



ABN: 65 768 804 095

Unit 11, 6 Vanessa Boulevard
Springwood QLD 4127

PO Box 137
Springwood QLD 4127

Tel : (07) 3808 2366
Fax: (07) 3808 2466
Freecall: 1300 365 325 (country & rural)

Email: childcareqld@bigpond.com
Web: www.childcareqld.org.au

Access to information about non-compliant licensed child care services

Childcare Queensland Submission

7 September 2009

Childcare Queensland (CQ) understands the government position regarding licensees who refuse to maintain safe and healthy environments for children in long day care services. Childcare Queensland does not condone unsafe practices in any care and early learning facility for children.

However your document “*Access to information about non-compliant licensed child care services*” (referred to hereunder as the “Compliance” document) encroaches on the rights of all child care centre-based operators.

We see this consultation as tokenistic as it has not been inclusive of all services and it was not distributed to all services. The four working days allocated for submissions to be collated is extremely inadequate and unprofessional. Childcare Queensland has not had opportunity to call meetings to discuss this proposal with members nor have we had time to call a meeting of our Committee for discussion. All stakeholders should be given sufficient time to provide considered responses. We consider this submission an initial submission only and request that a longer timeframe be allocated for further consultation.

We consider the Compliance document is discriminatory as it will only apply to *licensed centre-based (with the exception of school age care) and home-based care*. If the government is concerned about the care and wellbeing of children, **all licensed children’s services** must be included, including stand alone kindergartens and Outside School Hours Care.

Discrimination against the licensed centre-based sector is evident again in your section “*What information would be published*” in that *home-based care name and address of service* will not be published. Childcare Queensland will not accept this discriminatory action.

Your document states: “*Providing transparent information about the quality of a service would enable parents to make informed decisions about a child care service that is providing, or would potentially provide, a service to their child*”. Childcare Queensland questions the objective of this sentence.

- a) How is quality measured and now by whom?
- b) Is overall quality taken into consideration?
- c) Does a seriously-non compliant issue or a moderately non-compliant issue override all other areas of quality?
- d) Is quality measured by the adequacy of our equipment and systems?
- e) In what other profession or industry is government permitted to name and shame on a worldwide basis: e.g. Doctors, Undertakers, Physiotherapists; Plumbers (the medical profession does receive similar access to government funding as child care services through subsidising families)?
- f) Does the government believe that parents (community) are not capable of making decisions on information already available e.g. Accreditation results, licence, quality of staff (displayed), philosophy of the service, programs, centre inspection and word of mouth?

Childcare Queensland does not agree with the intent of this compliance document and sees no basis for why the child care sectors mentioned should be singled out as a special category apart and distinct from any other industry.

We believe that it is a subjective approach to determining quality in that it will work from a ‘matter of fact’ description of defects e.g. loose paling. Full information and details of these

defects have not been advised to the sector which leads us to question whether it will be a continuously moving set of government requirements as has occurred in the past.

From complaints Childcare Queensland receives from members, the process under which the government executes compliance for long day care services is defective in that it is inconsistent across areas of departmental regions in Queensland.

Childcare Queensland meets with the department on a regular basis in order to iron out many of these irregularities and inconsistencies. These meetings in the past have been valuable to the sector and we understand to the department also but over the past twelve months our belief is that the meetings are not as effective as they have been and could be.

Early Childhood Officers (ECO's) in some regions are very willing to work with licensees to ensure that issues recognised as being non compliant are fixed in an appropriate length of time. In other regions an extremely hard line is evidenced with a variety of expectations and outcomes placed on services.

Childcare Queensland has no confidence in the proposed system that ECO's will be consistent across all areas. Discussions with our members reveal many inconsistencies in approach. In the past CQ has offered to be available during the training of ECO's to assist to develop a system that is fair, reasonable and consistent whilst ensuring that all areas of compliance are met.

Interpretation of the Act and Regulations by ECO's is where most of the compliance angst is instigated.

Your document states that *"the Office uses a collaborative approach to achieve compliance without the need to issue compliance notices or to take more serious enforcement action"*. In most cases it is not a collaborative approach but more a compliant (we will do as we are told even if we believe it is not correct) approach by licensees. Anything dealt with through a 'collaborative' approach is more often than not still written up on the compliance letter. Working together with the department to attain better outcomes has now become very one sided from within a service.

This has been evident over the years with requests by ECO's.

- Beautiful trees with roots out of the ground that the children loved to play in have had to be removed at the request of an ECO. A service has nowhere to appeal to when these orders are given as the time line is fine and to remove trees does not occur overnight.
- A compliance letter was issued during the worst drought in Queensland for grass to be grown under a tree. Not only could the licensee not water newly planted grass but grass will not grow under absolute shaded conditions particularly with lots of little feet constantly playing there. Children love to play on different textured surfaces – an olden day memory – children in a mud patch. The overprotective nature of many of these orders is bordering on abuse of freedom for children. At a conference in Nebraska on nature in the environment, delegates spoke of the wonderful experience for children in "back to nature" surroundings in their long day care centres. Concrete is being pulled up and trees and waterways introduced. Queensland and Australia is continuing to travel down the path of removing the natural environment for our children.

- Staff constantly changing. How will this be measured? Three staff in a year, two in a month, two in one week? This point is extremely subjective as licensees have no control over another human being – particularly staff. Staff leave services for many reasons; disillusioned with government regulations, feeling snowed under with the accreditation process and paperwork which is in many cases, foreign to them as they chose childcare to work with children – not do paperwork. We employ the majority of our staff in the most difficult periods of their lives. Their first jobs, their first romances, their first move out of home, their first marriages, their first homes, their first babies etc. etc. At each of these stages some employees have difficulty managing and they move on to other professions, to other regions or in the case of having babies, to remain at home for some time. It is totally unrealistic to determine what is staff constantly changing. When employing a new staff member, even with correct interviewing and reference checking, sometimes it may take three attempts to settle a staff member before the correct person is found to meld with the service community. A Director may move to another service and encourage several staff members to move with her. How can the licensee be held responsible for this?
- Dust on a windowsill – compliance letter. Not that CQ supports an unclean centre, but in dry times, dust happens and I would ask if any of us are living in an absolutely dust free environment. We are just asking for a reasonable approach. If dust is noticed, a staff member cleans it, why then does it need to be written up as a compliance issue and recorded in a log book?
- Many years ago we were told that outdoor taps could not be within a child’s reach. At expense licensees raised the taps to above 6 feet. A later directive said that outdoor taps must be within reach of children, at expense, licensees lowered the taps.
- Compliance letters issued for failure to have a JP witness a document. On two occasions known of by CQ, the licensee has identified fraudulent qualifications and confirmed this with the Registered Training Officer. Phone calls to the ECO and discussions with the department at CQ regular meetings informed us that it is no business of the department. Why then do we bother with the JP signatures? A document not witnessed by a JP will lead to the licensee receiving a compliance letter.
- We note that “loose fence palings” will be considered as moderate non compliance. CQ believes that if anything at all, this should be an on the spot rectification and maybe a compliance letter if it cannot be fixed immediately. If a service has fence palings there will most likely be some thousands of individual palings. Whilst staff and maintenance staff monitor these palings, is the department saying that we must employ a person each day to physically rattle each individual paling and how many times each day? If the ECO has time to rattle each paling, and they do, and finds one paling with movement will this be considered a serious non-compliance? How much movement is loose With thousands of palings should one be found loose on two consecutive visits, will that then be considered serious non compliance and listed on the website? Consultation with a registered builder has confirmed that a loose paling caused by age or rot is easily identified however he suggests that the degree of severity of the disrepair of the fence must be taken into consideration for a serious compliance issue to be noted? A fence in disrepair is a different compliance matter. Are ECO’s sufficiently qualified and experienced to make this diagnosis?
- Compliance letter – a doll with dirt on its face (it had been much loved in the outdoor environment during play time) – immediately cleaned by a staff member, written up in the compliance letter. This is an absolute waste of time and does not generate a feeling of support or negotiation with an ECO. Staff are doing their utmost to meet all legislative requirements in the allotted time that they have combined with providing

each child with a high quality program that will ensure that they are ready for school and socially adjusted to live comfortably within the community.

We cannot align dirt on a dolls face, a tear in carpet grass or a cracked tile to the situation in most public schools whereby children do not have soap and paper towels to maintain hygiene. One cannot imagine the breeding ground for bacteria that must be occurring when we have teenagers attending to their own personal hygiene needs and having to wash their hands only with water. Children may have faeces on their hands and have water alone to remove the contamination. Long day care centres are subjected to increasing regulations for health and hygiene with regard to children's health only to have these same children exposed to inferior hygiene standards when they attend school.

- The principal of a public school is not named and shamed on the internet by the state government if a prep child wanders away from the school grounds or for not providing soap.
- **Minor non compliance is intended to be published as noted in "What is proposed in Stage 2?"**

CQ is requesting that anything that is so minor that it can be rectified on the spot should not be written up in a compliance letter. That is unless ECO's are required to justify their existence by ensuring that they find something at each service.

Log book:

'The second stage would involve a log book, whereby licensees would be required to record information about any notices given to them under the ACT'.

The word causing concern in this clause is **any**.

Childcare Queensland does not support this process of recording incidents of compliance in a log book from minor to serious in view of the issues raised above, together with the fact that they would have been rectified. CQ does not have confidence in the system to believe that ECO's will not become overzealous in order to prove themselves to the detriment of a quality service and staff.

What is the vision for long day care in the eyes of government? From where our members' observe, it appears that the system is becoming so regulated that the joy will never be returned to the early year's sector, staff will continue to leave and we will be breached for *staff constantly changing*.

This section links to: **What is proposed in stage 2? See below for CQ comment.**

Non compliance publication and the *Right to Information Act 2009*:

This paragraph of your document on page 2 indicates that under the *Right to Information Act 2009*, a decision on disclosure takes into account '*public interest, consideration as to whether disclosure could reasonably be expected to prejudice or have an adverse effect on the private, business, professional, commercial or financial affairs of the licensee*'. It is less than comforting to note that the state government is not going to recognise the considerations under the Act but will determine by the judgment of the state department to publicly name and shame a licensee. Childcare Queensland's insists that the licensee has a right to the common law principles of procedural fairness and natural justice and does also have the right to appeal through a fair system with private representation.

Even infamous criminals do not have their address published for the public to make personal or terrorising attacks on them. A convicted paedophile has his whereabouts hidden by the state. Childcare Queensland is not trying to minimise the responsibility of a licensee to act on serious issues of compliance but we are concerned as to the rights of each individual in progressing through the process.

In discussion with officers of the department, members have been advised that it will only be the centre name and service published. Childcare Queensland points out that your document states:

- Name of the licensee and their address: **Discrimination**
- Name and address of the service (except home-based service): **Discrimination.**

Your compliance document states: “No information about a child or individual persons (other than the licensee) would be published to ensure the *dignity, privacy and safety of parties*”. This statement again enforces our understanding that there will be one law in Queensland for child care licensees and another for all other persons. The dignity, privacy and safety of parties will be appropriate for all Queenslanders except those who are licensees of centre based child care.

Childcare Queensland suggests that the disclosure of information on child care licensees will be contrary to the intent of the Right to Information Act 2009. We do not agree that this disclosure would have more public benefit than it would have detriment to the persons named. With no finite details on this process, our confidence in the process is hindered. The statement that governments option “to provide certainty the Child Care Act needs to be amended” is evidence that this intended strategy will seriously hurt the financial affairs and privacy of the licensee.

Childcare Queensland objects strongly against publication on the World Wide Web.

The length of time that information would be displayed:

Childcare Queensland does not agree that non-compliance be displayed on the website at all. If a service refuses to fix a moderate issue after progressing through the system, it would appear that conflict is more the issue than the identified compliance point. Have negotiations broken down, is the licensee defiant, what steps can be taken to work with the licensee to reach the desired outcome, can Childcare Queensland assist? If the sector and government can work together rather than work with the “sledgehammer to kill an ant” process, we would certainly lead the field in Australia with a happier, more compliant early year’s sector and maybe even provide a natural outdoor environment that children can explore.

It is obvious on visiting services that services are not all treated equally by regulatory bodies. Old buildings that have had very little expenditure on structures and environment are evident. If this should be a community service, whose name and addresses will be displayed on the website, the entire parent committee or the CEO, or will negotiations continue to suit the financial and timing needs of the organisation?

What would be the right of reply/review of mechanisms?

Childcare Queensland has extreme concerns about this process, bearing in mind the possible discriminatory processes already suggested.

Before punishment can be dispensed procedural fairness must be seen to have been applied to provide the ability of the accused to receive natural justice.

The accused licensee must be provided with a reasonable opportunity to state their case and have the right of representation before an independent tribunal. We do note that in an article written by Cooper Grace Ward <http://cgw.com.au/articles/will-you-need-to-go-to-qcat-.html> article 'Will you need to go to QCAT?' dated 6th July 2009 and retrieved on 6th September 2009 that: *The tribunal will need to give specific consent if a party wants to be represented by a lawyer or agent.*

Childcare Queensland needs assurance that the accused will be fairly heard by an Independent Body.

What is proposed in stage 2?

Childcare Queensland objects to the details of the information about any notice (minor, moderate and serious) being recorded in the log book, the details of which will be then published on the website.

Childcare Queensland requires that procedural fairness be applied prior to any publication on the website of centre details.

The Queensland Government's Smart Regulation Reform Agenda seeks to get the balance right between the benefits and costs of regulation, and to reduce regulatory burden in order to give time and money back to individuals, businesses and government to invest in innovation, productivity and economic growth. Childcare Queensland suggests that a Regulation Impact Statement, in accordance with best practice regulation making, be conducted to determine the effects of this proposed legislation on the child care sector – and in particular centre-based services. At this point, with the information provided, we are unable to determine the following:

- the problem or issues which give rise to the need for action;
- the desired objectives
- the options (regulatory and/or non-regulatory) that may constitute viable means for achieving the desired objectives
- an assessment of the impact (costs, benefits and, where relevant, levels of risk) on consumers, business, government and the community of each option;
- a consultation statement (that provides transparency and inclusive consultation over a reasonable period of time)
- a recommended option; and
- a strategy to implement and review the preferred option.

Gwynn Bridge
President
Childcare Queensland
7th September, 2009