

Productivity Commission
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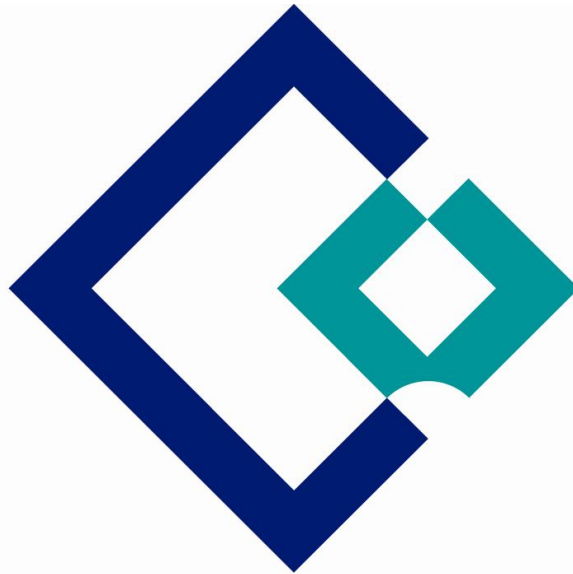
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A•S•U
Australian Services Union

**Early Childhood Development Workforce
Productivity Commission Draft Research Report**

Date: Friday 2nd September, 2011

Submitted by: Greg McLean
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The Australian Services Union (ASU) is the largest local government union in Australia, and represents child care workers employed in local government child care centres, in both Long Day Care (LDC) and Family Day Care (FDC) facilities.

The ASU broadly supports the findings and recommendations of the Productivity Commissions Draft Report on the Early Childhood Development Workforce. It accurately depicts the workforce and the challenges and benefits from the introduction of the National Quality Framework (NQF). The ASU believes the most pressing of these workforce challenges is low wages. Until this is addressed the sector will continue to struggle to recruit and retain qualified workers, and ultimately undermine the objectives of the NQF.

The following comments are directed to relevant issues raised in the Draft Research report released in June 2011. Also attached is the ASU's submission to the Department of Education, Employment and Workplace relations regarding the Exposure Draft of the National Quality Framework Regulations.

Chapter 3

Fee increases

The ASU is concerned about the prospect of fee increases as a result of the introduction of the NQF. As the report acknowledges this has equity implications and affects female labour force participation. Many women stay out of the workforce because the family unit is financially better off forgoing one income than they are paying childcare fees. This pressure on families, and in most cases women, will only increase as childcare fees increase. The ASU strongly supports the introduction of NQF qualification requirements but it is the responsibility of Government to wholly fund the increased costs associated with this.

We strongly support recommendation 3.2 to ensure low income families are not disadvantaged by the reform.

Overcoming information barriers and market pressures

The ASU welcomes the observation that information barriers exist in childcare and government intervention is needed to overcome them. We endorse the sentiment in finding

3.2 that market pressures will not bring about a quality ECD system. This recognition is a welcome change from the policy approach of the previous government where ultimate faith was placed in market forces to regulate quality. This policy approach led to the unsustainable growth of private providers such as ABC Learning and a decline in quality standards. At the time of the ABC collapse the ASU called for the introduction of quality standards and less reliance on the market. It is good to see the Productivity Commission acknowledge market failure in this industry.

The ASU has some concerns about what information may be available to the public. The Information Paper on the National Quality Framework released earlier this year appeared to suggest that very detailed information may be available to parents about regulatory breaches. The Paper stressed that the identity of the child would be kept private, but left open the possibility that workers identity may be accessible to the public. This information could unfairly prejudice a workers reputation and future employment prospects. Care needs to be taken to ensure only relevant information is released to the public, and workers privacy is protected.

Workforce initiatives

The workforce initiatives detailed in the Draft Report are positive but fall short of what is required for the industry to meet the qualification requirements. The most glaring omission is the lack of any support for workers obtaining a Certificate III qualification. It is unrealistic, and unfair to expect the 43% of the workforce without post high school qualifications to foot the bill for qualifications. Government assistance is required to support these workers to obtain the required qualifications.

Wages and conditions

The ASU strongly supports the observation that pay and conditions are not competitive and will need to increase in order to attract and retain qualified workers. This reality needs to be reflected in government funding decisions.

Chapter 4

Pay and conditions

ASU members work in local government child care centres and are in most cases employed on collective bargaining instruments which pay above the federal Award rate.

The observation made on page 55 that workers employed in part time and casual arrangements often represent a 'lifestyle choice' is untrue. It is true that many people, mostly women, work part time to accommodate caring responsibilities. However the same cannot be said of casual workers. In many cases these workers take casual positions because they are all that is available and they are never given the option of choosing permanent work. When asked say they want the job security that a permanent position provides. The use of casuals is a cost saving mechanism employed by the likes of ABC learning to pursue profit over quality care. It is an unsustainable model of employment that must be addressed if the NQF is to be successful. After all, why would a casual worker undertake training for a qualification if they have no job security?

Union coverage

The assertion at page 56 that employers have to contend with multiple Unions, negotiating multiple agreements is inaccurate. It is the ASU's policy that where multiple unions exist in one worksite they will work with other Unions as a single bargaining unit to negotiate an agreement. Workers employed in the same capacity will be paid on the same pay and conditions according to the agreement. It is only in cases where workers are employed on the Award that an employer would have to apply more than one industrial instrument to their workforce. There is a simple solution to this 'administrative burden'. Negotiate an enterprise agreement. It is a ridiculous assertion to contend that workers find ECEC employment unattractive because of the presence of multiple unions.

Recruitment and retention

The real reason that workers find ECEC employment unattractive is acknowledged in section 4.5. The ASU supports the finding that 'relatively low level of pay and conditions in ECEC, combined with limited returns to career progression, have been seen to cause recruitment and retention problems.' The ASU has observed that local government childcare centres tend to have lower turnover rates than their private sector counterparts. We would contend this is because local government childcare workers are paid higher rates and have better conditions than the private and community sector.

Chapter 6

Family Day Care Workforce

The ASU is concerned about the observation that FDC workers may suffer a wage decrease as a result of the introduction of the NQF. This is fundamentally unjust and unfair to workers who in many cases have gone to considerable expense and effort investing in their business and ensuring their houses conform to local council regulation and departmental guidelines. This problem stems from the precarious way in which FDC workers are engaged by local government. FDC workers engaged through a direct and secure employment relationship cannot have their wages decreased. This problem must be addressed as part of the transition to the new regulations to ensure FDC workers are not disadvantaged by the introduction of the NQF.

Chapter 8

Remuneration of professionals working with children with additional needs

The ASU endorses the findings in chapter 8 with regard to the difficulties in attracting and retaining professionals to work with children with additional needs. The observations on page 133 that these workers often leave the community sector to work for much higher salaries in Government is a common experience across the Social and Community Services Sector. These workers are the subject of the ASU's application for an equal remuneration order in Fair Work Australia which sought to increase wages in line with their public sector counterparts.

Attachment 1:

ASU Submission to the Department of Education, Employment and Workplace Relations on the National Quality Framework Regulations Exposure Draft Submission, April 2011

1. The Australian Services Union (ASU) is the largest local government union in Australia, and represents child care workers employed in local government child care centres, in both Long Day Care (LDC) and Family Day Care (FDC) facilities.
2. The ASU is supportive of the initiative to improve the qualifications and regulation of education and care services. However the changes will have significant industrial implications for workers and employers in the industry that need to be addressed by the Government if the initiative is to be successful. Further, we have concerns about the potential financial penalties that individual workers may be exposed to under the proposed regulations.
3. This submission seeks to address the following questions raised in the information paper and addendum;
 - *To what extent should educators and other staff members be held liable for failure to meet certain regulatory requirements?*
 - *Should charges for offences under the National Law be included in the range of information that may be published by a Regulatory Authority (para 559 – 560)*
 - *The Australian Children’s Education and Care Quality Authority will be responsible for approving and publishing a list of nationally approved educator qualifications. What factors should it take into account in relation to the transition of educators to these qualifications (430 – 436, 589- 592)*

Qualification requirements

4. The ASU supports the objective of improving the skills and competencies of child care workers. The *National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care* as it relates to staff qualifications, and staff/child ratios is a positive reform that recognises the demanding nature of the job and complex skills that child-care workers need.
5. However there are a number of issues that remain unaddressed in the information paper, these include recognition of experience, the industrial implications of the

changes, and training needs to upgrade the qualifications of a workforce in such a short period of time.

Recognition of experience

6. While many ASU members have the minimum qualifications and will be unaffected by the new qualification requirements, a number do not have formal qualifications. In most cases these workers have significant experience in the industry, and have developed skills far beyond what they would learn in Certificate III course. It would be redundant, and costly, to put these workers through a qualification that they don't need just to satisfy a regulatory requirement.
7. The ASU recommends the Australian Children's Education and Care Authority that is charged with the responsibility to consider what qualifications should be included in the national list of 'approved educator qualifications' should also have responsibility for assessing the cases of workers with substantial experience in the industry that do not have a formal qualification. The ASU submits the Authority should exempt cases where the worker has worked in the industry for a number of years from the qualification requirements, and look instead to workplace assessment.
8. In addition, the Authority should ensure that approved courses give credit and recognition to prior learning, and on the job training. This sort of flexible approach to training means that the formal training offered in Certificate III or Diploma courses is meaningful to people who have worked in the industry for a significant period. It allows those experienced workers to accelerate through the course material in which they are proficient, and focus on the elements of the formal training that is new. It ensures the training is really an opportunity to upskill.

Industrial implications

9. The new qualification requirements will have implications on the workplace conditions of our members, many will be required to upgrade their skills, and take on new responsibilities and liabilities. As such, serious attention and resources are needed from Government and employers to support workers whilst they undertake

study or training, and to ensure workplace awards and agreements, and remuneration reflect the new work responsibilities.

Support for study and training

10. As it will now be a legal requirement to have or be studying for a qualification, it is reasonable to expect that employers should support workers to undertake this study. The kinds of supports workers need includes provisions in industrial instruments such as study leave to attend classes and assessment and the payment of course fees. These provisions exist in some instruments, but are not widely available.

11. The ASU recommends the Government should pursue changes to the *Local Government Industry Award 2010* and *Children Services Award 2010* and relevant state awards to include these provisions. The Government will also need to provide funding to employers to ensure relief workers can backfill workers on study leave, and fund the payment of course fees.

Changes to childcare roles: increased responsibility and liability for workers

12. The introduction of the National law will change the roles and responsibilities of some child care workers.

13. Under the new national system family day care workers, and supervisors will be charged with more responsibility for regulatory compliance and face greater risks and liability in the case that these regulations are breached. The workers in the position of 'Nominated Supervisor' of 'Certified supervisor' and 'FDC educator' in particular are exposed to significant personal liability. It is important that the increased responsibilities the regulations impose are reflected in the position descriptions and remuneration of these workers. (The ASU has significant concerns about individual workers being exposed to this sort of liability. This issue is discussed later in the submission.)

14. The new national law will also impact workers employed in 'unqualified' or 'helpers/untrained assistants' classifications. These workers will be required to

undertake training towards a Certificate III and in doing so will need to move to a higher classification and pay level to reflect their skills attainment.

15. These changes at the lower levels and top of the pay scale will increase the cost for child care providers. The ASU recommends that Government funding be increased to Approved Providers, to reflect the new skills requirements and costs they will incur.

Attraction and retention of qualified workers

16. More attention needs to be given the question of how the Government will attract workers to become qualified as child care workers, and then retain them once they have achieved the qualification. The low rates of remuneration for a qualified child care worker mean there is significant incentive to leave the industry once qualified, for a better paid position in a Kindergarten. For those unqualified workers it is hard to see the economic value in committing the financial and time resources to undertaking a qualification, when the pay rates at the end are so low.

17. Just imposing regulations on providers does not address this question. Providers still need to find willing and capable workers to undertake the qualifications to comply with the regulations, and they need to find a way to retain them after they have completed the qualification.

Penalties for offences under the proposed regulations

18. The information paper sets out serious penalties for individual workers for regulatory non compliance. The ASU believes the heavy burden of liability placed on the 'Nominated Supervisor' and Family Day Care Educator is excessive and unnecessary. This supervisor, who may earn as little as \$49,013¹ a year, will be exposed to fines of up to \$2000. This is the same amount that is imposed on the Approved Provider, who has a much greater capacity to pay.

¹ Commencement rate for Children Services Employees in the position of Director, employed under the Children Services Award 2010

19. The move to penalise individual workers is unprecedented in the care and education professions. Primary and Secondary Teachers do not face financial penalties for breaches of the regulations that govern their profession. If they engage in activity contrary to the regulations they are subject to workplace disciplinary procedures that are set out in their industrial instruments. If they engage in criminal activity, those matters are addressed by the criminal law.
20. The child care industry, and individual providers already has effective strategies for ensuring workers comply with regulations. Those strategies are set out in the dispute resolution clauses in Awards, Agreements or State Regulations. Those internal strategies impose a much more serious penalty on workers that contravene the regulations; they can lose their job and livelihood.
21. It would be more effective, and just to impose the regulatory responsibility on the Approved Provider, who then has responsibility to ensure the compliance of its workers through normal workplace procedures. If anything, making the Nominated Supervisor of Family Day Care provider liable just waters down the Approved Provider responsibilities and potentially allows them to be use as scapegoats for breaches. Ultimately it is the licensee, owner and management who have the decision making authority and resources to determine whether their centre is compliant or not.
22. In addition the ASU is particularly concerned about how these penalties, and regulation would work in Family Day Care. Currently FDC is regulated by State Governments who often license to Local Government, who then effectively contracted to individual's to operate the service. It is unclear in the information paper, who would be the FDC Approved Provider? Is it Local Government or the individual? If it's the individual, the regulation place a significant burden on those individuals. Further, it is unclear what local Government's regulatory role would be following the introduction of the National Law. Surely Local Government is in a better place to monitor the activity of FDC centres in their municipality, as compared to a national Authority?

Right to appeal

23. The child care industry, and in particular the Family Day Care workers have faced considerable difficulties accessing rights to appeal administrative decisions of the regulator, in their case local or state government. The ASU recommends that all workers and providers have access to appeal rights to their state administrative tribunal for decisions of the Authority concerning offences under the proposed national regulations.

Privacy

24. The information paper seems to suggest that detailed information may be available about Approved Providers who have breached the regulations. It clearly provides that the identity of the children will be restricted. It is important that the identity of the worker concerned is also restricted from public access. This information, if made publicly accessible could be provide an incorrect account of the incident, or may be open to misinterpretation.