Chapter 2

ABC Learning Centres

> There are few barriers to entry and expenses are low, so the childcare industry is a licence to make money. A Gold Coast real estate agent and 'child-care specialist', Bryan Hayden, says: 'I've got a client and he's got 20 bottle shops, 10 hotels and three child-care centres. I say to him, 'I'm 77 and the child-care business is the best business I've ever seen in my life.' The Government pays subsidies, the parents pay you two weeks in advance and property prices keep going up.[1]

2.1 The collapse of ABC Learning, which was the catalyst for this inquiry, added significant momentum to the movement to improve the provision of childcare across the country. That an organisation catering for up to 25 per cent of the long day care market should fail so rapidly following its rise to market dominance says as much about the deficiencies in childcare policy and regulation as it does about the highly questionable business practices of the company.

2.2 In June of this year, a representative from the Australian Competition and Consumer Commission (ACCC) informed the Senate Economics Committee of the ACCC's belief that ABC Learning's failure was not due to a lack of competition but probably 'prudential reasons' such as high levels of debt and acquisitions as well as complicated business practices.[2]

2.3 However, any detailed analysis of the financial collapse of ABC Learning is beyond the scope of this report. It has much more to do with issues of corporate governance and requires the attention of the ACCC and the Australian Securities and Investment Commission (ASIC). One submission to the inquiry drew the attention of the committee to the apparent failure of ASIC to examine closely claims made by ABC Learning about the valuation of its operating licences. Although these licences had no trading value, ABC Learning put high valuations on them and then raised additional shareholder funds, in large part based upon such valuations.[3] This matter was also dealt with in an article in the Sydney Morning Herald, which reported that ASIC was taking 'a close look at the ABC Learning collapse and is expected to be a little more active this time around'.[4]

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1 James Kirby, 'Playgrounds', *Business Review Weekly*, 13-19 November 2003, p. 33.

2 Mr Tim Grimwade, *Economics Committee Hansard*, 22 June 2009, p. 24.

3 Mr Steve Trzcinski, *Submission 63*.

4 Colin Kruger, 'Lessons to be learnt from ABC Learning's collapse', *Sydney Morning Herald*, 2 January 2009, Available at http:/business.smh.com.au/action/printArticle?id=337508.

2.4 The committee requested from ASIC some details of its progress in this investigation. ASIC continues to investigate the collapse of ABC Learning but advised that no further details are yet available. Regarding the revaluation of licences, ASIC advised that in accordance with its initial investigation, revaluation of the licences was not 'material to the company'. ASIC informed the committee that:

> [r]evaluation of licenses was permitted under the accounting standards for the year ended June 2005 and new accounting standards applied thereafter. The new standard AASB 138 "Intangible Assets" ("AASB 138") only allows the revaluation of intangible assets in certain circumstances. However, the standards only apply where an accounting treatment has a material impact…ASIC noted that at the time of its enquiries, the financial impact of these concerns on the 2006 financial statements was not material to the company.[5]

2.5 The more important aspect of the collapse of ABC Learning was to focus attention on the appropriateness of corporate sector participation in childcare provision. There was a strong view expressed through many submissions that provision of quality childcare was incompatible with shareholder aspirations. There is an inherent conflict of interest between the two. This chapter will consider the lessons to be learnt from market domination by the corporate sector, and the implications of having a national 'system' dominated by any future oligopoly of corporate providers.

The advent of 'market forces'

2.6 It was assumed in several submissions that policies adopted by the Coalition government of 1996-2007 introduced the free market into childcare provision. Professor Deborah Brennan and Associate Professor Susan Newberry, however, traced changed attitudes back to the 1980s when the attraction of a market-orientated funding system became evident to the Treasury. In 1985, the Commonwealth ended the link between childcare subsidies and the award wages of qualified staff and cut operational assistance by 50 per cent.[6] This was followed by changes to the extended childcare assistance in 1991. Up to that point, the Commonwealth subsidised non-profit organisations only, as provided for under the *Child Care Act 1972*, and these recurrent subsidies were paid on the basis of the number of properly qualified staff in each centre as required under state regulations.[7]

2.7 The 1991 legislation extended assistance to users of private childcare. The reason for this was the need to expand childcare services to meet increasing demand and to end what came to be seen as discrimination against the private sector. Brennan

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5 Correspondence received by the committee from ASIC dated 16 October 2009. Available at http://www.aph.gov.au/Senate/committee/eet_ctte/child_care/submissions.htm.

6 Professor Deborah Brennan and Associate Professor Susan Newberry, *Submission 64 (Attachment 3)*.

7 Professor Deborah Brennan and Associate Professor Susan Newberry, *Submission 64 (Attachment 2)*, p. 214.

points out that this move was strongly supported by the Federation of Childcare Associations, who argued that the employment of unionised workers with 'unnecessarily high' qualifications was a factor in the high cost of childcare.[8] There have been echoes of this view expressed during this inquiry.

2.8 The effect of this policy change was significant. Between 1991 and 1996, the number of places in private childcare centres increased by 233 per cent, while the growth in community-based and not-for-profit centres increased by 15 per cent. In 1991, the number of places in community-based centres outnumbered those in privately-owned centres. By 1996, there were over two and a half times as many places in private centres as in community centres.

2.9 The government abolished operational subsidies for community-based and not-for-profit childcare centres in the 1996-97 Budget and stopped funding for construction of new community-based centres that had been planned. The new tax system in 1999 saw the consolidation of family benefit payments into the arrangements which continue today, including the payment of Child Care Benefit (CCB). In regard to the CCB, around 95 per cent of parents using approved childcare receive this subsidy as a fee reduction at the time that they pay their fees. Families choosing to receive CCB as a fee reduction, rather than as an end-of-year lump sum, will only have to pay the service provider the difference between the full fee and the amount of CCB.[9]

Market or community service?

2.10 Finally, the committee notes that the role of corporate players in the childcare sector is regarded by many as anomalous.[10] Proponents of this view argue that childcare is a 'public good' in the same way that school education is a public good. There are no schools or school systems listed on the stock exchange.[11] There are no universities listed on the ASX. The reason is that those schools and universities are heavily subsidised by government. They function very well as non-profit institutes, able therefore to pay competitive salaries to maintain quality of teaching and maintenance costs for buildings and equipment, usually with government assistance.

2.11 Some committee members would argue that it is not appropriate for profits to flow from childcare centres into the hands of shareholders who benefit from the leveraging of taxpayer funds. The committee appreciates, however, that pragmatic considerations often outweigh objections in theory. Even if the experience of ABC Learning's operations have been unfortunate, it is clear that it has not entirely

8 Ibid., p. 215.

9 DEEWR, *Submission 41*, p. 18.

10 See, for instance, SDN Children's Services, *Submission 29*, p. 3.

11 ABC Learning did plan to enter this sector but was ultimately unsuccessful.

prejudiced public opinion against a continuation of corporate participation in the sector.

2.12 On the other hand, the market approach resulted in a substantial increase in the number of childcare places available, meeting the increasing demand for childcare. In fact, as noted previously, there was more than a two hundred per cent increase in the number of childcare places offered by private providers between 1991 and 1996.

Rise and fall of ABC Learning

2.13 ABC Learning Centres Ltd began operating in Brisbane suburbs in 1988, growing on the back of urbanisation in south-east Queensland.[12] By 1997, it was the largest single provider in Australia, with 18 centres.[13] It was the first of several childcare operators to be listed on the Australian Stock Exchange (ASX) in 2001-02. Others included Future One, Child Care Centres Australia, Peppercorn Management Group and Kids Kampus. Two of the proprietors of these companies entered the *Business Review Weekly's* 'rich list' within two years of listing. ABC Learning in time acquired each of these other companies. With ABC Learning in receivership, there are no listed companies at the time of reporting.

2.14 By 2008, ABC Learning was the largest provider of childcare, holding around 20 per cent of the long day care market and providing care to over 100 000 children. ABC Learning employed around 16 000 staff. The company sold 45 of its childcare centres in July 2007,[14] which contributed to a reduction in the number of centres in 2008. Researching the growth of the company between 2001 and 2006, the Australia Institute noted that ABC Learning achieved close to one hundred per cent growth between financial years 2004-05 and 2005-06.[15] The graph below demonstrates the growth in the number of ABC Learning centres in Australia from 2001 to 2007.

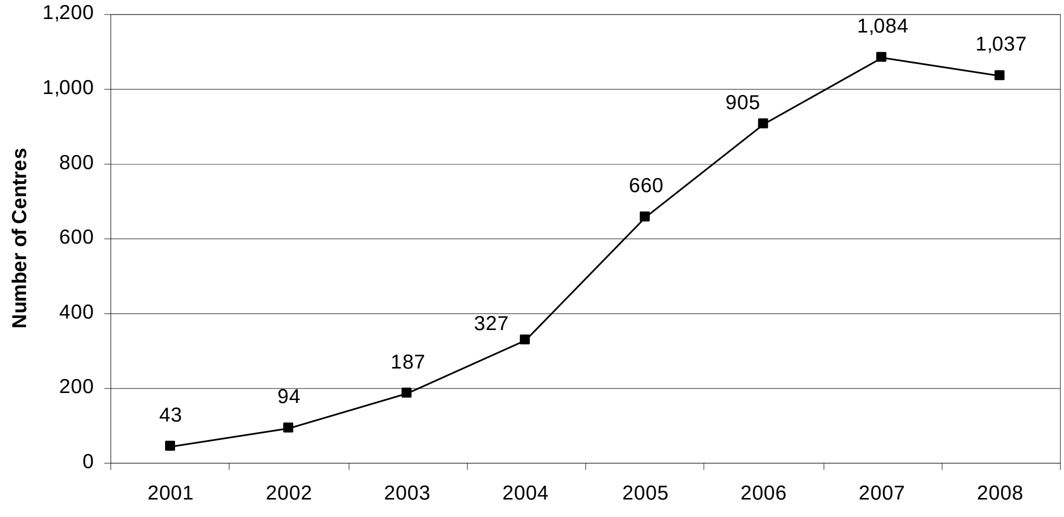
12 Nick Tabakoff, 'Daycare Dynamo: the ABC of Eddie Groves success', *The Bulletin*, 23 August 2005, p. 48.

13 Emma Rush & Christian Downie, 'ABC Learning Centres – A case study of Australia's largest child care corporation', *Discussion Paper 87*, Canberra: the Australia Institute, June 2006. Available at https://www.tai.org.au/documents/downloads/DP87.pdf, p. 13.

14 ABC Learning Centres Ltd, 'Note 28: Subsequent events', *2006-07 Annual Report*, , p. 99.

15 Rush & Downie, op. cit., p. 14.

Graph 2.1: Growth in ABC Learning Childcare Centres in Australia



Source: ABC Annual Report 2007; ABC Receiver Update 2008

2.15 The financial press became an important source of information about childcare matters by 2001. *Business Review Weekly* reported that ABC Learning shares, worth two dollars after listing on the ASX, had risen in value to $13.94 by 4 October.[16] ABC lifted its net profit 115.6 per cent to $9.6 million in 2001-02 on revenue that rose 81 per cent to $23.8 million.

> Eddie Groves of ABC describes the child-care business as recession-proof, thanks to the guaranteed revenue stream from federal government subsidies. Under the child-care benefit scheme, fee subsidies, which are subject to a parental income test, are usually paid direct to the centre.[17]

2.16 The biggest leap in revenue occurred in the financial year 2004-05 when they rose 257 per cent on the previous year. This significant growth, in large part, was due to the acquisition of Peppercorn Management Group which led to the number of centres under ABC Learning control doubling from 327 to 660 in the financial year ending 2005.[18]

2.17 One effect of corporate interest in the childcare sector was seen in the property and building market. The new corporate-run centres needed prime location sites in central business districts and in affluent suburban areas with favourable demographic characteristics, or at least sites in fast-growing urban areas. For some corporate players, real estate acquisition and income from rents from childcare centres was the raison d'etre for their investment in childcare. There were complicated business

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16 John Stensholt, 'Child-care sums make listings look simple', *Business Review Weekly*, 10-16 October 2002, p. 36.

17 Ibid.

18 Rush & Downie, op. cit., p. 13.

arrangements between mutually dependent entities like ABC Learning and Australian Education Trust. Market rentals were determined by childcare places.[19] Brisbane merchant bank, DDH Graham ran three property trusts and owned 35 centres which were operated by Peppercorn.[20] Small-business operators who had once dominated childcare service provision were disadvantaged by corporate sector expansion. Many small private operators in desirable catchment areas sold out to the corporate sector. As *Business Review Weekly* reported:

> Smeed of DHH Graham says the average cost of building a child-care centre has increased from $500 000 to about $1 million in the past two or three years. He says the increase is pushing owner-operators out of the sector. 'It is getting out of the reach of the ordinary person,' he says. He believes the involvement of a strong corporate sector ensures there is sufficient capital to maintain high standards and continuity in the child-care sector.[21]

2.18 The committee notes the evidence that it heard about the predatory nature of corporate players in the childcare sector and the longer-term concerns about quality care that were being voiced at the time of the expansionist boom in 2002. It notes the reported concerns of the peak body of small independently-owned childcare centres, the Australian Federation of Child Care Associations, that the 'sheer financial muscle of the large chains will swamp the smaller operators'.[22] Chair, Ms Gwynn Bridge, was quoted as saying, in relation to predatory corporate expansion:

> [w]hat it means is that if the owners don't want to sell, the large chains can just put up another centre and put them out of business…we really need a return to a system under which the Federal Government designated which areas were high needs and licensed accordingly...a child care centre is very difficult to operate. A lot of these new players think it is just a license to go in there and make money, but you need years of experience.[23]

2.19 The predatory nature of ABC Learning operations was evident in other ways. Childcare operators and practitioners, regardless of whether they are small independent operators or community sector operators are normally keen networkers. It was noted in one submission that ABC Learning staff remained aloof from interactions with privately operated centres. They did not attend sector conferences or workshops. There appeared to be a 'silo' effect in their training. Moreover, there appeared to be deficiencies in staff trained by ABC, particularly in areas of

19 Professor Deborah Brennan and Associate Professor Susan Newberry, *Submission 64 (Attachment 3)*.

20 Stensholt, op.cit.

21 Ibid.

22 Andrew Fraser, 'Is making money out of childcare as easy as ABC?', *Weekend Australian*, 12 October 2002.

23 Ibid.

management and centre involvement. It is suggested that they became well-trained in economy.

> An ex ABC applicant when interviewed by a private centre director was intent on finding out how much money would be allocated for craft, equipment etc. Interview applicants would normally be concerned with method of programming; behaviour guidance techniques; professional development etc.[24]

2.20 Professor Alma Fleet, Head of the Institute of Early Childhood at Macquarie University, was also warning in October 2002 that quality childcare was costly, being dependent on low staff-child ratios. Fleet was reported to be worried that many of the new centres relied on a standard service delivery in order to contain costs which allowed for the payment of a shareholder dividend. They would be unable to move beyond the mandatory minimum staff-child ratios in order to cater for children with special needs or respond adequately to cultural diversity.[25] Under its new management, ABC Learning has acknowledged unfavourable perceptions of its sacrificing quality for the sake of profit.

> Those experienced in the childcare industry knew, given the regulatory requirements, it was not possible to produce the kind of returns being reported unless quality of care was being compromised. The seeds of discontent as to the motives of the ABC management were sewn and the reputation of ABC amongst childcare professionals further deteriorated.[26]

2.21 Further comment about perceptions of ABC Learning programs are included in chapter three which relates to the quality of childcare.

2.22 There were other early indications of the potential problems of staffing childcare centres with qualified staff. Professor Collette Tayler, Head of the School of Early Childhood at the Queensland University of Technology, warned that the low level of salaries and conditions would eventually conflict with the imperative on corporations to maximise profits. Taylor is quoted as saying:

> [t]he main problem is that there will be short-term pressure to maximise profits, but the stronger demand is for childcare in the 0-3 age group. Now, these services cost more to deliver, simply because little babies need more attention. That will be a challenge, because in the long term, quality of staff will determine whether or not that performance is sustainable. Unless something is done we will be seeing massive shortages of trained staff in a few years.[27]

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24 Childcare Queensland, *Submission 22*, p. 2.

25 Carolyn Milburn, 'Making profits is child's play', *The Age*, 12 October 2002.

26 ABC Learning, *Submission 86*, p. 2.

27 Andrew Fraser, 'Is making money out of childcare as easy as ABC?', *Weekend Australian*, 12 October 2002.

2.23 By 2003, there were signs of emerging conflicts over the involvement of corporate operators in the sector. Rapid expansion by the operator Peppercorn (at that time the largest corporate operator in the childcare sector) saw disputes with the Liquor, Hospitality and Miscellaneous Union (LHMU) over the poor condition of newly acquired premises and underpayment of staff.[28] Peppercorn was taken over in December 2004 by ABC Learning. There were increasing concerns over the quality of care when the 2003-04 financial records for ABC Learning revealed that it spent only 56.7 per cent of revenue on staff, compared to an average of 80 per cent paid by not-for-profit providers.[29]

2.24 Yet these were the boom days. The committee was given a description of how the sector was affected by the close association of corporate childcare and real estate interests by an experienced private operator in Brisbane.

> It was during its heyday, when centres were selling out because they were getting top dollar to sell out to ABC, that a lot of the huge growth started, with developers just building them up and selling them off. ABC were a major buyer in that market. And it just kept going from there. Some people who sold their medium-sized groups to ABC then went on to build and gain more to sell them back to ABC. But the private sector, the individuals, were still selling, but we had three corporates at that point and there was a bit of a market to get good prices and so on….It brought a lot of people into the industry but it became a worry when centres were going up in areas where we knew that there was no demand. The aim, I think, in those days with a lot of the developers was to build big and bright and shiny and entice the parents to something that was very up-market—and the buildings were very spectacular in many cases.[30]

2.25 The committee was told that the uncontrolled expansion of childcare centres was a source of considerable anxiety for operators who feared an oversupplied market. It was claimed that the government was made aware of these views but its response was that market forces should prevail.[31]

2.26 At the peak of its market share, ABC Learning was the largest single corporate operator with about 30 per cent of the market, according to its CEO, Eddy Groves. Some academics have put its market share higher than that, given its program of acquisitions and construction. Writing in 2008, Professor Susan Newberry (from the University of Sydney's Faculty of Economics and Accounting) and Professor Deborah Brennan stated that, in particular areas of Queensland and Victoria, ABC Learning

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28 James Kirby, 'Playgrounds', *Business Review Weekly*, 13-19 November 2003, p. 32.

29 Nick Tabakoff, 'Daycare Dynamo: the ABC of Eddie Groves success', *The Bulletin*, 23August 2005, p. 48.

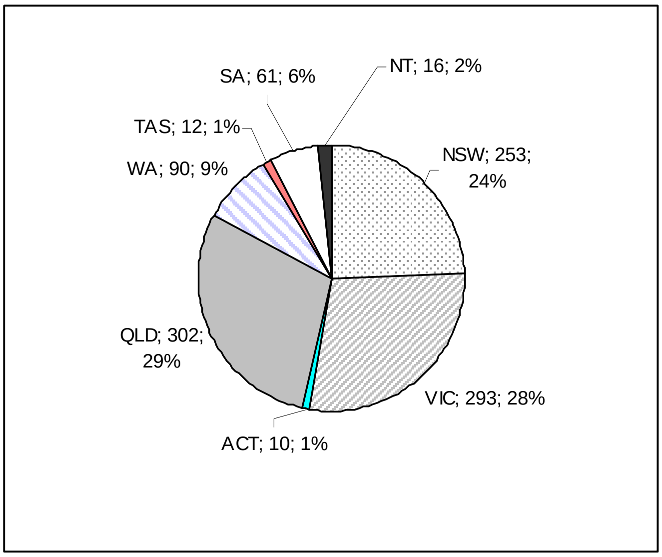
30 Mrs Gwynneth Bridge, *Committee Hansard*, 15 July 2009, pp. 16-17.

31 Ibid., p. 18.

was thought to have up to 50 per cent of the market and that, in these and other areas, parents had little real choice but to use an ABC-branded childcare centre.[32]

2.27 The following graph shows that the distribution of centres was predominantly in Queensland, Victoria and NSW, with the remaining states and territories having significantly smaller representation. This illustrates the position of the company while it was still trading.

Graph 2.2: Distribution of ABC Learning Centres (2008, prior to administration)



Source: McGrathNicol; taken from Department of Education, Employment and Workplace Relations, *Submission 41*, p. 3.

2.28 It was pointed out to the committee by one of the acknowledged authorities on childcare that an extraordinary degree of market concentration had been allowed to occur as a result of government policy. Professor Deborah Brennan told the committee:

> I think that everybody is aware that [the extraordinary level of market concentration] is unusual, but I just want to really drive that home. We think that ABC Learning had around 20 to 25 per cent of the Australian long day care market. But in the UK the largest 40 providers altogether own 10 per cent of the places, and in the USA all corporate chains together own 13 per cent. So I argued, and I think this took Sue's attention, that we have really entered into a vast national experiment with our children in Australia. My concern, and I am happy to elaborate on this, is about not individual private for-profit centres but the system-level consequences of market concentration.[33]

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32 Professor Deborah Brennan and Associate Professor Susan Newberry, *Submission 64 (Attachment 3).*

33 Professor Deborah Brennan, *Committee Hansard*, 16 July 2009, p. 22.

2.29 Newberry and Brennan also made the point that ABC Learning evidently recognised that its market dominance limited its scope for further expansion in Australia and, for that reason, looked abroad for investment possibilities.[34] Eventually ABC Learning became the largest listed childcare company in the world, owning similar businesses in the United States (where it was also the largest corporate provider), Britain and New Zealand as well as in the Philippines and Indonesia. This foreign expansion compounded the company's difficulties when the collapse came in 2008.

2.30 During the course of 2008, in the lead-up to the financial crisis, media and market speculation intensified about the financial circumstances of ABC Learning. There were a number of worrying indications. The intangible assets of the company ranged between 71 per cent and 81 per cent.[35] This included the previously mentioned valuation of (valueless) operating licences. The fall in the company's share price was dramatic once questions arose over questionable practices adopted by accounting firm Pitcher Partners in the auditing of the company accounts. It became evident that a quarter of the childcare centres were losing considerable amounts of money. Two leading accounting firms were later called in to scrutinise the ABC accounts ending 31 December 2007. There were threats of legal action against the company, and ABC Learning's co-founders Mr Eddy Groves and Dr Le Neve Groves left the company in September 2008.

2.31 The new management of ABC Learning, in its submission to the committee described these events thus:

> [u]nfortunately the accounting practises that underpinned this growth strategy appear to have served to materially inflate the true underlying operating performance of the business which is at the core of the problem. The public reporting of ABC's profitability (Analysts forecasts in Jan '08 pointed to a profit of $200 million) gave rise to the perception that the provision of childcare was an extremely lucrative and profitable industry. This attracted significant investment and enabled ABC to accelerate its expansion plans, including forays into international markets.[36]

2.32 Following the departure from ABC Learning of its co-founders, a new interim CEO, Mr Rowan Webb, was appointed on 30 September and Mr Matthew Horton, General Counsel and Company Secretary also joined the Board on an interim basis. ABC Learning failed to lodge its financial statements with the ASX by 31 October 2008. The company continued to operate until 6 November 2008, having given assurances that it was intent on trading its way through its difficulties.

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34 Professor Deborah Brennan and Associate Professor Susan Newberry, *Submission* 64 *(Attachment 3)*.

35 Ibid.

36 ABC Learning, *Submission 86*, p. 2.

2.33 It is easy to speculate about the extent to which the corporate policies of ABC Learning and the regulatory regime which supervised such policies contributed to the collapse of the company. The committee notes however that ASIC is conducting a review of the circumstances surrounding the collapse; as such, a safer approach may be to reserve judgement until this review is completed.

Salvaging the wreckage

2.34 The government was faced with the immediate problem of having to maintain the services provided by ABC Learning. On 2 November 2008, ABC Learning advised DEEWR that the company was likely to enter into voluntary administration almost immediately. Their banking syndicate indicated they would appoint a receiver to ABC Learning if the company entered into voluntary administration. This occurred on 6 November. In normal circumstances, this would have meant that around 400 ABC Learning centres would have ceased operating on entering into receivership. The assessment of the banks was that the considerable number of ABC Learning centres operating at a loss would need to be closed to limit the already serious financial loss suffered by the banks. The government was aware of the 'catastrophic' consequences for tens of thousands of children and their families, and for ABC Learning employees. There would have been serious economic and social effects.[37]

2.35 The committee notes advice from DEEWR that the department established, among other contingency measures, an internal childcare industry taskforce on 24 September 2008 to manage what was occurring at ABC Learning and to plan for either the consequences of the closure of childcare centres or the company's insolvency. Discussions continued between DEEWR and ABC Learning.[38]

2.36 On 7 November 2008, following discussions with ABC Learning’s banks and the ABC Learning Receiver, McGrathNicol, the government announced that up to $22 million, plus costs for the receiver, would be made available to keep open about 400 loss-making centres until 31 December 2008. This was to allow time for the receiver to assess the viability of these centres. A further sum of $34 million guarantee of funding during 2009 for 262 centres regarded as unviable (now known as the ABC2 Group) was made on 10 December 2008.

2.37 By the end of December, the receiver had identified 720 centres, equal to about two-thirds of all the centres, which could operate into 2009. These became known as the ABC1 Group. Fifty-five centres closed on 31 December 2008, as there were suitable alternative centres located nearby, and all children were offered alternative places at a nearby ABC Learning centre. The majority of staff was redeployed.[39]

37 DEEWR, *Submission 41*.

38 Ibid.

39 Ibid.

2.38 With the government having secured its objective of maintaining childcare services through a large injection of cash, the court-appointed receivers for ABC2, PPB, proceeded to sell off the ABC2 centres. By the end of 2008, around 3 300 people or entities had registered an expression of interest with the receiver.[40] The unprofitable ABC Learning centres were sold, some reportedly for as little as $1,[41] to 75 different operators from March 2009 on the condition such operators were financially sound. Beyond that, buyers were required to sign documents declaring they had no affiliation with ABC Learning founder and former chief executive, Eddy Groves.[42]

Post-ABC complications and questions

2.39 The committee heard many comments on the reasons for the collapse of ABC Learning, although none were given with any claim to particular expertise. In its defence of ABC Learning, the new management of the company which is soon to be liquidated pointed out that ABC's investment in the industry created a significant number of new centres as well as material upgrades to existing services. This raised the standards of facilities and provided additional places needed to cope with the increased demand for childcare.

> With the economics of childcare, as we know it now to be, this investment would have been impossible because [the] financial case for opening a centre to ABC's standards would not be viable. The investor's losses have, in at least some part, been to the industries [sic] gain.[43]

2.40 This suggests that the childcare sector has benefited from a windfall of unintended advantage, a large injection of funding resulting from misjudgement about returns on investment. Looked at in these terms, it would probably be argued that the expenditure of $56 million in government rescue funding represents value for money. ABC Learning has made the point that, as the economics of childcare currently stand, it is difficult to see where the next level of investment will come from to cater for expected future demand growth in the industry.[44] In response to this, the committee notes that there has been considerable expansion from small private operators and that this is likely to continue into the future, bringing further investment into the sector.

2.41 The committee heard considerable commentary and opinion about the dilemma which was presented to the government by the collapse of ABC Learning. On the one

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40 Ibid.

41 Natasha Bita, 'ABC Learning Centres Sold to Charity for $1 Each', *The Australian*, 23 April 2009.

42 Natasha Bita, 'ABC Sell-Off gets Labor's Go-Ahead', *The Australian*, 4 September 2009, Available at http://www.theaustralian.news.com.au/business/story/0,28124,26023853-36418,00.html.

43 ABC Learning, *Submission 86*, p. 3.

44 Ibid.

hand, the government was faced with an obligation to preserve childcare services, a responsibility apparently discharged by the course of action that it followed. Financial support to ailing centres, assuming a reasonable demand for their services, may be viewed as a practical necessity. On the other hand, the sale and disposal of operating childcare centres, which was a process in the hands of receivers and beyond government control, was described in a number of submissions and by a number of witnesses as disappointing. When asked about the possible decision by receivers to sell-off ABC1 as a single tender, Professor Brennan remarked:

> I am personally disappointed in the decision. I think a unique opportunity had opened up through those very unfortunate events. I personally would like to have seen really strong efforts made to introduce genuine diversity back into the Australian child-care system.[45]

2.42 The perpetuation of a corporatist approach has been evident in the way the sale of centres has proceeded. The normal processes of company liquidation do not work well in the case of essential services. The customary main obligation of receivers is to creditors of the failed company, rather than to clients and customers. In this case, the division of assets between profitable and unprofitable centres took no account of the fact that, in the provision of a public service, a degree of cross-subsidisation is required to ensure equity in the provision of services. The committee was told that, as far as was known, there were no children's services experts consulted in regard to decisions about which centres were viable.[46] The committee notes the claim that the Receiver of ABC Learning, McGrathNicol, apparently considered that, although over 200 centres were unviable under the ABC operating model, they could still be considered viable under a not-for-profit model.[47] As the submission from KU Children's Services explained:

> [s]adly this fails to recognise that generally the not-for-profit model is more expensive than the ABC model due to such things as higher quality of care (including higher staff to child ratios and better qualifications and experience) and the inclusion of children with additional needs (such as children with a disability, children with Aboriginal and Torres Strait heritage, children from culturally and linguistically diverse backgrounds, children at risk and children with challenging behaviours.[48]

2.43 The KU submission further explained that the only means through which a community organisation could operate unviable former-ABC Learning centres would be to 'package' them with viable centres. Had the receivers disposed of the assets in a way which facilitated this, more community-based and not-for-profit organisations would have offered to take over ABC Learning centres. On the other hand, the committee also heard comment that not-for-profit childcare organisations would also

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45 Professor Deborah Brennan, *Committee Hansard*, 16 July 2009, p. 34.

46 Ms Prue Warrilow, *Committee Hansard*, 16 July 2009, p. 110.

47 KU Children's Services, *Submission 32*, p. 11.

48 Ibid.

have been deterred from buying up ABC Learning sites because of their ties to corporate landlords. Rents would have been as high as several hundreds of thousands of dollars a year in some cases. Australian Community Children's Services told the committee that inadequate information was provided to tenderers, which deterred many potential buyers from making bids. The likely adverse effect of higher-than-market-rate rents was a deterrent to the non-profit community sector which regarded such centres as unsustainable over the medium to long term.[49] KU submitted that community providers had been urging the government to use the collapse of ABC Learning 'as an opportunity to reset the policy levers to rebalance the provision of childcare'. Since this opportunity was not taken up, KU feared that an important opportunity had been lost.[50]

2.44 Many submissions to the inquiry opposed the Receiver's potential sale of over 700 ABC Learning centres (known as the ABC1 tender) as a 'job lot' to a single purchaser, and have expressed alarm at the likely consequences. It is feared that such a resolution would run counter to the need to ensure wider diversity of choice in the sector and that it would anticipate the maintenance of a corporatist model of childcare which has been discredited by the experience of ABC Learning, not only because of its collapse but because of the doubtful quality of the service it provided even at its peak.

2.45 A representative of KU Children's Services told the committee that the missed opportunity for the government was its acquiescence with the intentions of the court-appointed receivers of the ABC2 centres which were nominated as unviable and sold off first.[51] The representative claimed that the government would have had more say in this process than it would in dealing with the receivers of the ABC1 Group. Commenting upon the degree of parental stress eight months on from the closure crisis, the representative gave her view that, while there was a widespread belief that things had settled down, circumstances are essentially unchanged from before ABC Learning collapsed and that there is likely to be a recurrence of the ABC collapse, although this might not happen for five years.[52]

2.46 The committee is aware, however, that Minister Gillard made known her concern to have much wider not-for-profit and community-based childcare on offer to provide more diversity in the sector and expected that this would be facilitated by transfers of ownership during the ABC2 tender round.[53] The court-appointed receivers have indicated that diversity has been achieved in the sale of the ABC2 centres. In April 2009, PPB noted that it had identified 'a diverse range of operators including

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49 Ms Prue Warrilow, *Committee Hansard*, 16 July 2009, p. 113.

50 Ms Sheridan Dudley, *Committee Hansard*, 15 July 2009, p. 33.

51 Ibid.

52 Ibid.

53 See, for instance, Hon Julia Gillard MP, 'ABC2 Group – Update on progress', Media Release, 14 January 2009.

not-for-profit organisations, individual owner operators and private operators'.[54] The Minister for Early Childhood Education, Childcare and Youth, the Hon Kate Ellis MP, in a Ministerial Statement on 15 September 2009, told the House of Representatives that the largest single buyer of ABC2 centres was a not-for-profit provider, Mission Australia. The sale process resulted in more than 70 diverse operators taking over ABC2 centres.[55]

The future of corporate childcare

2.47 The National Childcare Accreditation Council (NCAC) has submitted that the collapse of ABC Learning has highlighted the adverse consequences of allowing any single provider to dominate the supply of childcare. It stated that the government is currently in a 'unique' position to remedy an imbalance which has been allowed to develop and to prevent its recurrence.[56] As the evidence suggested, the government had less opportunity to restructure the control and ownership of the childcare sector in the wake of the ABC Learning collapse than might appear. 'De-corporatising' the childcare sector becomes much harder in normal corporate insolvency processes which generally preclude government intervention.

2.48 Although it is of small comfort to parents and their children who experienced dismay at the disruption to their lives at the end of 2008, there is some truth to the claim that the demise of ABC Learning has been in the best interests of childcare provision.[57] It adds urgency to the tasks already being undertaken by COAG to agree to a national approach to childcare provision, to implement commonly-agreed standards, to provide for their enforcement and to lift minimum standards of training and the employment status of those who work in the sector. It has also refocused public attention on the issue of quality of care. As the committee makes clear in later chapters, the matter of who runs the childcare centres across the country, provided there is real diversity in the sector and genuine choice in the provision of care, is less important than the dedication, commitment and quality of care demonstrated by those who provide it.

2.49 As this report is prepared for tabling, the receivers are proceeding with the sale of the ABC1 tranche of 720 childcare centres. This could be delayed to the end of 2009 or beyond. It is difficult to imagine that any prospective buyers would be unaware of the changed childcare policy climate. ASIC and ACCC will be more vigilant in areas of corporate governance and, as will be made clear in the following chapter, the public mood is swinging toward much tighter regulation in the pursuit of

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54 PPB Corporate Recovery, 'Vast Majority of ABC2 Group Centres to Continue Operating', Media Release, 15 April 2009.

55 Hon Kate Ellis MP, 'Ministerial Statement – The future of ABC Learning', Transcript, 15 September 2009.

56 National Childcare Accreditation Council, *Submission 72*, p. 3.

57 See, for instance, Early Childhood Australia, *Submission 31*, p. 2.

quality care and learning outcomes, as reflected in recent regulatory tightening at the state level.

2.50 While the committee recognises a high level of scepticism about the ability of corporate bodies to provide childcare of a quality comparable with small independent operators, not-for-profit providers and community-based centres, it believes that the final test of this is whether corporate providers are willing to cater comprehensively for children with a full range of needs and pay good salaries for well-qualified staff. Quality is the test. Any organisation which establishes centres which put the needs of children first in these circumstances is a contributor to the common good.

Conclusion

2.51 The committee recognises the difficulty in determining policy in regard to the control and ownership of childcare centres when the only source of government support comes to centres indirectly though Child Care Benefit payments. The committee believes that the provision of services is best provided by small-scale or individual independent operators and by not-for-profit and community-based organisations. The role of corporations as childcare providers appears to be broadly accepted but, in the light of more stringent quality standards, their costs for labour as a proportion of outlays will rise to the level of other providers. Accountants and auditors advising corporations will need to be aware that there are important non-financial accountability and compliance tests that will need to be met. Childcare centres are not just a business – they must be in the service of the common good.