



Small
Business
Commissioner

Submission to the National Quality Framework Review

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Table of Contents

Further information and contacts	1
List of recommendations	2
Introduction	3
Alignment of NSW standards to the NQF standards	4
Higher staff costs	4
Shortages of qualified staff and resulting increased administrative burden	5
Produce measurable evidence for additional requirements.....	6
Streamline administration and regulatory processes	7
Excessive administration and compliance requirements	7

Further information and contacts

We welcome the opportunity to meet and further discuss the ideas outlined in this submission.

For further Information or clarification on issues, please contact:

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List of recommendations

Recommendation 1 – Facilitate alignment of state standards with the new NQF standard

NQF standards should be considered within the context of state-based requirements, including circumstances where there is the potential to align options with standards already in place.

Operators should be subject to national standards unless there is clear and compelling evidence supporting standards higher than those contained in the NQF. Where this is this case, it is the Commission's view that those standards ought to be adopted as part of the NQF to better align funding arrangements with the actual costs incurred by operators.

Recommendation 2 – Staffing requirements to consider skills shortages and needs

The NQF should consider the ability of the market to meet any new staffing or skills requirements imposed, including as part of any assessment of existing requirements. Variances in regional labour markets should be considered as part of this.

Recommendation 3 – CRIS to be a model of best practice to inform reform of state-based standards

Individual measures or standards should be justified based on their contribution to outcomes.

The CRIS should be developed in a manner that supports jurisdictions in considering the appropriateness of state-based standards. Analytical tools and assessment frameworks should be developed and made available to jurisdictions so they can develop suitable analysis and support for requirements that deviate from national standards.

The CRIS should provide a platform for policymakers to communicate to stakeholders that regulatory standards have been informed by best practice regulatory impact assessment.

Recommendation 4 – Streamline administrative and regulatory burdens for early learning education services

Active consideration should be given to reducing regulatory burden in a manner that does not compromise policy objectives, including consideration of alternative systems and reporting tools.

The Commonwealth, NSW State and Local Governments should collaborate to reduce administrative and regulatory burden small businesses face to operate compliantly. This should include a review of current policies, processes and technology to introduce streamlined interactions and creating regulatory reporting efficiencies for small businesses and the regulators.

Introduction

The NSW Small Business Commission (the Commission) provides strategic advice, advocacy and affordable dispute resolution services to small businesses in NSW. The Commission's role includes:

- encouraging government agencies and larger businesses to enter productive working relationships with small businesses
- facilitating and encouraging the fair treatment of small businesses
- promoting a fair operating environment in which small businesses can flourish.

This submission to the Education Council (Council) represents the perspectives of small businesses operating within the heavily-regulated early learning education sector in NSW. The sector has a diverse range of services operated by organisations with varying purposes and organisational structures. Small operators are by far the largest group with 65 per cent of NSW long day care and preschools run by small or medium businesses.

This submission is informed by the Commission's recent engagement with small businesses, industry representatives and regulators involved in early education.

Feedback through the Commission's consultations suggest that operators largely agree the National Quality Framework (NQF) has brought positive outcomes in both regulation and quality of service, albeit with some additional operational costs to their business. Nonetheless, the benefits brought about by the NQF need to be weighed against potential costs resulting from standards imposed.

While the Commission is unable to provide specific feedback on the detailed options set out in the Consultation Regulation Impact Statement (CRIS), we support evidence-based policymaking including a proper assessment of the costs and benefits of alternative options to meet policy objectives.

The Commission notes that in NSW there are state-based requirements that exceed the standards set out in the NQF. Higher requirements to operate in NSW contributes to cost pressures and these additional costs are not covered by Commonwealth funding which provides a standard rate of support across all jurisdictions. The adoption of higher standards beyond those set out in the NQF may also give rise to additional considerations relating to whether the costs and benefits of those higher standards have been properly assessed and stakeholder perceptions that, in some cases, they are not well-justified or explained.

Higher standards should only be adopted if there is sufficient confidence their benefits outweigh costs. If higher standards can be reasonably justified, it is appropriate for them to be adopted in the NQF with national funding arrangements adjusted to ensure service affordability and accessibility is maintained. Within this context, we encourage the NQF Review to consider:

- supporting NSW and other jurisdictions to align their standards with the new NQF standards
- recommending streamlined administration, operational and regulatory processes.

Alignment of NSW standards to the NQF standards

Stakeholder feedback to the Commission suggests operators in NSW face significant additional burden due to the imposition of standards above the NQF. These NSW-only costs have significant economic impacts as they restrict workforce participation, limiting both economic growth and productivity.

The Commission accepts that it may not be within the scope of the NQF review to consider the suitability of state-based requirements where they exceed the NQF and that this is ultimately a matter for individual jurisdictions. However, the Commission encourages consideration of NQF standards within the context of state-based requirements, including circumstances where there is the potential to align options with standards already in place.

It is the Commission's view that NSW operators should be subject to national standards unless there is clear and compelling evidence supporting standards higher than those contained in the NQF. Where this is this case, it is the Commission's view that those standards ought to be adopted as part of the NQF rather than unilaterally by the state to better align funding arrangements with the actual costs incurred by operators in NSW.

Additional costs resulting from NSW-specific requirements are not factored into Commonwealth funding arrangements. These costs are therefore, at least in part, ultimately borne by families through higher fees. The Commission acknowledges that higher standards reflect an aspiration to maximise the standard of care and education to high standards. However, a broader view may challenge the suitability of this approach when considering both affordability and accessibility objectives.

Key cost concerns in relation to NSW requirements are set out below.

Recommendation 1 – Facilitate alignment of state standards with the new NQF standard

NQF standards should be considered within the context of state-based requirements, including circumstances where there is the potential to align options with standards already in place.

NSW operators should be subject to national standards unless there is clear and compelling evidence supporting standards higher than those contained in the NQF. Where this is this case, it is the Commission's view that those standards ought to be adopted as part of the NQF to better align funding arrangements with the actual costs incurred by operators in NSW.

Higher staff costs

NSW operators are currently required to have significantly more teaching staff than the national standards. Anecdotal feedback to the Commission suggests staff costs now represent 60-70 per cent of expenses and are significantly higher per child than other jurisdictions.

The 2020 NSW Productivity Commission Green Paper¹ recognised this and included a draft recommendation to align NSW staffing requirements with the NQF. The table below, extracted from the Green Paper, illustrates how NSW requirements compare with national regulations:

Centre-based staff requirements for early childhood teachers compared²

Approved places	National regulations	NSW specific provisions
25-29	1 early childhood teacher for at least 6 hours per day if the service operates for 50 or more hours a week, OR for 60 percent of operating hours for less than 50 hours a week.	1 early childhood teacher in attendance for at least 6 hours per day if the service operates for 50 or more hours a week, OR for 60 percent of operating hours for less than 50 hours a week
30-39	1 early childhood teacher or other suitably qualified person for at least 3 hours per day if the service operates for 50 or more hours a week, OR for 30 percent of operating hours for less than 50 hours a week.	1 early childhood teacher in attendance at all times
40-59		2 early childhood teachers in attendance at all times
60-79	Services with 60 or more children preschool age or under in attendance must either have access to or attendance of either two early childhood teachers, or an early childhood teacher and a 'suitably qualified person'. The number of hours this second ECT or SQP is required to be in attendance at the service increases if there are 80 or more children preschool age of under in attendance.	3 early childhood teachers in attendance at all times
80+		4 early childhood teachers in attendance at all times

Shortages of qualified staff and resulting increased administrative burden

Staffing requirements also have the potential to exacerbate skills shortages.

Small businesses report significant difficulty finding suitably qualified staff to maintain compliance. Those in regional and remote communities indicate there are significant challenges recruiting early-learning teachers in their communities. Those in metropolitan areas find it difficult to keep staff when they can easily transition to other roles with better pay and less administrative overhead.

This undersupply is reflected in the number of waivers from additional NSW requirements granted by the NSW Department of Education, increasing from 206 in 2013 to 476 in 2019.³ While this

¹ NSW Productivity Green Paper (2021), page 125-6, Draft recommendation 4.18

https://www.productivity.nsw.gov.au/sites/default/files/2020-08/Productivity_Commission_Green%20Paper_FINAL.pdf

² NSW Treasury analysis and Education and Care Services National Regulations, NSW Productivity Commission (2021) NSW Productivity Green Paper, Draft recommendation 4.18

https://www.productivity.nsw.gov.au/sites/default/files/2020-08/Productivity_Commission_Green%20Paper_FINAL.pdf page 125-6,

³ A State of Positive Possibilities (2021), umber of compliance waivers granted by the Department of Education to childcare operators,

https://nsw.childcarealliance.org.au/images/2021/Documents/ACA_NSW_-_A_State_of_Possibilities_-_Vol_1_-_Immediate_Solutions.pdf p 4

flexibility mitigates the potential consequences of additional NSW-based requirements, stakeholders have highlighted to the Commission the administrative effort needed to apply for waivers and to implement video services is itself a significant cost.

Stakeholders suggest this problem could be significantly reduced by aligning NSW standards with NQF standards allowing a 'suitably qualified person' to operate in place of a qualified teacher in prescribed circumstances.

Recommendation 2 – Staffing requirements to consider skills shortages and needs

The NQF should consider the ability of the market to meet any new staffing or skills requirements imposed, including as part of any assessment of existing requirements. Variances in regional labour markets should be considered as part of this.

Produce measurable evidence for additional requirements

While there is broad evidence supporting the merits of investments in high-quality early education,⁴ the Commission is unaware of any direct evidence or research assessing the costs and benefits of specific additional requirements that apply to NSW operators. The Commission's view is that individual measures should be justified based on their contribution to outcomes. Industry representatives are unsure of whether the anticipated benefits are worth the significant additional costs as they are unaware of any initiatives to track actual outcomes for families and the economy.

The Commission welcomes the CRIS as a demonstration of best practice in assessing the merits of regulatory frameworks applying to the sector.

Recommendation 3 – CRIS to be a model of best practice to inform reform of state-based standards

Individual measures or standards should be justified based on their contribution to outcomes.

The CRIS should be developed in a manner that supports jurisdictions in considering the appropriateness of state-based standards. Analytical tools and assessment frameworks should be developed and made available to jurisdictions so they can develop suitable analysis and support for requirements that deviate from national standards.

The CRIS should provide a platform for policymakers to communicate to stakeholders that regulatory standards have been informed by best practice regulatory impact assessment.

⁴ Such as: Lifting Our Game: Report of the Review to Achieve Educational Excellence in Australian Schools through Early Childhood Interventions (2017) <https://education.nsw.gov.au/early-childhood-education/whats-happening-in-the-early-childhood-education-sector/lifting-our-game-report>

OECD (2017), Starting Strong 2017: Key OECD Indicators on Early Childhood Education and Care. Retrieved: <https://doi.org/10.1787/9789264276116-en> p 16.

PWC Australia (2014), Putting a value on early childhood education and care in Australia, Retrieved: <https://www.pwc.com.au/pdf/putting-value-on-eccec.pdf> table 2.

Streamline administration and regulatory processes

Small business operators in NSW continue to report that they feel overwhelmed by the amount of legislation, regulation and reporting for which they are responsible. The complexity and effort required to maintain compliance has led to both increased costs and additional mental load imposed on operators.

The NQF was introduced to harmonise regulatory requirements for early education and childcare services across the country. The NQF should seek to achieve intended outcomes at minimum cost. Administrative requirements that are excessive will detract from the overall success of the NQF. The NQF Review can add further value to jurisdictions by considering and recommending ways to simplify how the sector operates and reports their activities.

Excessive administration and compliance requirements

One common pain point is the different systems and portals small businesses are required to use to run their business. The complexity and duplication involved make the processes very confusing, time-consuming and stressful. Whether part of the current CRIS or in subsequent stages, the Commission recommends consideration of:

- customer journey mapping and analysis of interactions to reduce pain points and delays
- provision of templated guidelines, policies and supporting resources to assist small businesses
- whole-of-government tools such as Service NSW's 'Service for Business' tool, to develop a 'one-portal' solution.

Recommendation 4 – Streamline administrative and regulatory burdens for early learning education services

Active consideration should be given to reducing regulatory burden in a manner that does not compromise policy objectives, including consideration of alternative systems and reporting tools.

The Commonwealth, NSW State and Local Governments should collaborate to reduce administrative and regulatory burden small businesses face to operate compliantly. This should include a review of current policies, processes and technology to introduce streamlined interactions and creating regulatory reporting efficiencies for small businesses and the regulators.