

Chapter 1

Introduction

Establishment

1.1 On 11 October 2016, the Senate established the Select Committee on Red Tape (committee) to inquire into and report on the effect of restrictions and prohibitions on business (red tape) on the economy and community, by 1 December 2017, with particular reference to:

- a. the effects on compliance costs (in hours and money), economic output, employment and government revenue, with particular attention to industries, such as mining, manufacturing, tourism and agriculture, and small business;
- b. any specific areas of red tape that are particularly burdensome, complex, redundant or duplicated across jurisdictions;
- c. the impact on health, safety and economic opportunity, particularly for the low-skilled and disadvantaged;
- d. the effectiveness of the Abbott, Turnbull and previous governments' efforts to reduce red tape;
- e. the adequacy of current institutional structures (such as Regulation Impact Statements, the Office of Best Practice Regulation and red tape repeal days) for achieving genuine and permanent reductions to red tape;
- f. alternative institutional arrangements to reduce red tape, including providing subsidies or tax concessions to businesses to achieve outcomes currently achieved through regulation;
- g. how different jurisdictions in Australia and internationally have attempted to reduce red tape; and
- h. any related matters.¹

1.2 On 28 November 2017, the Senate extended the reporting date to 3 December 2018.² The committee decided to conduct the inquiry by focusing on specific areas. This interim report presents the committee's findings and conclusions about the effect of red tape on child care (childcare inquiry).

Conduct of the childcare inquiry and acknowledgement

1.3 The committee advertised the childcare inquiry on its website and wrote to a number of individuals and organisations, inviting submissions by 20 March 2018. The committee continued to accept submissions received after this date. In total, the committee received 13 submissions, which are listed at Appendix 1.

1 *Journals of the Senate*, No. 9–11 October 2016, pp. 290–291.

2 *Journals of the Senate*, No. 73–28 November 2017, p. 2314.

1.4 The committee held a public hearing in Brisbane on 12 June 2018. The witnesses who appeared before the committee are listed at Appendix 2.

1.5 The committee thanks the individuals and organisations who made submissions and gave evidence to assist the committee with its childcare inquiry.

Scope of the report

1.6 Chapter one provides broad background information to set the regulatory context for the childcare inquiry. Chapter two then examines some of the information presented to the committee, which may be drawn upon in the committee's final report.

Regulatory framework for child care

1.7 In 2009, the Council of Australian Governments (COAG) agreed a national quality agenda for early childhood education and care (ECEC) and outside school hours care (OSHC) (National Quality Agenda). This agenda aims to deliver better quality services, and promote good social and educational outcomes for children.³

1.8 Governments committed to two national partnerships to achieve these objectives. The current partnership agreement is the *National Partnership on the National Quality Agenda for Early Childhood Education and Care—2015–16 to 2017–18* (NPA). Provision 13 specifies the following outputs:

- a jointly governed national quality system for education and care services (National Quality Framework, NQF);
- the efficient and effective operation of a national body that is responsible for guiding implementation and administration of the national regulatory system, as well as monitoring and promoting consistency in its implementation (Australian Children's Education and Care Quality Authority, ACECQA);
- a national quality standard to provide clarity about expectations for the provision of quality services across agreed quality areas, and to guide educators in developing quality education and care programs (National Quality Standard, NQS);
- a national quality rating system based on the NQS to provide transparency and accountability, and to combine the agreed quality areas with a rating scale that describes the quality of services that should be found in settings across Australia; and

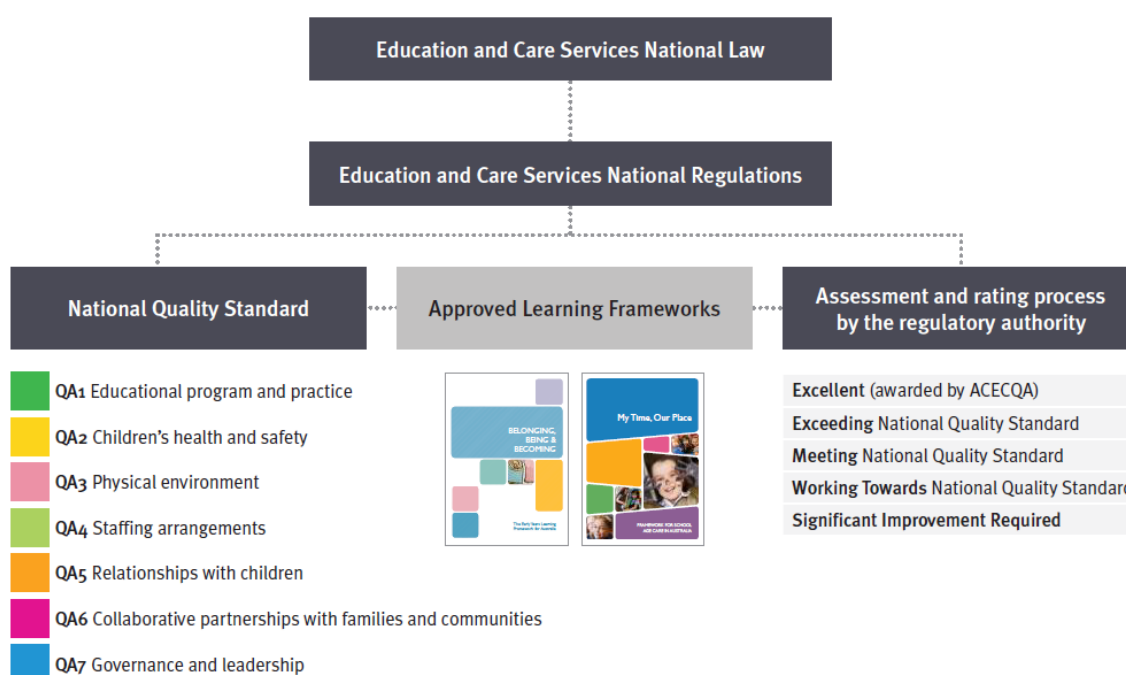
3 Council of Australian Governments, 'COAG Meeting Communiqué, 7 December 2009, <https://www.coag.gov.au/meeting-outcomes/coag-meeting-communiqu%C3%A9-7-december-2009> (accessed 8 August 2018).

- a national regulatory system, with state/territory regulatory authorities implementing and administering the NQF under a national law and national regulations.⁴

National Quality Framework

1.9 The NQF is the national system for the regulation and quality assessment of ECEC services (currently covering 15 766 services).⁵ Figure 1.1 depicts the key features of the system.

Figure 1.1: National Quality Framework for ECEC services



Source: ACECQA, *Guide to the National Quality Framework*, February 2018, p. 9.

1.10 The NQF has multiple objectives, including:

- ensuring the safety, health and wellbeing of children attending education and care services;
- improving educational and developmental outcomes for children attending education and care services; and
- reducing regulatory and administrative burden for education and care services.⁶

4 Commonwealth of Australia, *National Partnership on the National Quality Agenda for Early Childhood Education and Care—2015–16 to 2017–18*, pp. 4–5, <http://www.federalfinancialrelations.gov.au/content/npa/education.aspx> (accessed 8 August 2018).

5 Australian Children's Education and Care Quality Authority, *NQF Snapshot, Q1 2018*, May 2018, p. 4, <https://www.acecqa.gov.au/nqf/snapshots> (accessed 8 August 2018).

1.11 According to ACECQA, the NQF has greatly improved regulatory efficiency by replacing:

...a pre-existing complex system of eight different state and territory regulatory models, and a partially overlapping national quality assurance regulatory scheme operated by the Australian Government.⁷

1.12 In 2017, following an independent review of the NPA, the COAG Education Council agreed changes to the NQF.⁸ The changes were intended to strengthen quality in ECEC and reduce red tape for the sector. The key changes are:

- revising the NQS to strengthen quality through greater clarity;
- improving oversight and support within Family Day Care (FDC) to improve compliance and quality across that sector;
- removing supervisor certificate requirements to enhance services' autonomy in choosing a responsible person for each service and to reduce red tape; and
- introducing a national educator to child ratio of 1:15 for services providing education and care to school age children.⁹

1.13 Changes to the NQF commenced on 1 October 2017 and changes to the NQS commenced on 1 February 2018.¹⁰

National Law and National Regulations

1.14 The NQF operates under an applied law system, the lead jurisdiction being Victoria (*Education and Care Services National Law Act 2010* (Vic), National Law).¹¹ The Education and Care Services National Regulations NSW set out the National Regulations, which cover detailed matters such as the assessment and ratings process, operational requirements, and jurisdiction specific provisions.

6 Australian Children's Education and Care Quality Authority, *Guide to the National Quality Framework*, February 2018, p. 9.

7 Australian Children's Education and Care Quality Authority, *Submission 5*, p. 4, which noted that the National Quality Framework is subject to continual improvement.

8 Council of Australian Governments Education Council, *Communiqué*, 15 September 2017, <http://www.educationcouncil.edu.au/EC-Communiques-and-Media-Releases.aspx> (accessed 8 August 2018).

9 Council of Australian Governments Education Council, 'Ministers agree to changes to the National Quality Framework', *Media Release*, 13 February 2017, <https://www.acecqa.gov.au/ministers-agree-changes-national-quality-framework> (accessed 8 August 2018).

10 Australian Children's Education and Care Quality Authority, 'Changes to the National Quality Framework', <https://www.acecqa.gov.au/resources/supporting-materials/nqf-changes> (accessed 8 August 2018).

11 An applied law system is one in which a jurisdiction enacts legislation which is then adopted in other jurisdictions through an Application Act or in corresponding legislation (with some variation to suit each jurisdiction).

Assessment and ratings process

1.15 ECEC services are assessed and rated against the NQS by the regulatory authority in each jurisdiction. Services receive a rating in certain areas, as well as an overall rating. The lowest rating is 'Significant Improvement required' and the highest rating is 'Excellent'.¹² In the quarter ending March 2018, 93 per cent of services had been quality rated, with 77 per cent achieving 'Meeting National Quality Standard' or above.¹³

Operational requirements and jurisdiction specific provisions

1.16 Operational requirements cover several matters, including minimum staffing ratios and qualification requirements for centre-based and FDC services.¹⁴ In some jurisdictions specific provisions amend these requirements. For example:

- for children aged less than 24 months, centre-based services must provide one educator for every four children;
- for children aged 24 to 36 months, the ratio changes to one educator for every five children, except in Victoria where the ratio remains one to four;
- there is further variation in the next two age groups—36 months to preschool age and over preschool age—for centre-based services; and
- for FDC services, there is one educator to every seven children, where there cannot be more than four children of preschool age or under.¹⁵

National Quality Standard

1.17 The NQS is set out in Schedule 1 of the National Regulations and provides a benchmark for ECEC and OSHC services throughout Australia. It identifies seven quality areas that are important to children's outcomes (Figure 1.1). Each quality area contains minimum standards that services are required to meet, with supporting elements. Quality Area 4 relates to staffing arrangements.¹⁶

12 Chapter 3 of the Education and Care Services National Regulations (NSW).

13 Australian Children's Education and Care Quality Authority, *NQF Snapshot, Q1 2018*, May 2018, p. 4, <https://www.acecqa.gov.au/nqf/snapshots> (accessed 8 August 2018).

14 Chapter 4 of the Education and Care Services National Regulations (NSW). Other operational matters include, for example: educational program and practice; children's health and safety; and physical environment.

15 Division 3 of Part 4.4 of Chapter 4 of the Education and Care Services National Regulations (NSW); Parts 7.2–7.9 of the Education and Care Services National Regulations (NSW). Also see: Australian Children's Education and Care Quality Authority, 'Educator to child ratios', <https://www.acecqa.gov.au/nqf/educator-to-child-ratios> (accessed 8 August 2018), which provides a useful table illustrating the jurisdictional requirements.

16 Australian Children's Education and Care Quality Authority, 'Revised National Quality Standard, from 1 Feb 2018', https://www.acecqa.gov.au/sites/default/files/acecqa/files/NQF/RevisedNOSHAndoutA4_2.pdf (accessed 8 August 2018), which sets out the National Quality Standard following its revision.

Governance arrangements

1.18 The NPA sets out the ECEC roles and responsibilities of Australian, state and territory governments. Some of these are joint responsibilities through the COAG Education Council and in collaboration with ACECQA (for example, implementation of the NQF and the NQS).

1.19 The Australian Government is separately responsible for:

- supporting the provision of ECEC and OSHC services, particularly through improving affordability for parents;
- contributing to preschool funding through national partnership agreements; and
- providing program support for service providers and ensuring that Commonwealth investment is aligned with state/territory investment to implement the NQA.¹⁷

1.20 State and territory governments' roles and responsibilities vary across jurisdictions but mainly include: funding and/or providing preschool services; funding to support national partnerships; regulating approved services (for example: assessing and quality rating services; monitoring and enforcing compliance with the National Law and National Regulations), and licensing and/or registering non-approved services.¹⁸

Deregulation Agenda

1.21 In 2013, the Australian Government introduced the Regulatory Reform Agenda (now known as the Deregulation Agenda). This agenda aims to reduce the burden of regulation and improve regulatory practices. One of the key elements is to cut 'the cost to businesses, community organisations and individuals of complying with Australian Government regulation'.¹⁹

1.22 The Department of Jobs and Small Business (formerly the Department of Employment) now administers the Deregulation Agenda.²⁰ In 2015, it was estimated

17 Productivity Commission, *Report on Government Services 2018*, 2018, Part B Chapter 3, p. 3.2, <https://www.pc.gov.au/research/ongoing/report-on-government-services/2018/child-care-education-and-training/early-childhood-education-and-care/rogs-2018-partb-chapter3.pdf> (accessed 8 August 2018).

18 Productivity Commission, *Report on Government Services 2018*, 2018, Part B Chapter 3, p. 3.3, <https://www.pc.gov.au/research/ongoing/report-on-government-services/2018/child-care-education-and-training/early-childhood-education-and-care/rogs-2018-partb-chapter3.pdf> (accessed 8 August 2018).

19 Department of Jobs and Small Business, 'Deregulation Agenda: Key Achievements (as at December 2015)', <https://www.jobs.gov.au/deregulation-agenda-key-achievements-december-2015> (accessed 8 August 2018).

20 Previously, the Deregulation Agenda was administered by the Department of Prime Minister and Cabinet. That department now administers only the Regulatory Impact Analysis requirements through the Office of Best Practice Regulation.

that deregulatory savings of \$103.7 million would occur in ECEC when automated reporting was introduced as part of childcare reforms in 2018.²¹

Child Care Subsidy

1.23 In 2014, the Productivity Commission inquired into ways to make the childcare system more flexible, affordable and accessible. As part of its inquiry, the Productivity Commission examined the 'rebates and subsidies available for each type of care'. Its report set out several funding recommendations, including that there should be a single child-based subsidy for all children attending mainstream approved services (Recommendation 15.1).²²

1.24 In response, the Australian Government announced a new and simpler subsidy (Child Care Subsidy), which took effect from 2 July 2018 (during the childcare inquiry).²³ The main features of the subsidy are it:

- replaced the Child Care Benefit and Child Care Rebate with a single means-tested payment, which includes an activity test;
- is generally paid directly to childcare providers to be passed onto families;
- is simpler than the previous multi-payment system; and
- is better targeted and provides more assistance to low and middle income families.²⁴

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- 21 Department of Education and Training, *2015 Annual Red Tape Reduction Report*, 2016, p. 3, <https://docs.jobs.gov.au/documents/departement-education-and-training-2015-annual-red-tape-reduction-report> (accessed 8 August 2018). Also see: Department of Education and Training, *2014 Annual Red Tape Reduction Report*, 2015, p. 3, <https://docs.education.gov.au/documents/education-portfolio-annual-deregulation-report-2014>; Department of the Prime Minister and Cabinet, *Annual Red Tape Reduction Report*, 2016, p. 38, https://docs.jobs.gov.au/system/files/doc/other/annual_red_tape_reduction_report_2015.pdf (both accessed 8 August 2018).
- 22 Productivity Commission, *Childcare and Early Childhood Learning*, Inquiry Report No. 73, 31 October 2014, p. 600, <http://www.pc.gov.au/inquiries/completed/childcare/report/childcare-volume2.pdf> (accessed 8 August 2018).
- 23 Hon Scott Morrison MP, Minister for Social Services, 'Jobs for Families child care package delivers choice for families', *Media Release*, 10 May 2015, <https://formerministers.dss.gov.au/15859/job-for-families-child-care-package-delivers-choice-for-families/> (accessed 8 August 2018). The Child Care Subsidy was introduced in the Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2016.
- 24 Department of Education and Training, 'Child Care Subsidy', <https://www.education.gov.au/child-care-subsidy-0> (accessed 8 August 2018).

