



EDUCATION, EMPLOYMENT AND TRAINING COMMITTEE

Members present:

Ms KE Richards MP—Chair
Mr J Lister MP
Mr MA Boothman MP
Mr N Dametto MP
Mr BL O'Rourke MP
Mr JA Sullivan MP

Staff present:

Mr R Hansen—Committee Secretary
Ms R Duncan—Assistant Committee Secretary

PUBLIC BRIEFING—EDUCATION AND CARE SERVICES NATIONAL AMENDMENT REGULATIONS 2020

TRANSCRIPT OF PROCEEDINGS

MONDAY, 8 MARCH 2021

Brisbane

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The committee met at 12.00 pm.

CHAIR: I declare this public briefing open. I am Kim Richards, the member for Redlands and Chair of the Education, Employment and Training Committee. I would like to respectfully acknowledge the traditional custodians of the land on which we meet and pay our respects to elders past, present and emerging. In this country we are very fortunate to live amongst two of the oldest continuing cultures, that of Aboriginal and Torres Strait Islander peoples, whose lands, winds and waters we now share. With me are committee members James Lister, the member for Southern Downs and deputy chair; Mark Boothman, the member for Theodore; Nick Dametto, the member for Hinchinbrook; Barry O'Rourke, the member for Rockhampton; and Jimmy Sullivan, the member for Stafford.

The purpose of the briefing today is to provide the committee with an opportunity to gain a better understanding of the provisions of the Education and Care Services National Amendment Regulations 2020 and the policy they give effect to. The amendment regulations are unusual in that they were made by the Education Council under the Education and Care Services National Law. They were tabled on 14 September 2020 by the Minister for Education, the Hon. Grace Grace, and are subject to disallowance by the Legislative Assembly, like other subordinate legislation.

I welcome representatives from the Department of Education. Thank you for assisting us today. The committee's proceedings are proceedings of the Queensland parliament and are subject to the parliament's standing rules and orders. In this regard I remind members of the public that, under the standing orders, they may be admitted to or excluded from the briefing at the discretion of the committee. Only the committee and invited witnesses may participate in these proceedings. Witnesses are not required to give evidence under oath, but I remind everyone that intentionally misleading the committee is a serious offence.

The proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and will be subject to my direction at all times. The media rules endorsed by the committee are available from committee staff if required. All those present should note that it is possible you may be filmed or photographed by the media and images of you may appear on the parliament's website or social media pages. I ask everyone present to turn off mobile phones or switch them to silent mode.

I remind committee members that officers are here to provide factual or technical information. Any questions seeking an opinion about policy should be directed to the minister or left to debate on the floor of the House. If any questions are taken on notice we ask that written responses are provided to the committee secretariat by Friday, 12 March 2021.

O'MALLEY, Ms Catherine, Executive Director, Regulation Assessment and Service Quality Branch, Department of Education

SCHIMMING, Mrs Sharon, Deputy Director-General, Early Childhood and Education Improvement, Department of Education

CHAIR: Mrs Schimming, would you care to make an opening statement?

Mrs Schimming: Thank you for having us here today. I will start with the role of the department as far as regulation goes. The Department of Education is a regulatory authority for early childhood education and care services under both national and state legislation. Services are regulated under the National Quality Framework and the Education and Care Services Act 2013. The objective of the NQF is to improve educational and developmental outcomes for children through service quality. Responsibility for administering the NQF is shared between the state and the national body, the Australian Children's Education & Care Quality Authority, ACECQA.

The NQF comprises the national law and regulations, national quality standards, and assessment and rating process. As at 31 December 2020, 3,062 approved services in Queensland were regulated under the NQF. Those services include 1,674 long day care services, Brisbane

513 kindergartens, 759 outside school hours care services, 115 family day care services and one limited hours care service. Fifty-seven services in Queensland are regulated under the Education and Care Services Act.

The regulatory authority licences services, monitors and enforces compliance with legislation, receives and investigates complaints and notifications, and assesses and rates the quality of services. The regulatory authority uses a published risk based framework, *Regulating for quality—Queensland’s risk-based approach to regulating early childhood education and care*, to undertake all regulatory activities in a manner proportionate to the level of risk or harm posed to children attending services. Options to address the range of identified noncompliance can vary from providing guidance to providers, the cancellation of provider or service approvals or prohibition of individuals from working in the sector. Approved providers are responsible for the health, safety and wellbeing of children. The regulatory authority supports approved providers to improve quality outcomes for children by providing detailed information about their performance in relation to each element of the national quality standard.

I know we are here to talk about the regulation. Cathy is here to give the details around that.

Ms O’Malley: In relation to the very tragic incident early last year in Cairns, the department took five strategies in response to that incident. The first strategy revolved around providing better guidance for services around how to actually undertake their procedures when transporting children. Up until that time there had been, I suppose, a lack of consistency nationally about whether the transportation of children formed part of the education and care service.

In Queensland we had always had the opinion that it did form part of the service. If services were offering a transport service to and from the child’s home and the service, we considered that to be part of the provision of the education and care service. As a result of that, even before this incident the regulatory authority in Queensland would always take some form of action if there was an incident involving a child being left on a vehicle, for example, for a period that could have been as short as five minutes or a longer period. The regulatory authority was already taking compliance action proportionate to the risk, of course, in the lead-up to this incident.

In response to the incident, we decided that it was obvious that approved providers were unsure about what procedures they should put in place when they were transporting children. As a result of that, we produced—and you can search easily under ‘Queensland Transport guidance’ and it will come up—quite prescribed procedures that we were recommending that approved providers should take. We were not able to mandate that because it is not in the law, but we were saying these are the recommendations, these are the kinds of things that you can do if you are transporting children.

Part of that procedure is about having a risk assessment, because sometimes, depending on the age of the children, the numbers of children and perhaps their challenging behaviour, your procedures might vary. For example, if you are transporting school aged children your procedures may not need to be as closely aligned to ensuring that every child has got off the vehicle. Normally school aged children are able to exit a vehicle themselves—always under supervision, but they can do that themselves—whereas young babies, of course, are strapped in or they are in seatbelts and they cannot do that, so your procedures will vary and that is what we have done in the published guidance. That is one of the strategies that we have put into place.

The second strategy was to actually conduct an audit of the sector about how many services did undertake this regular transport provision, which was what was happening at the service in Cairns where the child sadly passed away. That audit was really well responded to. It was not something we could require providers to respond to but about 70 per cent of them did, which was a really good response rate. If you are interested, later on I can take you through some of that data. It did demonstrate that probably about 22 per cent of services did offer a regular transport service to the families enrolled at the service.

The third strategy that we undertook, led by the Minister for Education and the Minister for Transport jointly, was a digital communication campaign. It was tagged ‘Look before you lock’. It was a communication campaign around school aged children and the transport of younger children in education and care services for families and for the sector to ensure that when they were transporting children—particularly when you are living in Queensland where, as you can imagine, the weather can pose a serious risk to a child who might be locked in a vehicle. This was a communication campaign to drive that message out to everyone that if you are transporting a child in your own car, in a vehicle operated by a service or in a school bus you need to ensure that every child has exited that vehicle

before you lock the vehicle for the evening, for example. That campaign was rolled out jointly by the Minister for Education and the Minister for Transport, because the Minister for Transport is responsible for the school buses.

The other strategy we employed was to brief our minister, because on the Education Council our minister was able to advocate for regulatory amendments to the national regulations that we are discussing today. As part of that there were already regulations in place around the transporting of children during an excursion, but this was something about the more regular transport of children. When you are talking about the regular transport of children you can have babies on that regular transport whereas they do not generally go on an excursion, as you would appreciate. That was the distinction that was made. Those amendments are now in place.

The last thing that was done was that the regulatory authority in Queensland undertook what we call a 'targeted intervention' where we went out and monitored again—and because it was during COVID times we had to do it via telemonitoring—the services that had already reported or that we had already taken compliance action against. Because of this new requirement now to have a written policy about the transport of children, we undertook a targeted monitoring of those services—there are about 32 of them—to ensure that they had developed or revised their policies and procedures to pick up the recommendations around having a better procedure to ensure that children were safe on vehicles. That process has practically come to an end. Every one of those services has received an outcome letter. That outcome letter has been discussed with them to ensure that they are continuing to remain in compliance now around this requirement in relation to having a fulsome transport procedure. Those are the five strategies that we undertook.

Mrs Schimming: Into the future there is a review of the National Quality Framework and in that is transport. The sector will be consulted on that and then it will be progressed.

CHAIR: I am certain that every member sitting around this table when they visit their schools, whether it is at the start of the day or the conclusion of the day, will see those transport services lined up ready to take children to or from out of school hours care. Also within our special schools transport is a regular part of the day of that student or that child in care. It is very important. Deputy Chair, do you have a question?

Mr LISTER: No, you have answered what I was hoping to ask. Thank you very much for that.

Mrs Schimming: The campaign is much broader than the services, as well. You would hear in the media that children are sometimes left in cars by parents and caregivers, so it is not just about services. The 'Look before you lock' campaign was really quite broad. We hoped that we were going to the hearts and minds of everybody who is involved in the care of children.

Mr SULLIVAN: I do not want to verbal you, Cathy, but I think that you said something like 70 per cent of providers responded to the survey.

Ms O'Malley: Yes.

Mr SULLIVAN: C&K is based in Kedron in my electorate. In relation to the early childhood area, did you engage with the peak bodies such as C&K, Lady Gowrie and those big non-profits at a peak level?

Ms O'Malley: Yes, we did. The regulator has a quarterly meeting with the peak bodies. It is called our Regulatory Advisory Committee. We certainly engage with them about the audit. We actually had our own online survey during the meeting that we held around that time. We also sought to consult with them in relation to the procedures that we publish. They were all very on board and very keen to get an understanding of what we thought was best practice in that regard.

Mr SULLIVAN: And to implement it internally themselves, to form part of their own processes?

Ms O'Malley: Yes. They are now required to because the regulation amendments were made and they are required to have a written policy and procedure.

Mrs Schimming: They did share a lot of their policies and practices with each other as well so that there was capability building across the sector.

CHAIR: Not reinventing the wheel.

Mrs Schimming: Yes, and it was awful for all of us to see the evidence of what happens if we leave babies on buses. From the regulatory authority, it was already in the remit of the work that they were doing in building capability for the sector because, whilst that ended tragically, there are other incidences that have come to the attention of the regulatory authority prior to that and now post that. We are continuing to monitor that very closely, and the sector does want to be part of that solution.

The minister's first stakeholder group was with all of the peaks, so the central governing bodies such as C&K and Lady Gowrie were all present as well as some of those other for-profit and not-for-profit organisations like Goodstart, Affinity and G8, so they were all part of that.

Mr SULLIVAN: Great; thanks. I also want to commend the education piece that looks to parents and community members as well. With regard to the tragic cases where they forgot to stop at a child care on the way home, it is not just about the buses. It is important that we remember all of those tragic cases but for the grace of God.

Mrs Schimming: That is right, and it is not just in Queensland; it is nationally. Queensland really took a lead in this instance, but it is something that every jurisdiction has in their sights.

Mr SULLIVAN: Thanks.

Mr DAMETTO: Firstly, I want to acknowledge the work of the department that has been put in to make sure that the transportation of children to and from learning facilities is being improved. I also want to acknowledge though that this is not just confined to day cares or schools transporting children; it is also parents as well. I know it is outside the scope of the department, but I want to acknowledge that we lost a young girl in the Hinchinbrook electorate to such an incident. My question is quite a broad question. Will the amendment regulations be periodically reviewed by the department like subordinate legislation made by your department?

Ms O'Malley: These are national regulations, so they are nationally applied law. They are under review at the moment. There is a review of the national quality framework underway at the moment and the consultation regulatory impact statement has been released for public consultation. What is happening in what we call the CRIS, which is the acronym for that, is that there is a series of options being put up around what needs to be done further in relation to the transportation of children. Some of these options include whether or not there should be, for example, specific ratios on a vehicle when children are being transported. That is one of the options. The big question across the sector has always been whether the bus driver should be included in the ratio, so that is one of the issues that is being raised in the current consultation as part of the review.

I would not be able to say how often those reviews happen. There is no specific requirement for the review to be conducted, for example, every five years. That is a decision for the ministers on the Education Council as to when there would be a review take place, but those sorts of things are reviewed. From my recollection, since the commencement of the national quality framework there have been probably 2½ reviews, I suppose. There have been two major reviews—one of them is the one that is underway at the moment—and there has been a smaller review, I suppose, just in relation to the parts of the national quality standards. In that period of time it has been reviewed quite a bit really, when you think about how long it takes. Because it is a national process, it is quite a big thing to do.

Mr DAMETTO: Thank you very much for answering that. I do acknowledge that you did note that there are ratios on buses and things like that. I am glad that the department is looking into that because there are also other issues that come out with transportation of children to and from public schools on bus services where the bus driver in the past has been held responsible for that whole cohort of children on the bus whereas his main focus usually is keeping that bus on the road.

Ms O'Malley: Yes. I think it is important to note though that school transport does not come under the regulation.

Mr DAMETTO: I understand that and thank you for that.

Mr BOOTHMAN: Do these reviews incorporate technology? These days modern vehicles detect that if you are falling asleep at the steering wheel they try to wake you up. Surely we could implement some type of motion detectors in these transport vehicles.

Mrs Schimming: We did look at those things as part of the campaign. I think that there are a few jurisdictions that have trialled almost an alarm that goes off when the bus is locked to remind the driver or the supervisors to go and check in that bus. We have looked at different mechanisms, knowing that this is a for-profit and not-for-profit sector. If organisations want to go ahead with any of those things, then we certainly would be supportive of that.

Many of the buses that our babies are being transported on are very small buses. It is quite different in that I think it was Western Australia that had a button where you had to walk to the end of the bus to press the button when you were getting off the bus because that made the drivers walk through the bus to check all of the seats. In our childcare services if they are only eight-seater buses, then it is sort of a moot point to walk to the back of that bus. There are some other technological solutions that I do believe services are looking at.

Mr SULLIVAN: Just out of interest, in your opening, Sharon, you went through the not-for-profits, OSHCs and all of those different services and then at the end you said that there was limited hours, was it?

Mrs Schimming: Limited hours care, yes, so it does not fall under the regulation.

Mr SULLIVAN: What is that?

Ms O'Malley: Most limited hours care services are regulated under the Education and Care Services Act, which is the Queensland act, and they offer a service generally for no more than 20 hours a week. They are services generally operating more in rural and regional locations and have grown up out of a need for a particular local community. As well as those services, there are other services under that act called occasional care where they do not necessarily offer the service to regular children on the same day every week. They may offer a service to someone when mum or dad might ring and say, 'I need to go to the dentist in town'—if they are coming out from a property, for example—'so can my child attend your service while I'm in town for the afternoon?' That is occasional care and then there is limited hours care. Those types of services have been around for a long time. They are very successful in local communities. People like the way they operate, so they are regulated under the Education and Care Services Act.

Mrs Schimming: Those services do not receive any Commonwealth funding though. When you go to a regulated early child-care service, parents can receive the Commonwealth funding—the CCS subsidy. Limited hours care does not receive any of that federal government funding.

Mr SULLIVAN: Thank you.

CHAIR: With regard to the fact that an offence attracts a penalty of \$2,000, I was just wondering what that enforcement process looked like in relation to the risk assessments and the monitoring of that going forward.

Ms O'Malley: If we are going to seek the actual penalty, we would need to prosecute the approved provider to pursue the penalty. If we were not going to do that, we could still take a form of compliance action. It could be that a compliance notice could be issued to them asking them to do certain things that would bring them into compliance and get them to remain compliant.

Depending on the history of the service, if there were a number of different matters of noncompliance that had gone on for some time that were serious enough, this particular breach could contribute to that history of noncompliance and the regulator could even take action to consider suspending their operation until they improved their practice, basically. We have done that in the past, particularly where there was a case where a child was left in a vehicle for a significant amount of time, and sometimes those decisions we make are reviewed in the tribunal. Sometimes they are upheld; sometimes they are overturned. We can take quite serious action that may impact on their ability to continue to operate if necessary.

CHAIR: What was the number of those that are in noncompliance at the moment in correlation to the total number of facilities?

Ms O'Malley: In terms of the ones that we looked at as a targeted intervention, they are now in compliance. We looked at 32 services and undertook a telemonitoring program with them to ensure that their policies and procedures were meeting the requirements of the new amendments. We just wanted to specifically target them seeing that they had been in a level of noncompliance. Not all of them were at a very serious end, but there were 32 at the time.

Mrs Schimming: The regulatory authority can also put additional conditions on a service for it to continue to operate, and in this case it may be an increase in the number of supervisors per children et cetera, so there are levers that the regulatory authority has.

CHAIR: Excellent. There being no further questions, that concludes this briefing. Thank you again. Thank you to our Hansard reporters. A transcript of these proceedings will be available on the committee's inquiry webpage when available. I note that there were no questions taken on notice. I now declare this public briefing of the Education and Care Services National Amendment Regulations 2020 closed. Thank you again for your time today and for your important work.

The committee adjourned at 12.25 pm.