unfair action of the employer cannot be tested. Were an avenue available to pursue this, it could be said this is a bit late in the day! The employee has suffered the professional, emotional and financial consequences associated with termination of employment.

The Department of Human Services Practice Note *Dealing with complaints* provides that a notifiable complaint will be handled in the following manner:

*“When the proprietor of a children’s service notifies the department of a complaint, a Children’s Services Adviser will seek information.*

*The Children’s Services Adviser will assess the seriousness of the issue and will undertake the appropriate follow-up. This may include telephoning a range of people, inspecting the service, questioning staff members, taking written statements, conducting formal interviews, seizing evidence and so on.*

*Once the Children’s Services Adviser has undertaken appropriate follow-up, the person making the complaint and any other relevant people will be notified.”*

For an employee (primary nominee/nominee/staff member) there are no clear steps in the investigatory process to anticipate should they be the subject of a complaint and associated investigation/s. It simply depends on the individual assessment of the Children’s Services Advisers (CSAs) as to what they determine is the “appropriate follow-up”. In failing to provide information about the process of any investigation made pursuant to a complaint under regulation 51, the rights of service staff are not recognised or protected. Lack of understanding about the expected process and its timelines adds to the stress and apprehension of the employee.

Until recently it has been the AEU’s understanding that it is the obligation under the Act and Regulations for the Department to investigate notifiable complaints (those which go to the health and safety of children and/or the contravention of the Act or Regulations). Verbal advice by an Officer of the Department has been that there is no such obligation

on the Department provided in the Act but rather it occurs only as a matter of practice. Given the detailed enforcement provisions of the Act, this is surprising and somewhat inconsistent.

This lack of clarity is compounded by the fact that multiple investigations can occur. At the same time as the relevant CSA investigates, the Proprietor (employer parties) may undertake investigations as they are obliged, by *R51 Complaints*, to “deal with, and respond to, complaints relating to the children’s service as soon as practicable after the complaint is made” and “in a way that deals with the complaint”. The consequence is that employees (primary nominees/nominees/staff members) can be subject to two investigations at the same time. In fact there is the potential for a third investigation to be undertaken at the same time in the event that a complaint has also been made to the police.

It is therefore not surprising that the subjects of investigations feel confused and at times overwhelmed. Given it is the purvey of the Department to determine whether or not a breach of the Act or Regulations has occurred, it is the AEU’s view that it should be the articulated responsibility of the Department to investigate alleged breaches. Further it should be clear that in the event that a complaint is not a notifiable complaint (to be clearly defined), any investigation should be the province of the employer alone and not that of the Department.

It is our belief that formal advice to the staff member of the making of a complaint and clear detailing of the process of investigation, inclusive of timelines, is essential to the recognition and respect of the rights of all parties.

It is our view that the process of investigation of a complaint made under regulation 51 should be determined and included in the Children’s Services Guide and associated Practice Notes. This process should include advice to the relevant staff member/s of:

- The substance of the allegations
- The process of the investigation
- The timelines for the investigation
- The reporting/notification process for the outcomes of the investigation
- Their rights within the process of the investigation; and
- An opportunity for representation and advice, from person/s of their choice, at any point during the investigation.

#### Use of entry powers

Use of entry powers is another example of when the investigatory powers provided under the Act and regulations can conflict with the principles of natural justice. When utilised by CSAs at times when staff are supervising children, it leads to a tension in application of the regulations. Staff are concerned to ensure they meet the provisions of *S26 Protection of Children from Hazards* and *S27 Inadequate supervision of children* but at the same time are eager to provide an appropriate response to the questions of the CSA. Staff are acutely aware of the significance of complaints and the associated investigations and are concerned to provide the support needed by the CSA to carry out

their responsibilities as provided by Part 5 of the Act. To place staff in this position is not compatible with a fair process and furthermore the endeavour to meet two conflicting demands concurrently is unduly stressful to staff. It does not provide the employee/s with a reasonable opportunity to respond in a considered manner or with the opportunity to seek advice before doing so.

## **E. RESPONSIBILITY FOR COMPLIANCE WITH THE ACT AND REGULATIONS**

The AEU views as a threshold issue for the Children's Services Act (1996), the resolution of the definition of Proprietor. The discussion paper asserts that there is "some confusion as to the scope of the term 'proprietor' and questions whether an amendment to the definition by reference to the licensee and primary nominee would assist. It is the AEU's contention that the problem is much greater than confusion.

The Act defines Proprietor as including

*"the owner of the service and any person who manages or controls the service and, in relation to any proposed children's service, includes the person who proposes to operate the service."*

The Act defines Licensee as

*"a person who holds a license to operate a children's service under this Act".*

By virtue of the definition of Proprietor, a teacher who is a nominee, whether or not the teacher is the primary nominee, has the same liabilities and responsibilities under the Act and Regulations as a licensee when the licensee is absent. Licensees are the predominantly the employers of staff.

We note, at page 30, that "the compliance framework is based on the policy principle that those roles in a children's service with authority or direct responsibility for a function should have its related compliance responsibilities" and that "on this basis, the legislation makes specified roles accountable, or assigns accountability for a specific function to a role, to ensure that requirements are met." Most notably it reminds us that "not meeting compliance responsibilities can result in an offence being committed."

Clearly the Act and Regulations when referring to the management and control of the service do not distinguish the extent of obligation of the various parties making up the Proprietor of the service. It fails to recognise the critical and significant difference in the authority of the nominee who is the employee and that of the licensee who is the employer. An employee (primary nominee or nominee) can be given the responsibility for a certain function by an employer (licensee) but may not necessarily have the commensurate authority to ensure compliance.

A simple example of this is dealing with a broken gate to the playground. *Section 26 Protection of children from hazards* and *S27 Inadequate supervision* of the Act are relevant to this example. An employee (primary nominee/nominee) can advise the employer (licensee) that the gate is broken and seek they authorise/implement processes to have it repaired. The employee (primary nominee/nominee) can implement practical strategies for supervision of children whilst in the playground. However when the employer (licensee) fails to authorise/implement processes for the repair of the gate or to authorise expenditure necessary for the repair of the gate, the employee (primary nominee/nominee) does not have the authority to do so. A breach of these provisions of the Act could incur a total of 100 penalty points.

As noted above, "the legislation makes specified roles accountable" and in relation to Sections 26 and 27, the legislation makes the Proprietor accountable and the definition of Proprietor makes the primary nominee/nominee (employee) equally responsible as the licensee (employer).

The definition of Proprietor has distorted the issues of vicarious liability that exists in common law between an employer and employee ('master and servant') which provides that the employer accepts responsibility as the 'master' of the 'servant'. Employers are vicariously liable, under the "let the master answer" doctrine, for negligent acts or omissions by their employees in the course of employment.

The definition of Proprietor needs to be amended to remove this conflict and unfair liability on employees.

In presenting this argument, the AEU does not propose that employees should be free from responsibility in relation to the intents of the Act and Regulations. However the AEU recognises that as employees there are other avenues which can be pursued in the event there is a belief that they have been negligent in their actions or failed in their duty of care. They may be subject to civil suit for alleged negligence, to criminal prosecution for actions which may be deemed assault and can be open to industrial processes such as disciplinary procedures or dismissal. Also, through the 'fit and proper persons' provisions of the Act, there is a regulatory mechanism which can also be utilised should an employee (primary nominee, nominee or staff member) be found to have breached the Act or regulations in a significant manner which would warrant the imposition of a potential penalty under the Act or Regulations.

#### Licence fees

The AEU would be concerned at any increase in the licence fee for bodies corporate as this would impact upon fee levels within services. Fee levels impact upon access to services for many families.

#### Out of School Hours Care

We also note that the regulation of OSHC will bring with it a greater workload for those service providers as they will need to put in place the necessary mechanisms to monitor and ensure compliance with the Act and Regulations. In a school setting for example this will demand greater time allocation by the School Services Officer (SSO) allocated these responsibilities on behalf of the licensee (School Council). This will necessitate increased funding to support this in order that increased costs do not rebound on parents through increased fees.

## **F. STAFFING**

High quality programs in the early years can be clearly characterised and rely on qualified staff and low child:staff ratios. Best outcomes are gained when qualified specialist teachers in early childhood education are included along with other complementary staff, all of whom are well remunerated and maintain high job satisfaction. Qualified early childhood teachers should coordinate and deliver education programs, in developmentally appropriate, educationally sound and culturally inclusive learning environments.

***“Quality is never an accident; it is always the result of high intention, sincere effort, intelligent direction, and skilful execution; it represents the wise choice of many alternatives.” (Willa A. Foster)***

There is a significant body of research and literature that sets out the indicators that point to the determinants of high quality programs. It is not our intent to summarise that research here. Suffice to say that in the context of this section of the Review, it is relevant to note that in addition to staff qualifications and staff:child ratios, group size, the environment and the frequency of staff:child interactions are identified as key determinants.

### **Should all staff members hold a qualification? and What is a qualified staff position?**

With overwhelming recognition of the importance of qualified staff to quality, the answer to the question ‘*Should all staff members hold a qualification?*’ must be a resounding ‘Yes’.

It is the AEU’s view that all staff must, as a minimum, hold a Certificate III in Children’s Services. However the introduction of a requirement for all staff to hold as a minimum a Certificate III, should not result in a diminution of the requirement for those in current ‘qualified staff’ positions. The current provision to *R25 Qualified Staff Member* should not be reduced to reflect the training base required for all staff. Staff holding a Certificate III should not be eligible to be counted in the qualified staff:child ratio. Some staff, according to ratios to be established (see later section) should hold higher level qualifications.

It is imperative that in introducing these improved requirements that a transitional period is provided to enable staff to access and complete the training. Critical to their capacity to do this is the availability of sufficient Certificate III courses geographically accessible to staff, and the time and resources (such as time release, relief staff and assistance with course costs) to support their participation. A failure to provide these necessary supports, combined with a requirement for the qualification to be held in order to be employed in a children’s service, will result in termination of the employment of staff. This is of course an undesirable outcome for the individual(s) but also for the sector – the loss of the skill and experience these staff members bring to programs and yet another negative issue for attraction and retention. Recognition of prior learning should be considered in the introduction of the new requirements however the integrity of the training qualification must be ensured.

## **Should qualified staff positions hold a diploma or degree?**

The AEU strongly supports introduction of a requirement that four year degree qualified early childhood teachers be employed in every ECEC centre in leadership roles and where settings are accredited to provide early childhood education. The AEU is very supportive of a model of co-operative and collaborative service provision where early childhood teachers work with and participate fully in a team of professional staff within services for children. We support the notion of a “crucible of knowledge” where expert contributions from each of the various disciplines are melded into a holistic approach to meeting children’s needs. This initiative accords with current research regarding qualified staff as a measure of quality service provision.

The Effective Provision of Preschool Education (EPPE) study found that nothing matters more to the quality of the early childhood education and care services than the skills and talents of early childhood professionals. Further it found that highly trained teachers in early childhood education and care settings have the most significant impact on service quality and deliver better outcomes in pre-reading and social development. The findings of the Longitudinal Study of Australian Children (2004 Annual Report) reinforce the importance of the involvement of qualified teachers in the outcomes for young children. Figure 9 (page 19) of the Report shows the difference in the mean learning domain score from the outcome index by attendance at preschool/daycare (4-5 year old children). The Report indicated that “Figure 9 shows that attendance in care with an educational focus is associated with higher learning scores compared to day care without such a program”.

All workers in early childhood education and care should be appropriately qualified for the roles and tasks that are performed in the settings in which early childhood education and care is provided. In addition there should be articulated and accredited pathways for early childhood education workers to seek further relevant qualifications, including to teacher status.

Staffing issues sit in a bigger picture (ref page 3 and 4 of this submission).The AEU recognises that there is a chronic shortage of qualified staff in the early childhood education and care sector and that the proposals for the increase of qualifications requirements as articulated above will place greater pressure on supply.

Resolution of the current under-supply of early childhood teachers and qualified child care staff will require a range of initiatives, some of which are referred to in the Victorian Government’s paper NATIONAL REFORM AGENDA – Victoria’s Plan to Improve Outcomes in Early Childhood (April 2007). However there is more the government can do.

In the immediate there will be need for time release for staff and access to replacement staff to enable their attendance at courses to obtain or up-grade their qualifications. Additionally there will be need to mitigate the cost to staff of HECS and TAFE fees. There will also need to be a balance to avoid service closure and increased costs to parents which will lead to reduction in access to services for some families. Nevertheless, it is critical that steps are taken to incrementally improve the minima.

The Victorian government’s funding policies and mechanisms such as price indexation act as counter-agents to providing appropriate salaries and conditions to early childhood

staff. The budgetary pressure in services leads to increased costs to parents which in turn mean many families cannot afford to access programs for their children. The policy of ignoring the realities that the federal industrial relations legislation brings through AWAs, particularly in the private for profit sector, is short-sighted. The Victorian government must require that, as a condition of funding, workers receive the relevant industrial benchmark salaries and conditions. To do otherwise, exacerbates the staff attraction and retention problem.

Also important is that erroneous assumptions or conclusions be corrected as a failure to do so leaves important issues unaddressed. Page 52 of the discussion paper argues that it is qualifications which create barriers to the development of career pathways, mitigate against the concept of mobile children's services staff and do not assist in developing a more integrated early childhood education and care system. It is not qualifications which are the issue, but rather industrial conditions which provide the barrier.

Endeavours to attract and retain highly qualified staff into a variety of service types and locations will fail whilst terms and conditions are lower in some services than others. It is unrealistic to expect that highly qualified staff will choose to work in service types which fail to provide terms and conditions which are the benchmark in other service types. All staff should be provided with terms and conditions (industrial entitlements) which support and facilitate their work. These industrial provisions are linked 'hand in glove' with issues of quality. For example, provision of adequate non-contact time for the planning and preparation of the educational or recreational program facilitates the quality of the program for the children. Paid time without responsibility for undertaking other tasks is necessary to support this. A further example is the provision of adequate leave entitlements. These impacts on the well-being of staff and their capacity to interact with children in a manner recognised by research as conducive to the well-being and development of young children.

There is an absolute need for the Victorian government, and indeed all governments across Australia, to raise the status and recognition of teachers and child care workers employed to educate and care for young children. This is essential as part of the attraction and retention strategy.

One avenue which provides acknowledgment of the professional status of early childhood teachers is the establishment of a system of teacher registration for early childhood teachers and professional accreditation for qualified childcare workers. This may also extend in some form to unqualified staff by way of, for example, certification.

The AEU has advocated for the inclusion of Victorian early childhood teachers within the Victorian Institute of Teachers (the current arrangement of exclusion appears to be on the basis of portfolio boundaries rather than on the basis of membership of the teaching profession).

The registration of early childhood teachers under any alternate arrangement is duplicative, wasteful of resources and imposes additional costs to those teachers who work across educational sectors. Additionally, the potential for disparity in registration standards and processes would further exacerbate the perception of professional difference. This does not fit with raising professional status and recognition in the early childhood education sector.

It is the AEU's position that in addition to provisions established in the Act/Regulations, agreed mechanisms which ensure proper registration and accreditation procedures must be adopted for all early childhood education teachers and education workers.

Additionally it is critical that the training undertaken by staff, whether provided by tertiary, TAFE or private RTO, must ensure quality and equivalence of qualifications. We note in the discussion paper a reference on page 51 to NSW provisions which provide for a degree in early childhood education "or a similar approved early childhood certificate". It is the AEU's position that equivalence of qualification is the criteria rather than the less rigorous criteria of similarity. In the haste to improve supply, the integrity of qualifications and therefore the value of investing in them, will be lost if entry criteria and course content are not sound and rigorous.

The wages impost of these improvements is acknowledged and in order that parent fees are not impacted, increased government funding will be necessary.

#### Child:staff ratios

There is a significant body of research which shows the importance of group size and staff:children ratios to the positive outcomes of early childhood education and care services. These elements are regarded by most studies as essential in determining the quality of programs for children. High quality staff:child interaction is described in literature and research as needing to be frequent, with the characteristics of warmth, trust, respect and responsiveness. It includes verbal interaction and positive physical gestures such as laughing and smiling. Further characteristics include:

- Staff providing good language models
- Encouraging children to express feelings and ideas
- Staff use positive guidance techniques which help children behave constructively
- Staff use information-seeking questions
- Staff give children some control over the conduct and content of the conversation
- Interactions are sometimes informal

Ideally the regulations should provide for ratios for 3 and 4 year children as follows:

Children 3 years - 1 staff to 8 children or part thereof

Children 4 years – 1 staff to 10 children or part thereof

However, given the contexts as described on pages 3 and 4 of this submission, the AEU recognises that these may not be achieved in the immediate. Therefore in the short to medium term the following ratios, for children 3 and 4 years of age, would represent an improvement to those which currently exist:

Children 3 years – 1 :10 or part thereof;

Children 4 years – 1:11 or part thereof.

Notwithstanding this acknowledgement of contextual hindrances, every endeavour should be made to work over time to achieve optimum ratios.

It is generally accepted that the younger the child the higher the ratio needs to be. In relation to children under 3 years of age, the AEU endorses the following ratios:

Children under 2 years 1:3 or part thereof

Children 2-3 years 1:5 or part thereof

Staff-child ratios must be adjusted in special settings and/or where children with special needs are included, to ensure that children's special educational needs are met.

### **Qualified staff:child ratios**

Ideally the qualified staff:child ratios should be:

Children 3 years – 1:15 or part thereof;

Children 4 years – 1:20 or part thereof.

In the short to medium term, given the contextual hindrances referred to at pages 3 and 4 of this submission, the AEU would support the following ratios as a step toward achieving optimum ratios:

Children 3 years – 1:20 or part thereof;

Children 4 years – 1:22 or part thereof.

As stated previously, the AEU is very supportive of a model of co-operative and collaborative service provision where early childhood teachers work with and participate fully in a team of professional staff within services for children where expert contributions from each of the various disciplines are melded into an holistic approach to meeting children's needs. Within this scenario the AEU believes that qualified staff ratios must, where educational programs are provided, require the program be developed and implemented by an early childhood teacher.

For children under 3 years of age, the AEU supports a qualified staff:child ratio of:

Children 0 - 2 years - 1:9 or part thereof

Children 2 - 3 years – 1: 15 or part thereof.

### **Ratios for mixed age groups**

The AEU's view on this matter is set in the context of our submission in relation to staff:child ratios, qualified:staff child ratios and group sizes as articulated above. Our position acknowledges the research base which emphasises the critical nature of these elements to quality outcomes for children.

Where mixed age groups occur it would appear obvious to the AEU that the developmental spread of children will be greater. Accordingly a program developed to meet the developmental needs, interests and experiences of individual children will, by necessity, be more complex and demanding.

It is the AEU's view therefore that the staff:child ratios and the qualified staff:child ratios, in addition to group sizes, should be better than those established for straight-aged groups. This will facilitate the type of inter-actions identified by research, and referred to in this submission at page 19, which are important to positive outcomes in early childhood education and care services.

### **Minimum number of staff at any time**

The AEU believes that the minimum number of staff required under *R23 Minimum staff requirements* of the Children's Services Act 1996, and for OSHC under the National Standards, must be preserved. This is essential for staff and child safety and to emergency situations.

R23 however refers to staff being “on duty” and the Department of Human Service’s interpretation of “on duty”, as provided in the Operational Guide, allows that a staff member who is undertaking administrative or planning responsibilities can be counted as ‘on duty’. The AEU opposes this interpretation and believes the regulations should provide for the minimum number of staff to be with the children rather than ‘under the roof line’.

### **Coverage of qualified staff members’ lunch breaks**

Whilst the AEU understands the motivation for the Ministerial determination of 1999 which allowed services to include qualified staff on their lunch breaks in the staff:child ratio requirements provided the qualified staff member remained ‘on duty’. However, this provision is being utilised in some preschool services as a mechanism to operate longer child attendance programs on the same staffing levels (2 staff). Early childhood teachers are utilising their paid break, which forms part of their 40% non-teaching time, to undertake this responsibility. As Primary Nominees they are responsible for what occurs in the absence of the licensee. They are therefore responsible for the actions of the other staff whilst the program continues in their absence. Teachers are understandably reluctant to put their professional careers in the hands of others and therefore to divorce themselves from what is happening in the playroom/yard whilst they undertake non-contact or management support duties elsewhere in the centre. Consequently they are forfeiting much of their non-teaching entitlement to continue keeping an eye out for what is happening in the program. They are effectively continuing to work with or be accessible to children and staff throughout this period. This results in the work that would rightly be undertaken in this paid time period being completed in their own (unpaid) time.

The AEU acknowledges the ongoing programmatic problem of obtaining additional qualified staff to cover lunch breaks in stand-alone services and the difficulties this presents in resolving the conflict outlined above. Despite these acknowledged difficulties, mechanisms must be adopted to deal with the matter. The AEU believes that a change to the definition of Proprietor (as canvassed at pages 14 and 15 of this submission); improvements in the staff:child and qualified staff:child ratios, coupled with the introduction of the requirement for all staff to hold minimum training qualifications may alleviate the unacceptable demands being placed on teachers (qualified staff). Additionally there should be provided the opportunity to review the impact of these changes on this matter.

### Group size

Research informs us of the importance of group size in enabling good quality education and care to occur. It also informs us of the importance of an environment that is safe, stimulating, and responsive to children and encourages them to be active learners and explorers with adequate space (indoors and outdoors) to do so. The number of children in a group directly impacts upon the capacity of those children to engage in their learning and development in this manner.

Group sizes ought to be limited to levels which are educationally appropriate. Whilst in ideal circumstances the AEU would advocate for a maximum group size of 15 for 3 year olds and 20 for 4 year olds, we have acknowledged that given the contexts of this review referred to above, in the short to medium term staged provisions may be necessary.

The Victorian Government has recognised the importance of group/class size and implemented policy in primary schools of reducing class size in the early years. Whilst the group sizes in preschools remain high at an estimated average of 28 children, the Government fails to fully reap the benefits of their strategy for Prep to Year 2 at school. The AEU believes that whilst working toward the optimum, group sizes for children aged 4 to 5 should be in line with those embodied in the government's strategy for Prep to Year 2 at school. On this basis we suggest a maximum of 20 for 3 year olds and 22 for children aged four.

Group sizes (in addition to staff-child ratios) must be adjusted in special settings and/or where children with special needs are included, to ensure that children's special educational needs are met.

Currently the provisions of *R42(2) Children's rooms* is being utilised to set group sizes. It is the AEU's position that we should not rely on room size to establish group size limits.

### **Staff:child ratios and group sizes for excursions/incursions**

The staff:child ratios for incursions and excursions should be addressed in the regulations. Rather than prescribe staff:child ratios and group sizes, the regulation should articulate principles upon which these should be determined by the service in light of the specific incursion or excursion planned. This should intersect with *S27 Adequate Supervision* and *S26 Protection of children from hazards* and should be cognisant of the:

- the age/age mix of the children involved in the incursion/excursion;
- degree of risk (e.g. involving water);
- the environment in which the activity will take place (e.g. designed for children or not);
- the nature of engagement of the children in the activity (e.g. active or passive);  
etc.

As a minimum the regulation should recognise that the change in program and routine in combination with the involvement of external parties (performers, farmers, bus drivers) in the delivery of the program warrants a higher than normal adult:child ratio apply. Where this is achieved by the utilisation of volunteers (under supervision of qualified staff), it must require that the program plan allocate specific responsibilities to those volunteers.

## **G. PROGRAMMING**

The Children's Services Centre Regulations 1998 currently require that the program offered in a centre be based on the developmental needs, interests and experiences of each child attending the service and be sensitive to their individual differences and that each child receiving an educational or recreational program can access the furniture, materials and equipment suitable to that program.

The requirements for OSHC are:

Programs should encompass activities which would be expected to be part of the life of school age children outside school hours. Programs should have regard for each child's social, physical, emotional, recreational, intellectual and creative development. They should take into account the fact that some children may spend substantial amounts of time in before and/or after school care services and in vacation care services over a period of up to seven years. Plans should reflect the cultural diversity of the community and incorporate the views of parents/guardians/approved person and the OSHC children. The OSHC children should be involved in this planning process to ensure that their needs are met.

The requirements for FDC are:

Programs should provide appropriate and flexible experiences based on children's needs and individual abilities. The program should offer opportunities for children to learn and develop their skills requires creativity, enthusiasm and access to suitable materials and equipment and should be culturally appropriate, culturally diverse and provide for a variety of experiences that appeal to individual interests.

The AEU applauds the emphasis in the paper on quality assurance systems and mechanisms and would welcome further discussion regarding details of these initiatives. In particular, we have advocated strongly for the introduction of an early childhood curriculum framework in Victoria and were actively involved in 2002, together with representatives of universities, TAFE institutes, employer organisations, early childhood sector stakeholder groups and some academics and practitioners, in the development of a statement of principles which should now underpin such a framework. These principles were endorsed overwhelmingly by early childhood practitioners and form a solid base for future work in Victoria.

Curriculum frameworks and programs must be child focused and reflect the centrality of play in children's learning.

The AEU believes that early childhood education curriculum should be based on a developmentally appropriate model that responds to:

- knowledge about how children learn;
- knowledge of the individual differences of children;
- the need to provide continuity of learning experiences across, between and within all settings of early childhood education and care.

Developmentally appropriate early childhood curriculum should display the following characteristics:

- attention to how young children learn through teaching strategies which include

observing, modelling, facilitating, supporting and challenging them as learners;

- progression from early to middle childhood;
- a view of learning as an integrated active and interactive process in which the learner constructs his or her own understanding;
- a valuing of the gender, experiences, language and cultures of all children;
- recognition that learning takes place in a context where social, cultural and gender related factors have an influence.

Any regulatory statement in relation to the educational or recreational program should acknowledge that the environment includes both indoor and outdoor areas and that program planning should encompass both these areas. This is particularly important given factors such as, but not limited to:

- developmental levels of children and their different learning styles;
- childhood obesity;
- the 'McMansion' approach to new housing developments where houses dominate the block leaving little outdoor space for children to play;
- parental concerns about the safety of their children resulting in limits on children's engagement with community based outdoor spaces (parks etc) and the equipment included at these locations; etc.

Out of School Hours Care programs must provide multiple activities that address the needs of school age children. They should not to be seen as an extension of the classroom but rather have a focus on games, creativity, touching, sharing etc. and should incorporate elements of outdoor play.

### **Time for program development and support**

Taking observations of children, recording them in a usable and appropriate form, analysing and evaluating them and utilising them in developing plans for individual children and the group as a whole takes time. It is also not a task that can be undertaken whilst undertaking other responsibilities. To think this or to rely on this happening undervalues the knowledge, skill and expertise required to complete this responsibility.

The same applies to the tasks of preparing materials and equipment and to preparing the learning environment to ensure it is safe, stimulating and response to children and encourages them to be active learners and explorers.

The AEU believes the regulations, in order to support quality outcomes for children, should include recognition of this principle in ensuring the provision of time for staff responsible for planning and preparation to undertake these responsibilities in paid time when they are not at the same time required to undertake other responsibilities. Any provision of this nature within the regulations must be regarded as a minimum.

## H. FACILITIES

The AEU believes that certain provisions that pertain to building requirements of children's services centres should be retained within the regulations. It is recognised that the physical environment affects the behaviour and development of both children and the adults who work in it.

The Building Code of Australia (BCA) is lengthy, complex and written and constructed in a style commonly utilised by architects, engineers, builders and such. Their purpose is to assist those responsible for the design and construction of buildings to a specified standard.

The purpose of the inclusion of these provisions in the Regulations is a focus on the health, safety and well-being of children. Regulations pertaining to matters such as indoor and outdoor space requirements, administration rooms, fencing, toilets and nappy changing facilities should be included.

The inclusion of these provisions in the regulations makes them much more readily accessible to Proprietors/service managers.

### Nappy changing facilities

*Regulation 48 Facilities for nappy changing* addresses the requirements for children under 3 years of age. As recognised in the discussion paper, it provides no recognition that there are some children over 3 years of age who are not toilet trained.

This needs to be addressed however with appropriate recognition given to the complex relationship between meeting the need of children for privacy and the capacity for the staff to maintain adequate supervision. Attention must also be paid to the legal obligation of an employer (often the Proprietor), under the provisions of the Occupational Health and Safety Act, to ensure the health and safety of staff (e.g. manual handling/lifting children, infection control etc.)

### Administration room

Spaces within children's services are either child contact spaces, the kitchen, bathroom, toilet or the administration space. The AEU rejects the notion of an administration 'space'. This would not be conducive to staff having a space away from children in which to undertake their non-contact duties. It is our view that it would not be possible to plan, have confidential conversations with parents and/or other professionals, or to have respite from engagement with children etc. under such an arrangement.

### Children's rooms

We note at page 69 of the discussion paper the difference between the requirements of the Children's Services Centre Regulations 1998 with those of the National Standards for OSHC for children's rooms. The AEU concurs with the view that the requirements for OSHC should be improved to align with those currently required by the Regulations.

### Outdoor environment

The AEU would welcome provisions in relation to requiring natural qualities to be present in outdoor spaces. This is particularly important in light of the 'rubberisation' of play spaces in many of the corporate child care services. Similarly we would support requirements for the consideration of water conservation in the development and maintenance of outdoor environments. The AEU however recognises that Government would need to provide financial support to services to assist them address the water conservation agenda.

The AEU believes the outdoor space requirements for any service type should not be reduced.

Ideally the play space provisions as provided in the current regulations (7 square metres) should be increased to 15 square metres per child however the AEU recognises that in existing services which may be land locked (particularly in inner city suburbs) this may not be possible.

### Sleeping facilities

The AEU would support the option canvassed on page 69 of the discussion paper which would require a proprietor to ensure each child needing to sleep, or rest, has appropriate facilities to meet this need in a safe and developmentally appropriate manner.

## I. HEALTH & SAFETY

### Food

The discussion paper raises the question as to whether the regulations should require food to be 'nutritious'. The AEU concurs with the view that the current wording of part (2) of *R52 Requirements for food preparation* in effect has this requirement. However it is our view that a significant issue associated with the provision of food has not been addressed - food allergies.

Victoria's Plan to Improve Outcomes in Early Childhood (March 2007) acknowledges that "allergies are widespread in our community, affecting many children." The research quoted indicates that "food allergies are the most common cause of anaphylaxis". The Plan goes on to explain the Government's intention to legislate for minimum standards, required policies and compulsory training about the prevention and treatment of anaphylactic shock. It would appear to the AEU that an appropriate parallel strategy would be to amend the Children's Services Regulations to provide for the consideration of food allergies when providing food to children attending the service.

For what appears to be an increasing number of children, food allergies are an issue. It is imperative that the regulations overtly recognise the intersection of *R52 Requirements for food preparation* with *S26 Protection of Children from Hazards* and *R52(2)*.

### Medication

*R36 Authorisation to administer medication* is written in a manner which assumes that the only medication expected to be administered by staff is orally. It fails to recognise that children with complex medical needs attend children's services and that expectations are placed on staff to manage their medications/procedures (e.g. the giving of injections not only via EpiPen). Regulations should provide that where suitably qualified support staff are not available, a staff member required to undertake complex medical procedures shall be provided with training by a suitably qualified medical practitioner. It should be a responsibility of the Proprietor to ensure such training is provided and the training should occur in paid time.

### First Aid and emergency care

*R26 Staff to have first aid training* requires the employer to ensure that "at least one member of staff on duty "has first aid training. The consequence of this is that not all staff have first aid training and therefore when that staff member is absent there is the potential for added complexity in trying to replace them. It is the AEU's view that all staff should be required to have first aid training

The discussion paper raises the issue of currency of first aid training and asserts that in practice "services ensure their staff maintain currency by undertaking the appropriate first aid course every three years and updating the cardio-pulmonary resuscitation training every year." For the AEU the question of currency is not only one about whether it is reliance on practice rather than regulation. It is also an issue of who pays for the training and in whose time it is conducted. In light of the issue of attraction and retention referred to elsewhere in this submission, it is the AEU's view that the expectation and practice in many services that the staff will undertake this at their own cost and/or in their

own time is yet another disincentive to enter or remain working in the sector and is a contribution to an already onerous workload.

#### Out of School Hours Care

The manner of delivering/collecting children from OSHC depends upon the age of the children. In the case of children attending OSHC within their primary school, some are collected (e.g. Preps) whilst others make their way to the OSHC service. Children attending from nearby schools make their own way, or are delivered to the service. On this basis, it would be appropriate that in the absence of a parent, the staff members sign the children in and the service's responsibility for the child/ren commences at this point.

Parents/guardians will determine whether their child/ren require collection from OSHC or are sufficiently independent to take themselves home. Under the National Standards for Out of School Hours Care, where a parent/guardian determines this, their express written consent is required. In this case it is appropriate for the staff members to sign children out of the service. The service's responsibility for the child/ren would cease at this point.

## **J. INFORMATION COLLECTION: RECORDS & NOTIFICATIONS**

The Department of Human Services Practice Note *How Long to Keep Records* establishes the requirement for keeping some records for one of two years and the potential for others for up to 25 years. This presents services with the practical dilemma of storing this quantity of data. There is also the issue of the safety of the data in hard copy form as experience tells us that services can be victims of fire and flood and also of over-zealous administrative procedures. For stand-alone services, storage of records off-site is problematic. It would be far preferable for records to be stored electronically. This of course presents a workload issue unless the on-going keeping of records can be maintained in an electronic form. Regulations should allow for this to occur.

Records which would be required in a hard copy in an emergency (such as the attendance register) could, at the discretion of the service, be printed at the time attendance was taken each day or maintained in hard copy format.

### Out of School Hours Care

Schools offering OSHC already maintain comprehensive records as a result of the National Standards for Out of School Hours Care. Many of the records required to be kept by children's services under the current regulations are required to be kept for OSHC. Similarly there are the same or similar requirements for the retention of records. On this basis the extension of the regulatory requirements to OSHC services should not result in duplication of effort.

## **K. INFORMATION RELEASE: SHARING INFORMATION WITH PARENTS AND OTHER GOVERNMENTS**

*Regulation 21 Access to the Service* provides that any parent or guardian of a child being cared for or educated by a service can enter the service at any time during the hours of operation and exchange information about the child with a staff member. This Regulation should be redrafted in order to provide a balance between:

- the rights of the service staff to safety
- the legal obligation of an employer (often the Proprietor), under the provisions of the Occupational Health and Safety Act, to ensure the health and safety of staff
- parental access to their child.

Regrettably there has been an increasing incidence of staff being threatened, intimidated and harassed by parents.

Proprietors/managers of services must be clear about how their responsibility to service providers and service users interface, and must be provided with avenues for curtailing inappropriate behaviour of service users.

The discussion paper canvasses issues about the sharing of information with parents and with various levels of government. The purpose of such sharing with governments is “to ensure that children’s health, safety, well-being and developmental needs are met irrespective of the level of government providing a service.”

The AEU believes that there are times when, with the same purpose, information needs to be shared between professionals. (e.g. preschool teacher and Prep teacher). The current division of services across government departments works against this. The AEU acknowledges the tenets of the privacy legislation which require parental consent for information to be provided. However the AEU believes that there needs to be a systemic collection and dissemination of data and information which enables professional staff engaged in supporting children and their families to work on the same platform of information.

### Out of School Hours Care

Compliance with the requirements for access to information should not lead to additional costs to schools providing OSHC services. Additional government funding may be needed on a case by case basis to facilitate compliance with any new and additional requirements.

#### **L. RELATIONSHIP BETWEEN THE CRIMINAL HISTORY CHECK AND THE WORKING WITH CHILDREN CHECK**

The AEU agrees with the option proposed at page 96 of the discussion paper – that a criminal history check under *R27 Criminal History Checks* be required only where such a person does not have a current Working With Children Check. Further however, the AEU believes that the licensee and staff members whose job description involves financial management (at the accountability level) should also be required to undertake both a Criminal History Check and the Working With Children Check.

*R27 Criminal History Check* provides for either the Licensee or the Primary Nominee to read the criminal history check prior to the commencement of a person within a service. In practice there are occasions when the Licensee is not present and the Primary Nominee is absent (e.g. sick leave) and pressure is placed on the Nominee to fulfil this role. The AEU does not support the formalisation of this on the grounds of confidentiality. However we understand that with the introduction of the Working With Children Check, presentation of a WWC Check card will be required prior to commencing work in a service. With the consideration of confidential information occurring prior to the issuing of the WWC Check card, we believe this will substantially address this concern. However this issue should be noted and taken into account where there remains a requirement for some staff (as indicated above) to undergo a criminal history check in addition to the WWC Check.