

# CHILDREN'S SERVICES REGULATIONS 2009 REGULATORY IMPACT STATEMENT

An AEU submission

AEU Victorian Branch

Submission paper

March 2009





## **Australian Education Union**

### **Submission in response to the Children's Services Regulations 2009 Regulatory Impact Statement**

**March 2009**

#### **A. PREAMBLE**

The AEU represents approximately 38,000 members across the early childhood, primary, secondary and TAFE education sectors. In the early childhood sector the AEU has coverage of teachers and early childhood education assistants who work under a variety of employment structures including parent committees of management, local governments and cluster managers. Our members work in stand alone preschools, long day care, integrated services and early intervention services.

Our submission focuses on the key issues from the AEU's perspective rather than respond specifically to the questions as contained within the feedback form.

In our submission to the Review of the Children's Services Act 1996 and Children's Services Regulations 1998 we stated

*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.*

In this context we welcome a number of the proposed amendments to the Children's Services Regulations.

## **B. STAFFING**

### **Staff qualifications**

The AEU supports the proposed changes to the qualifications requirements. In the interests of delivering quality programs, it acknowledges the importance of staff training and qualifications as being a key contributor to good outcomes for children.

### **Teaching staff member**

We particularly welcome the introduction of the requirement that at least one person with a degree in early childhood education is to be employed by each children's service operating a standard licence, or an integrated service that includes a standard service component.

However, the definition of "*teaching staff member*" presents a potential concern when it refers to someone who "*holds a qualification the Secretary has approved as **substantially equivalent** or superior to a qualification referred to in paragraph (a) and for which the Secretary has published a notice under subregulation (2)(c).*"

What is meant by "substantially equivalent"?

The Regulatory Impact Statement makes a clear argument about the importance of having an early childhood qualified teacher in every standard service, as cited by a strong body of evidence. We would want to ensure that the integrity of the decision to introduce early childhood qualified teachers is not undermined in the context of a teacher shortage.

### **Minimum qualification**

In our submission to the review of the Act and Regulations we expressed our support for the introduction of the minimum standard of a Certificate III in Children's Services.

However in doing so we have argued that it is imperative that a transitional period is provided to enable staff to access and complete the training. We also argued that recognition of prior learning should be considered in the introduction of the new requirements however the integrity of the training qualification must be ensured.

In this context we welcome the introduction of the minimum qualification requirement and acknowledge the provision of transitional arrangements.

The transitional provisions provide that the proposed regulatory change would not apply until 1 January 2014 for any licensed service operating immediately before 25 May 2009 and that the minimum requirements will be satisfied for any

staff member who prior to the commencement of these regulations was employed full-time for a period of 5 years or part-time for a period of 10 years at a children's service operating under the 1998 regulations.

However a number of questions remain.

Firstly, what does full-time mean? Whilst the *Educational Services – Early Childhood Assistants – Victoria Award 1999* provides for a 38 hour week, the vast majority of early childhood education assistants are employed on a part-time basis (26 hours per week) as it is often not possible to work in a full-time capacity in a stand-alone kindergarten. In essence custom and practice has made 26 hours per week 'full-time' for these employees. What number of hours will be deemed to be part-time and full-time?

Secondly, it is also unclear whether the requirement for 5 years working full-time and 10 years working part-time refers to consecutive or accumulated years of experience. It would be a common experience of many early childhood education assistants to have taken some time out of the workforce to raise their families, thus creating a break in service. We would want to ensure that these staff members are not disadvantaged, providing they meet the requirement of having completed either 5 years full-time or 10 years part-time across their time spent working in children's services. For the purpose of greater clarity, it would be helpful to draw the distinctions around hours classified as part-time and the issue of years of experience.

Further, as indicated above, we raised the issue of the integrity of the qualification in relation to recognition of prior learning. There has been some suggestion that in this context there could be a requirement for those staff grandfathered from the Certificate III provisions to undertake a unit in child development, for example. As is the case with the Certificate III, critical to their capacity to do this is the availability of sufficient 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 unit to be completed 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.

### **Minimum staff requirements**

We note the retention of the requirement for a minimum of 2 staff to be on duty whenever children are being cared for or educated by the children's service. We welcome the preservation of this however we maintain our concern that Departmental 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 maintains our opposition to

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'.

### **Staff records – matters to be recorded in staff record**

As is the case in the current regulations, the proposed regulation in relation to *Matters to be recorded in staff records* does not mention recording a contact phone number. A contact phone number is essential in a range of circumstances, particularly if a relief staff member is required and another staff member could be contacted to fill this position.

We would submit that this should be included in the regulation.

### **Staff members to have first aid training**

The AEU supports the proposal for all staff to have first aid training, in the interests of ensuring child safety and wellbeing. However the transitional arrangements are open, with no defined timeline for all staff to have this training. It is simply required that until all staff are trained, the proprietor must ensure that at least one staff member on duty whenever children are being cared for have this training. What is a reasonable amount of time expected for all staff to be trained and at what point will services be deemed uncompliant if they don't meet this regulation? The issue of compliance could be open to interpretation.

*NB: It was stated at one of the consultation forums that this regulation would be required by 2012. Yet, this is not evidenced in the draft regulations or associated papers.*

We would also argue that funded training be provided to support the introduction of this requirement.

### **Health of staff members and family day carers**

This proposed regulation requires the proprietor to ensure a staff member's health does not adversely affect the staff member's ability to care for or educate children at the children's service. Whilst the intent of the proposed regulation is understood as a measure to ensure the health and safety of all who attend the service, the following issues are raised in relation to the practicality of such a requirement and its interface with provisions of natural justice for staff.

What is defined as "adversely affected"? What expertise does a proprietor have to make judgments about a staff member's health? What avenues would they need to follow before they could take action? Does this give them the authority to send someone for a doctor's check up, if so to who's doctor and at whose cost? Would the staff member be required to produce a certificate from a doctor indicating they are not impacting adversely on their work? Would the proprietor have the capacity to stand down staff whilst they determine the matter? What impact could these decisions have on the employee's rights?

To provide a real-life example, what would occur in the case of a staff member presenting to work with a bad cold and laryngitis? Whilst it is argued that they could still carry on with their work to a certain degree, at what point are they adversely affected? Is the loss of voice regarded as an adverse impact? Is the issue of potential cross-contamination regarded as an adverse impact? If this state of health is deemed to have an adverse impact, how will the proprietor handle the situation, particularly in light of workforce reality - with a shortage of relief staff in early childhood (particularly qualified staff) staff often continue to attend work when unwell or injured.

### **Minimum age of staff member**

The AEU supports the increase to the minimum age of a staff member from 15 years to 18 years of age. We support a transitional timeframe which ensures that existing employees are not disadvantaged i.e. allows them to attain the age of 18 by the end of the transitional period.

### **Child:staff ratios**

The AEU welcomes the improvement to the child:staff ratios for children under the age of 3 years. Whilst not providing ratios sought by many in the early childhood sector, we recognise this as a beginning to the ongoing improvement of regulations to support quality provision for children and families. We understand the rationale for not addressing the child:staff ratios for children over 3 years and look forward to improvements in ratios arising out of the COAG agenda.

## **C. OTHER**

### **Food and beverage requirements**

The requirement for food and beverages to be offered to children at frequent and regular intervals raises the question, what is defined as frequent and regular?

In sessional kindergartens where a set snack/meal time is offered, will this meet the requirement or will staff be expected to offer a more flexible snack/meal time where children can choose when they eat and drink? As with other elements of the program, staff make professional judgments about what is appropriate for their children and families, in line with philosophies of practice and objectives for children. We would want to ensure that professionals can continue to make these professional judgments in relation to food and beverage requirements.

It is also mentioned in the RIS feedback form (p.13) that "*if a child attends a service with insufficient food, the service or family day carer would be required to supply food to that child.*" This is not an overt provision in the draft regulations and raises numerous practical issues including:

- Will services need to ensure that a supply of nutritious food is always available for children who present with insufficient food?

- Who determines what is insufficient?
- It is possible that a parent could feel undermined if a child with “insufficient” food is given additional food at the service?
- Who is responsible for the purchase of this additional food?
- How will the cost be borne?

It is certainly possible that this could create tensions for staff, employers and families.

### **Outdoor space**

The AEU welcomes the introduction of the requirement for outdoor spaces to include features that enable children to explore and experience the natural environment.

### **Administration room**

The AEU rejects the notion of an administration ‘space’ as proposed by draft regulation 99. 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.

### **Nappy changing facilities**

In our submission to the review of the Act and Regulations the AEU supported the need for the regulations to address the fact that there are some children over 3 years of age who are not toilet trained.

However we also identified the need for it to be done 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. We argued that 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.)

These issues remain unaddressed by the proposed amendment and by the introduction of the legislative requirement for provisions for children over 3 may bring them to the fore in the sector.

### **Immunisation**

Whilst supporting the intent of the draft regulation 88 requiring proprietors to ensure that children who are not immunised do not attend the service when there is an occurrence of an infectious disease for which there is an immunisation available, we question what mechanisms will be available to staff to enforce non-attendance should a parent of such a child present at the service demanding

their child attend. Whilst most parents in this circumstance would accept the exclusion with the understanding that it was intended to prevent their child from being infected, some parents who have chosen not to immunize their children have the view that their children should be exposed to the illnesses and will fight them naturally.

The requirement to **ensure** non-attendance cannot require a staff member to put their health/safety at risk to enforce the regulation.

### **Removal of child by a staff member or carer**

Draft Regulation 72(3)(b) refers to routine outings however there is no definition of 'routine outing'. Instead there is reliance on the examples. The examples tend to suggest that it is an outing to a location or type of location the child will attend on more than one occasion. This should be clarified.



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