



**A•S•U**  
**Australian Services Union**

# **National Quality Framework Regulations Exposure Draft Submission**

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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 \$49,013<sup>1</sup> 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.

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<sup>1</sup> 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 identify 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.