

ATTENTION

The Hon A Rishworth MP
The Hon A Aly MP
By email:
earlyyearsengagement@dss.
gov.au

10 March 2023

Dear Ministers,

Australian Government Early Years Strategy: Discussion Paper

Futuro Childcare & Education (**Futuro**) is a small Approved Provider in NSW. We welcome the development of an Early Years Strategy (the **Strategy**) by the Commonwealth Government and provide the following submission in response to the Strategy Discussion Paper. This submission will not address Questions 3, 5, 7 and 8 in the Discussion Paper.

About Futuro

Futuro's Directors have extensive experience with the development of long day care centres, having worked for many years for one of Australia's largest long day care operators. [REDACTED]

Question 1

Do you have any comments on the proposed structure of the Strategy?

Yes. A brief overview of suggested elements for inclusion in Attachment B is set out below:

A. Feedback Loop.

It is recommended that consideration be given to the inclusion of a feedback loop that assesses progress and performance against the principles and indicators, at all stages of program implementation.

It is a reality of policy and program implementation that new evidence, unforeseen challenges and in some instances, unintended consequences will arise. It is important to take a flexible approach with policy and program implementation that allows for the consideration of such changes as they occur and gives those responsible for implementation the power to make adjustments as required in order to ensure that agreed outcomes are met.

If those responsible for program and policy implementation have been explicitly granted the power to make adjustments as needed, within a defined scope, there is less risk of late discovery that the approach taken to implementation was not in fact fit for purpose or had a raft of damaging unintended consequences that could have been prevented. This approach will also ensure that new evidence from other jurisdictions can be more easily taken into consideration without the need to re-instate formal stakeholder consultation.

Part of the 'defined scope' referred to above should include the ability to refer matters to the Australian Institute of Family Studies, or a similar body, in circumstances where program and policy implementation is not achieving anticipated milestones, or where unintended consequences have been reported.

B. Milestones & RACI model.

It would be beneficial to break the relevant indicators into time-bound milestones so that it's possible to assess performance against expected progress at each milestone. This process should also stipulate trigger points at which a decision can be made to defer or temporarily cease work on a program of work while consideration is given to the necessity of a change in approach and if substantiated, what that shift in approach should be.

In addition to clearly identifying relevant milestones, it is recommended that a RACI model be adopted that specifies those individuals and Departments that are 'Responsible, Accountable, Consulted and Informed' with respect to each component of the program and policy implementation. Ideally there should be mutual accountability across each program of work, to ensure that Departments are incentivised to pursue the collective success all programs.

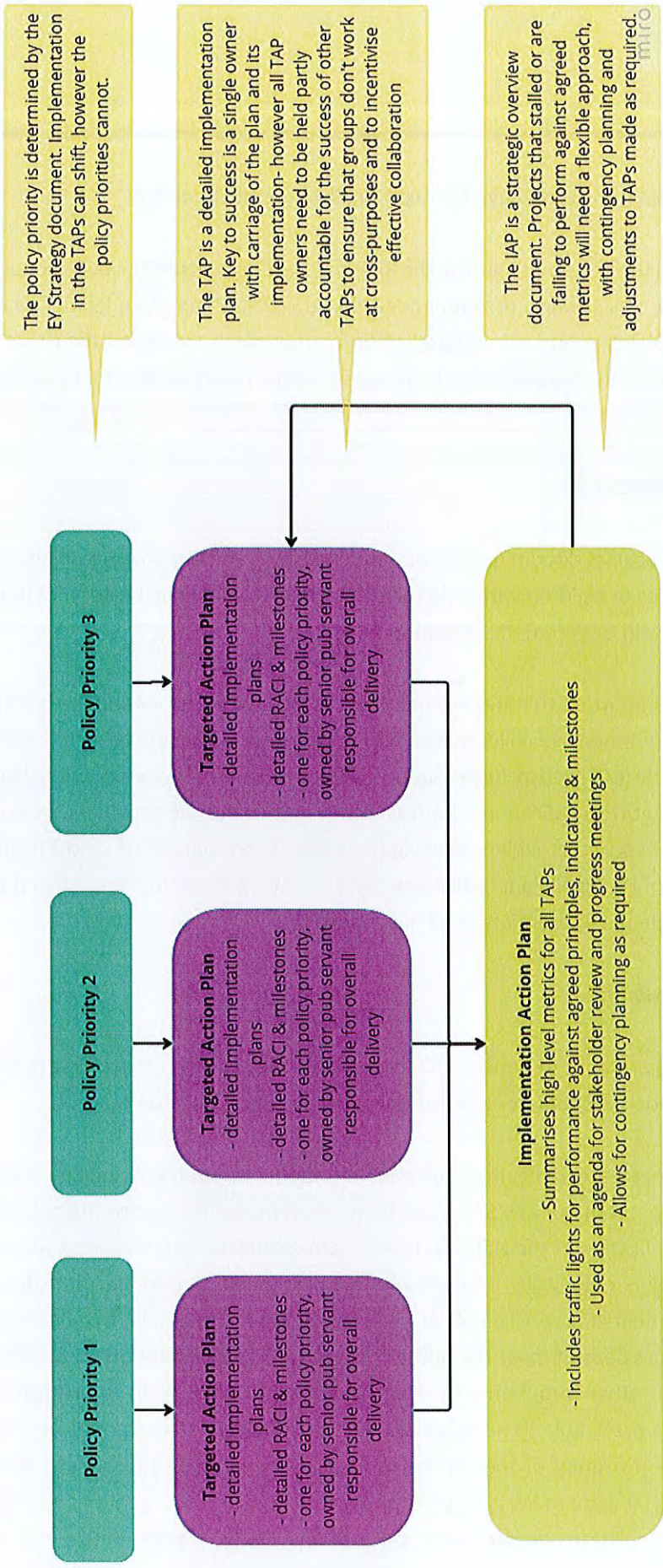
C. Stakeholders.

It is recommended that consideration be given to the creation of a stakeholder committee, comprising a range of providers, peak bodies, Government entities like the OCG, senior representatives from the public service entities responsible for delivery, and groups representing the interests of children.

This committee could be tasked with providing oversight and input into the framework detailed above. This committee can feed progress reports back to stakeholders and advocate on behalf of stakeholders where implementation adjustments are required. Taking this approach will avoid the possibility of duplication with respect to stakeholder communication and consultation.

D. Implementation Action Plan.

It is suggested that the approach should be:



2. What vision should our nation have for Australia’s youngest children?

Australia has ratified the UN Convention on the Rights of the Child (**UNCRC**), however has not enacted the UNCRC into law. It is strongly recommended that the UNCRC be given legislative effect. In the absence of a Bill of Rights in Australia, greater efforts can be made to protect the rights enshrined in the UNCRC on behalf of the most vulnerable members of Australian society. Particular areas of focus should be:

A. *Disability discrimination.*

The prohibition against discrimination set out in Article 2, and the positive obligation to provide adequate services to children with a disability in Article 23, could be better met in the provision of Government and Government-funded services.

It is particularly important to note the challenges associated with meeting the health, safety and educational requirements of children with additional needs within the parameters of the existing Child Care Subsidy (**CCS**) and Inclusion Support (**ISS**) funding arrangements, with eligibility subject to onerous repeat re-certification, a burden often met by service providers. In some instances we are aware of service providers refusing to accept the enrolment of children with additional needs because of the significant challenges associated with obtaining funding that will allow the service to provide the appropriate level of support.

B. *Childcare accessibility.*

The positive requirement to provide childcare services for children of working parents in Article 18, and to provide education for all children in Article 28, could be better met.

In particular, there are difficulties surrounding adequate supply of quality ECEC in growth corridors, and to remote or low SEIFA communities. A pragmatic approach could and should be taken to the application of the National Law in such circumstances, balancing the advantages of having a service in a particular location within a reasonable timeframe, with the requirement that all requirements for service delivery be met. By way of example, the view could be taken that a service that doesn’t meet the outdoor space requirements set out in the Regulations but that meets all other requirements particularly with respect to qualification and ratio requirements, is preferable to no service at all. In such circumstances consideration could also be given to the proximity of the service to local parks or other appropriate outdoor spaces. Currently a very rigid approach is taken to such matters, with the result that some communities are considered ‘childcare deserts’ (see ‘Deserts and Oases’ report, Mitchell Institute, March 2022).

C. Child protection.

Article 19 of the UNCRC contains a requirement that states take all appropriate legislative, administrative, social and educational measures to protect children from all forms of physical or mental violence, injury or abuse.

There is currently some inconsistency in approach across all levels of Government in the approach taken to the reporting and management of suspected child abuse. In some instances, mandatory reporters are given little guidance or conflicting guidance in relation to their reporting obligations. This is particularly challenging where those obligations conflict with other statutory obligations. This is a critical issue considering that the Persons with Management and Control of Approved Providers under the National Law and Regulations can be found liable and subject to penalties in their personal capacity. These individuals are also exposed to potential liability under the criminal law for failure to report suspected child abuse.

There is also substantial work that can be done regarding the administration of the system for Working With Children Checks (**WWCCs**). The 2015 Royal Commission highlighted significant shortcomings in the approach to managing WWCCs at the state, territory and Federal level. In response, National WWCC Standards were developed however these have been implemented inconsistently across different states and territories, replicating the very problem that the Standards were intended to avoid. A second, and more important piece of work, involved the establishment of a centralised database to assist jurisdictions with the continuous monitoring of individuals holding a WWCC. The jurisdictional work required as part of this project is still in progress eight years after the Royal Commission's report was handed down. The reality is that the community and to some extent services, do not understand the limitations of the current WWCC framework, placing undue reliance on WWCCs.

4. What specific areas/policy priorities should be included in the Strategy and why?

A number of recommendations are set out in response to question 2 above. In addition to the foregoing, and as a general comment, we suggest that consideration be given to the improvement of existing service delivery by the Commonwealth rather than embarking upon new and complex policy initiatives.

With respect to the improvement of existing Commonwealth services, we highlight the following:

A. CCS Administration.

A number of issues surrounding the administration of the CCS were raised in the 'Child Care Package Evaluation: Final Report' (AIFS, 2022). Specifically, this report noted difficulties surrounding ISS funding and the effective and timely resolution of errors or complaints. It is also important to note that unlike jurisdictions responsible for assessing and granting applications for Service Approval, which require an assessment to be completed within 90 days, there is no time-

bound statutory obligation on the Commonwealth with respect to the assessment of Child Care Subsidy applications.

Approved Providers are provided little transparency regarding the progress of CCS applications, including the likely timeframe for CCS to be approved. This has a very real impact on families, as the Department advises families to pay full fees until the CCS application has been approved. This places a significant financial impost on families in circumstances where the service can provide no assurances regarding the relevant timeframe for approval to be obtained. We are aware of applications submitted well in advance of Service Approval on behalf of large established operators taking over 6 weeks to approve.

B. Complex regulatory landscape.

The Regulation surrounding the provision of ECEC is extremely onerous and much more so than the approach taken to the provision of education in other settings. At a minimum, an Approved Provider opening an ECEC service is required to ensure compliance with over 40 different pieces of legislation, regulations, guidelines and frameworks across local, state and federal Government. This doesn't include compliance with taxation or corporate regulations. As a cottage industry, with no centralised body providing advice or guidance, it is surprising that there are not higher levels of unintended non-compliance.

Implicit Regulation

It is important to emphasise that what is asked of providers often well exceeds what is stipulated in the National Law and Regulations, creating a layer of implicit regulation. The National Law and Regulations are extensive, totalling 292 and 208 pages respectively. The provisions of the National Law and Regulations are regularly referred to in practice.

The National Law and Regulations are supplemented by the 'Guide to the NQF', which is 648 pages in length. Amongst other things, the Guide to the NQF gives an indication of the practices that assessors will look for during an Assessment & Rating visit. This includes compliance with guidelines like 'Staying Healthy in Childcare' issued by the NHMRC (see p 156, Guide to the NQF). In this way, what is technically a Guideline becomes an implicit regulation because failure to comply with that Guideline can be considered a failure to 'Meet' the requirements of the National Quality Standard.

Subjective assessment of compliance

A factor that adds further complexity to the regulatory landscape is the lack of consistency in approach between Authorised Officers, and between the approach taken by Regulatory Authorities in different states and territories. We are aware that Authorised Officers in some states are not required to hold an ECEC qualification and undertake only 4 days of training on the Regulations.

Anecdotal feedback from the sector suggests that the view is widely held that Authorised Officers take an inherently subjective approach in their assessment of compliance with the National Law and Regulations. Services however have limited resources and legal remit to challenge these assessments, creating a substantial power imbalance between services and the regulator.

Excessive administration

It is a legal requirement that all services maintain 23 prescribed policies and procedures, and that those policies and procedures are compliant with the National Law and the National Regulations as updated from time to time. The Regulatory Authorities are not, however responsible for providing advice on the content of those policies and procedures (see p 41 Guide to the NQF).

Many smaller services that don't have the capacity to create their own policies and procedures in-house will purchase and amend templates from a service like Childcare Centre Desktop. In response to the unpredictable and subjective approach taken by Authorised Officers, services will often implement a wide array of additional policies, procedures, audits and checklists to ensure that all possible expectations are met with respect to compliance with the Regulations and the Law. However, the burden of completing this documentation invariably falls upon Educators, Centre Directors and Nominated Supervisors.

The following is a list of documents recommended for adoption by Childcare Centre Desktop in satisfaction of the statutory requirement to implement policies and procedures controlling the spread of infectious disease, in addition to the prescribed policy and procedure (reg 168):

- Reporting of infectious diseases procedure
- Indoor cleaning procedure
- Indoor cleaning checklist
- Outdoor cleaning and safety checklist
- Bathroom cleaning procedure
- Bathroom and nappy change cleaning checklist
- Bathroom safety audit
- Kitchen cleaning procedure
- Kitchen cleaning checklist
- Toy and equipment cleaning register
- Vaccine preventable disease occurrences record

The prompt for subscription services to create templates of this kind stems from service feedback that such documents have been requested by Regulatory Authorities during spot checks or the Assessment & Rating process.

The list above pertains to only one of the 23 mandatory policy and procedure requirements. It is easy to understand how services can end up with over 150 policies, procedures, guidelines, checklists and audits all of which need to be completed contemporaneously by Educators. Services that don't take a comprehensive approach with respect to policies and procedures run the risk of breaching the National Law and Regulations and/or obtaining a sub-optimal rating during the Assessment & Rating process. Whilst the completion of such checklists and audits may provide satisfactory documentary evidence regarding standards of practice in the centre, it will also be taking time away from the Educators engaging in a meaningful way with the children in their care.

Recent changes to the Assessment & Rating process have a similar impact, requiring the maintenance of a Self Assessment Tool totalling approximately 20,000 words on an ongoing basis. This does not include the collection of evidence to substantiate the information contained in the Self Assessment Tool (minutes of meetings, checklists, audit logs, training invoices etc), in circumstances where that evidence may never be requested or sighted by an Authorised Officer during an Assessment & Rating visit. Services would be forgiven for thinking that they are being asked to collect evidence for the sake of collecting evidence rather than to ensure the highest possible standards of care for children.

Purpose

It is necessary to ask what purpose some of this regulation serves and to weigh up its benefits with the cost, complexity and effort associated with ensuring compliance. Educators frequently cite administration and paperwork as a major reason for leaving the ECEC sector, and this administration and paperwork is largely a response to these high levels of regulation. It is possible that the regulatory landscape detailed above, combined with the stress upon the sector due to staffing shortages will result in some services effectively 'opting out' of the regulatory framework, providing the Regulatory Authority with the bare minimum because they don't have the capacity to meet the requirements of the regulatory landscape and those of the Assessment & Rating process.

C. Unintended consequences.

It is important to take an agile approach to unintended consequences flowing from policy implementation, and particularly before such policies are adjusted. An example relates to the strict ratio requirements in place in the ECEC sector. Futuro is a strong believer in the importance of staffing ratios, however it is extremely common for services to engage agency staff to meet these ratio requirements. In Futuro's view, this defeats the intended purpose of mandatory ratios.

There are a number of objections to the use of agency Educators, including:

- i. The cost, with the starting hourly rate in the capital cities ranging from \$45-85 per hour, depending on the qualification. Regular use of agency staff can result in substantially higher wage bills which, over time, will increase the cost of care for families.
- ii. The availability of agency staff. Where there are staffing shortages, agencies also experience shortages, so it can be the case that services aren't able to obtain agency staff to meet ratio and are then faced with the prospect of sending children home or asking families not to attend the centre.
- iii. The quality is highly variable. Agency staff are often engaged on short notice due to staff sickness, meaning that there is no capacity for services to screen agency staff before they are required on the floor to meet ratio.
- iv. Agency Educators aren't in a position to contribute in a meaningful way to the completion of programming and planning documentation, as they often won't know the children. In many circumstances, Educators are attracted to agency work because of the reduced expectations regarding programming and planning. This has a direct impact on the quality of care.
- v. Agency Educators cannot possibly read and understand individual centre policies and procedures in advance of starting a shift with the result that their ability to effectively comply with mandatory statutory requirements can be compromised.

Whilst the use of agency staff will ensure a service can meet ratio, their ability to perform the role required can be extremely limited. The objective of strict staff to child ratios is designed to lift the quality of care in a service, however the unintended consequence of this policy has not received any attention and arguably, may do more harm than good.

D. Care for shift workers.

There is a disconnect between the applicable employment Awards and the ability of services to offer extended hours. The CCS was designed to support services to offer extended hours, however no changes were made to the relevant Awards that would make it financially viable for services to do so without triggering overtime and/or breaching minimum/maximum shift lengths. In a sector where wage costs represent on average 60-65% of revenue, any such additional wage costs would result in substantially higher fees for families. As a result, very few services offer extended hours, and families undertaking shift work or working irregular hours still have extremely limited access to formal care arrangements. In this instance, more could be done to balance the benefits offered to staff under the Awards, with the desirability of offering flexible care for families.


E. Coordination across Government.

The Commonwealth Government is uniquely placed with respect to the coordination of ECEC service delivery with other parts of Government. By way of example, the Department of Immigration and Citizenship could play a much more significant role in supporting newly arrived migrants accessing care services, and more importantly, in addressing the critical shortage of skilled migrants in the sector.


6. What areas do you think the Commonwealth could focus on to improve coordination and collaboration in developing policies for children and families?

We recommend that a long-term approach is taken that establishes frameworks for collaboration that are capable of surviving election cycles. Rather than taking a coercive approach to program and policy implementation across states and territories, the Commonwealth can and should be a facilitator. It has substantial social welfare infrastructure already in place that states and territories often cannot take advantage of in the administration of their own programs. This creates the possibility of duplicate regulation and reporting by services across multiple levels of Government. By way of example, the New South Wales Government has made an extraordinary commitment with its Universal Pre-K initiative but is implementing this laudable initiative without the benefit of leveraging the existing CCS framework. If there was ever an initiative on which the State and Federal Governments should effectively collaborate, this is it.

There is also an opportunity to use an organisation like ACECQA as a centralised point for advice and support for ECEC providers. Where small providers run such a substantial portion ECEC services nationally, it would be sensible to offer those providers a one-stop shop for reporting and for the provision of consistent advice and guidance. At present, most Government agencies are wary about providing advice with the result that they will simply point providers to their website or will state that they are not able to provide 'legal' advice, even where guidance is being sought to understand the agencies' own materials. Providers are expected to engage external providers at their own cost to provide training on areas such as child protection, first aid, mental health, and inclusion. However, in many instances there are Government agencies better placed to run this training, which would also ensure a more consistent standard of professional development across the sector.

Should you or your officers wish to discuss anything in this letter, please do not hesitate to contact the writer at 

Kind regards


Futuro Childcare & Education