

KPV

**Children's Services
Regulations Review
Submission**

Early Childhood Education
— *preparing children for life*

■ ■ ■ April 2007



**develop
promote
sustain
early childhood education**

KPV is pleased to be able to contribute to the debate about quality children's services and program through this submission to the Victorian Government's review of the Children's Services Regulations 1998. This is a rare opportunity to improve the base quality of children's services by ensuring that the standards developed define the coverage and content of the regulations of children's services over the next decade. Our comments are guided by *Vision 2011 – preparing children for life*. This is KPV's vision for early childhood education and the steps required to achieve it.

Introduction

KPV supports performance based or outcome focused regulations. Flexibility and initiative must be allowed to achieve the desired outcomes and to respond to risk. This approach enables and encourages reflective, evidence and evaluation based operational and program decisions. However, they also enable a wide range of interpretation. This can lead to perceived or actual inconsistency in their application. These risks are lessened when capable staff are engaged to implement them. Degree qualified staff have a fund of theoretical and practical knowledge that can support the delivery of quality programs through performance based regulations. In addition there is now a wealth of evidence that suggests the better qualified the staff in children's services the better the outcomes for the children in their care and those children's families, the community and the economy.

The *Child Wellbeing and Safety Act 2005* sets out guiding principles for the development and provision of services for children and families. KPV recommends the inclusion of principles in the *Children's Services Act 1995* to promote both good understanding of the framework and consistency of implementation.

Descriptive performance or outcome based regulations must be supported by a wide range of clear educational resources to inform licensees and practitioners and advise on best practice and to support consistency in monitoring by the Regulator.

One critical resource is a curriculum framework that would underpin the rich diversity of individual theories and philosophies of early childhood learning and teaching. A curriculum framework:

- guides and supports professional staff in their practice
- promotes an even level of quality in the diverse service types
- Facilitates communication between staff and parents
- Promotes pedagogical continuity between early childhood services and schools

An emphasis on continuous improvement is a characteristic of highly effective children's programs and is an essential adjunct to a performance based regulatory system. The National Quality Improvement and Assurance Scheme has successfully raised the standard of childcare in Australia and guided parents' understanding and expectations of quality practice and service provision. While this is useful for long day care centres it does not apply to kindergartens for which there currently is no quality assurance framework.

The limited number of Practice Notes currently available makes compliance difficult, especially for licensees, such as voluntary committees of management, with little knowledge or understanding of early childhood practice.

The availability and accessibility of support resources must be firmly embedded either in the regulations or in a policy framework to which the Government can be held to account.

The Regulations are baseline or minimum standards that apply to all components of the operation of children's services, funded and unfunded kindergarten programs and any other groups, occasional care, after kindergarten care etc.

Regulations for three service types

The quality and safety of centre based early childhood services must not be compromised by having one set of regulations for three service types. Consistency may not always be in the best interest of children and families when all variables are considered.

KPV recommends

Performance based regulations be set and describe a sufficiently high standard for each service type, while recognising the intrinsic differences.

COVERAGE OF THE ACT AND REGULATIONS

Definition of a children's service

The definition of a children's service must not in any way compromise current or possible standards for centre based early childhood services by including family day care and outside school hours care in the Act and Regulations.

The definition needs to be aimed at ensuring that the best interests and needs of children are the primary consideration in coverage of the Act. This must be balanced with diverse societal activities and expectations. Single purpose instruction classes with a short duration, such as a ballet class or Sunday school should continue to be excluded. Group care of children while a parent undertakes an activity away from their child, such as exercising, and so is unable to 'supervise' their child should continue to be covered by the Act and Regulations.

KPV welcomes the flexibility that performance based regulations would bring to the provision of mobile services. While it is essential that standards for children's programs are not diminished there are many ways standards can be achieved.

REGULATORY POWERS

Powers of entry

KPV recommends the powers of entry be clarified to ensure the right of entry extends to both past, investigating (alleged) contraventions, and present (assessing current compliance) acts of non-compliance.

Questioning and provision of information

KPV recommends that a fair and reasonable process, guided by the best interests of children be included in new regulations.

Offence-related search and seizure

There are many circumstances where evidence of contravention of the Act or Regulations will not be discoverable at the licensed premises itself.

KPV recommends the current powers be extended to allow search of premises or persons connected with the provision of the relevant service where there is reasonable grounds for suspicion.

Protection against self-incrimination

While KPV accepts the common law position that corporations have no privilege against self-incrimination, this is not widely known within the sector.

KPV recommends this be explicitly articulated in Section 42 of the Act in preference to relying on the sector's understanding of the common law.

Notice to enforce

KPV supports the proposed revision of Section 43 of Act particularly to allow the regulator to make greater use of variations of license conditions. This is a reasonable process to enable appropriate responses to breaches and more likely to promote greater compliance with the kind of improvement required than resort only to fines

Power to cancel a licence

KPV supports including a power to cancel a licence at the Licensee's request, consistent with other jurisdictions.

Direction orders

KPV agrees that there is a need to enhance the powers in Section 44 which allow the Secretary to remove children where there is an immediate danger to their health, welfare and safety. This will not always be the most appropriate response to the risk identified.

KPV supports empowering the regulator to issue a direction to a person at a service where there is an immediate risk. We suggest that this be extended to circumstances of immediate *or serious* risk to health, welfare or safety.

KPV recommends this power be supported by clear delegation of authority and a fair and reasonable process be put in place to ensure licensee is informed and clear procedure for DHS to follow when giving a verbal direction.

Appointment of temporary licensee

KPV supports giving the Secretary power to appoint a temporary licensee where a licensee is incapacitated.

KPV recommends defining the period of the temporary licence.

Attribution of action to a body corporate

KPV supports clarifying the common law in relation to vicarious liability. The ultimate responsibility of the body corporate for actions undertaken by an employee on their behalf and within the scope of the employee's employment should be made explicit.

Penalties

KPV supports the introduction of higher penalties for a body corporate to act as a greater deterrent for non compliance. This is a reasonable provision for multi-licence holders, but the potential impact on voluntary committees of management of incorporated association that meet the definition of a body corporate is significant.

Whilst there needs to be a level playing field in relation to meeting regulatory standards, it is reasonable that the nature of the body corporate, i.e. not for profit/ for profit, be identified so it is clear to the court when setting penalties.

KPV recommends that options for delineating between not for profit and for profit services be explored. Avenues to explore include appending a schedule of not for profit organisations to the *Children's Services Act*. Reference to the Sustainability of

Community Organisations project being undertaken by the Department of Victorian Communities and the State Services Authority Review of Regulation of the Not for Profit sector may also provide some options. Models used in the health legislation to distinguish public and private entities may also be worth examination.

RESPONSIBILITY FOR COMPLIANCE

KPV recommends that the primary responsibility for compliance remain with the licensee. However other legal entities or individuals should also be held legally accountable for actions, inactions and decisions in relation to functions for which they have authority or direct responsibility.

One way of reducing regulatory burden is to make regulations easy to follow and hence comply with. The term 'proprietor' causes much confusion. Less cumbersome, more straightforward and consistent language is required to clarify who is responsible and will be held legally accountable.

Similarly a definition of 'staff member' in the Act and consistent use throughout the Act and Regulations would reduce confusion.

KPV recommends defining 'staff member' and using straightforward and consistent language in place of 'proprietor'.

KPV recommends against any increase in licence fees for community managed early childhood education and care providers. Volunteers managing Victorian kindergartens are contributing 19% of the total operating costs compared with 28% from fees and fundraising and 52% from government grants. This significant community service should be recognised and supported rather than penalised through higher licensing fees. The possibility of a two tier structure for licensing fees may need to be explored.

STAFFING

Research demonstrates that highly educated staff with specialist early childhood training, low child: staff ratios and smaller group sizes are characteristics of highly effective children's programs. The 1998 Regulations no longer provide an adequate baseline standard for staffing.

Qualifications

KPV recommends

The Regulations require that

- All staff have a minimum of Certificate III training
- Qualified staff be defined as a Diploma or Advanced Diploma with children's services/early childhood education and care underpinning knowledge
- Degree qualified staff are those with a three or four year early childhood education and care degree awarded by a University
- There is a proportion of degree qualified early childhood teachers employed in all service licensed for more than 14 children or operating with a standard licence.
- The education (development and learning) program is planned and delivered by degree qualified early childhood teachers, or where only a proportion of

qualified staff are degree qualified, that person oversees/supports staff with diploma or advanced diploma qualifications to plan and deliver the program.

After ten years with early childhood as the qualification requirement any staff qualified under the 1988 regulations not currently working in the sector should be excluded until suitable early childhood training has been completed.

KPV recommends the transitional provision for staff qualified under 1988 Regulations be removed from the Regulations.

Staff: child ratio

The current ratios clearly must be improved. There is an overwhelming weight of international evidence that high staff to child ratios improves outcomes for children and are cost effective over the longer term. However the level of improvement required will impact on infrastructure and will present a challenge to early childhood services already struggling to keep fees affordable.

New regulations must address the changing needs of children and families and flexible program models while ensuring staff to child ratios are in the best interest of children. Ratios should be capable of adjustment as required by good practice over time as new service models and or understanding of child development is applied.

KPV has considered these factors in proposing the following.

KPV recommends the following staff: child ratios and that these ratios be included as a schedule rather than a regulation.

Age	Staff: child ratio	Qualified staff: child ratio	Degree qualified staff: child ratio
Birth – 12 months	1:3	1:9	1 when 15 or more children in attendance
13 months – 24 months	1:4	1:8	1 when 15 or more children in attendance
2 years – 3 years	1:5	1:10	1 when 15 or more children in attendance
3 years – 4 years	1:8	1:16	1 when 20 or more children in attendance
4 years – 6 years	1:11	1:22	1 when 22 or more children in attendance
Mixed age groups	The ratio for the group must at least ensure that the ratio maintained is as specified for the youngest child in the group while allowing for some flexibility.		

Group size

KPV recommends that group size not be a prescribed upper limit of children, but rather be a performance based outcome where the limit is based on demonstrating that the health, safety, wellbeing, development and learning of each child in a group can be met.

Qualified staffing emergencies

Despite the factors noted in the discussion paper, many services, especially rural centres, continue to have difficulties replacing staff, especially at short notice.

KPV recommends the exemption continue.

Coverage of qualified staff members' lunch break

KPV considers that including qualified staff on their lunch breaks in the staff: child ratio makes the provision of flexible kindergarten programs easier. However it is vital that skilled and knowledgeable staff are available to guide decisions in an emergency.

KPV recommends the current conditions continue.

PROGRAM

The program or curriculum is a critical component of quality in a children's service. Consistent with this KPV urges that the Act, rather than the Regulations, have a requirement for an education program with clearly articulated guiding principles. There should be a further requirement in the Act for a gazetted curriculum framework to be the foundation of the children's education program in a licensed service. A transition period should also be provided for.

KPV understands that there may be no legislative path to ensure that when a curriculum is developed it be made mandatory. If this is not possible, then guiding principles for early childhood development and learning programs should be included in the Act.

KPV recommends the requirement for an education program, with a set of guiding principles, be included in the Act.

Section 27 and Section 28 of the Act are not covered by the discussion paper and comments are included here as they are integral to a quality program.

KPV recommends that s27 *Supervision of children* be renamed and include the descriptors *actively, and efficiently* as well as *adequately supervised*

KPV recommends that s28 be renamed and the focus changed to a more positive approach to interacting with children and guiding their behaviour and includes *'interactions with children must be warm, nurturing and respectful'* in the reworded section.

FACILITIES

The ability to comply with essential sections of the Act and specific regulations, such as children's supervision and the provision of an education program, can be made easier or more difficult depending on the physical environment.

KPV supports a shift to performance based facilities regulations that complement the Building Code of Australia. However these standards must be met by all services at all times, that is, existing and future services and any changes to existing services.

KPV supports retention of prescriptive space requirements but recommends that consideration be given to replacing some of the prescriptive regulations, such as those covering toileting and sleeping, with outcomes based regulations. This may result in an environment and approaches which are more respectful of children and better meet their individual and diverse developmental and cultural needs. This may require descriptive outcomes and the development of a range of guidelines and/or practice notes.

Space

The provision of adequate functional space – arrival areas, bathrooms, sleeping areas, kitchen, storage, office, staff spaces etc – is essential if the child space is to be maintained exclusively for children. Any outcome focused regulations would have to give sufficient weight both to the potential impact of activities in any of these spaces on children and children’s programs and on the efficient and effective operation of the required activity. For example, an administration space would have requirements for safety, security and privacy that would preclude an open area being used.

KPV recommends

- Space requirements remain prescriptive.
- Indoor space remain at 3.3 square metres per child
- Increasing outdoor space for new services

Outdoor play space

Outdoor play is integral to children’s learning and development. Children need spaces that provide opportunities for a variety of play experiences and that suit a variety of play styles. The outdoor play area should have spaces for children to:

- Imagine and role play
- Relax and socialise
- Play on their own, with small or large groups
- Explore, experiment and create
- Run, jump, climb balance, swing, crawl
- Enjoy and experience diverse natural elements – sand, mud, pebbles, grass, dirt, trees, shrubs, flowers

Outdoor play spaces must also balance safety, suitability and challenge.

KPV recommends

- Increasing the minimum outdoor space requirement for new services and encouraging existing services to increase outdoor space.
- Including an outcome focused regulation to ensure the diverse elements of play listed above occur daily for children
- Requiring the provision of natural elements and that outdoor space be aesthetically pleasing
- Requiring specific outcomes for equipment safety, flexibility and suitability
- Requiring outdoor play to be explicit in programming

HEALTH AND SAFETY

Food

The regulations should make it clear that even when children are in a care and education program their physical needs for food and drink must be met, regardless of the amount of time they attend. This could be achieved by removing the word ‘if’ from regulation 50(3). Children must have access to water at all times. The nutritional

needs of children should be more explicit, for example add 'nutritious' to R50(2)b or add a new sub clause 'meet children's nutrition needs while the child is being cared for or educated'.

KPV recommends that food safety and suitability be covered as performance based regulations.

Medication

KPV supports the proposal to allow for medication to be administered in life threatening emergencies with the oral authorisation of a paramedic or medical practitioner, for example, the use of a second Epipen®.

Clarification of what constitutes medication may be needed given that the use of complementary medicines is commonplace and staff are likely to be asked to administer it. Requiring this type of medication to be in its original packaging may not be particularly useful in promoting confidence about its safety and suitability.

KPV supports this proposal.

First aid and emergency care

KPV recommends including a requirement for current first aid and CPR training. Relying on custom and practice is not acceptable for such an important area. It is not realistic to expect that early childhood practitioners have an understanding and awareness of common law requirements; making an explicit provision in the regulations to render first aid or emergency care is logical.

Responding to an anaphylactic reaction, including administering an Epipen® is a cause of concern to both licensees and staff.

KPV recommends clear guidelines be included in the Regulations.

Removal of a child by a staff member

KPV supports including a provision for authorisation of regular or local excursions – rather than every time they are going out the gate. All authorisations must provide sufficient information about the nature of the excursion, the potential risks and the risk management strategies in place for parent/guardian to provide informed consent.

INFORMATION COLLECTION

Good record keeping supports effective processes and accountability.

KPV agrees that the Regulations should only stipulate record keeping that is essential to ensure children's health, safety, development, learning and wellbeing. This includes both the records the service and a corresponding requirement that the Regulator will collect and analyse required records for a useful purpose including feedback to the field.

KPV recommends flexibility in the manner of keeping these records and where possible avoidance of duplication. For example, replace 'book' with 'record' and add outcomes to ensure the purpose of the records are clear.

Notification

KPV recommends the requirements regarding notification be clarified. It is reasonable to distinguish between a child's safety, health or wellbeing being compromised and a child being harmed, or exposed to serious harm.

Enrolment records

KPV supports the removal of redundant sub clauses.

Medication records

KPV recommends this regulation promote greater ease of administration of regular and/or emergency medication. The requirement to record the time and date the medication was last administered is problematic in these circumstances.

Accident, injury and illness

KPV recommends requiring these details to be recorded 'as soon as practicable'. Replacing 'accident', which does have a sense of being unavoidable with the more general term "incident' and /or 'trauma' seems reasonable.

INFORMATION RELEASE

KPV recommends that where it is practicable and there is potential or actual public interest or good to be achieved, aggregated data and non identifying data be published and/or made available to other governments, government departments or agencies. A cost-benefit analysis and consultation with appropriate industry bodies such as KPV would help establish this.

Any service specific data should be released either with the agreement of the licensee or if there has been a fair and proper process to ascertain the accuracy and relevance of the information. This would include a rigorous investigation by the Regulator that has resulted in a notice to enforce requirements (s43), cancellation of a licence or any matters proven at law.

STREAMLINING LICENSING PROCESSES**Assessment of fitness and propriety**

It is imperative that bodies corporate are aware of the responsibilities and accountabilities of being a licensee and that the Regulator has appropriately assessed all licensees to be 'fit and proper'.

KPV recommends the Act include a definition of the term 'representative' that makes it clear that they must be a person in a position of direct control over and accountability for decisions that would affect the operation of the children's service.

KPV recommends a clear and a streamlined approach for notifying the regulator about changes to 'persons who exercise control over or manage a children's service'.

Prescribed licensing documentation

KPV recommends documentation that provides evidence that those responsible for managing, operating and working in children's services are suitable for the responsibilities they undertake. Streamlining processes so that there is no unnecessary duplication is sensible.

KPV recommends a fit and proper assessment be for a defined period for all licences controlled by that person, rather than be site specific.

Approval in Principle

KPV recommends that the Regulator continue to assess sites and plans for proposed premises prior to major works being undertaken. The Regulator, through authorised officers with early childhood qualifications and knowledge of a wide range of children's services can provide valuable advice at the planning stage. However it seems unnecessary to undertake the fit and proper assessment at the AIP stage.

CRIMINAL HISTORY CHECK AND WORKING WITH CHILDREN CHECK

The basic principle is that unnecessary duplication should be avoided. However, *KPV recommends* that, in addition to a Working with Children Check, a criminal history check be assessed as part of determining whether a licensee representative, primary nominee or anyone working with children who is exempt from applying for a Working with Children Check is fit and proper.

References

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