



Small  
Business  
Commissioner

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# **Stakeholder consultation: Small business experiences in the early childhood education and care sector**

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**September 2022**

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## About the Commission

The NSW Small Business Commission (the Commission) provides strategic advice, advocacy and affordable dispute resolution services to small businesses in NSW. The Commission's role includes:

- Encouraging government agencies and larger businesses to enter productive working relationships with small businesses.
- Facilitating and encouraging the fair treatment of small businesses.
- Promoting a fair operating environment in which small businesses can flourish.

In addition, the *Small Business Commissioner Act 2013* provides that it is a function of the Commissioner to advise the Minister, either at the Commissioner's own initiative or at the request of the Minister, on any matter affecting small businesses or that is relevant to the Commissioner's objectives or functions.

## Further information and contacts

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## List of recommendations

### **Recommendation 1 – Staffing requirements**

The benefits of NSW's higher educator to child ratio requirements should be assessed, with additional requirements removed unless clear and measurable benefits are found to outweigh their cost.

### **Recommendation 2 – Staff-break provisions to be adopted in NSW**

Additional provisions in other jurisdictions that provide flexibility to facilitate staff breaks appear to sensibly balance the need to maintain quality care with the practical need for staff to take breaks.

Feedback should be sought on the operation of these provisions, and if they are functioning well in other jurisdictions, then equivalent provisions should be adopted in NSW.

### **Recommendation 3 – Review of transportation requirements**

The efficiency and effectiveness of staffing requirements when transporting children should be reviewed. The review should consider options that have been found to be effective in other jurisdictions, and whether different requirements, aligned with those for school buses, are appropriate for OSHC services. Requirements should be amended if alternative approaches are found to be effective and more efficient.

### **Recommendation 4 – Consistency of ratings**

Providers should be objectively assessed against the NQS and their rating should not depend on their performance relative to peers.

To ensure providers are objectively assessed against the NQF, NSW ratings and rating processes should be calibrated and benchmarked with other jurisdictions to provide greater confidence that the NQS are assessed in an objective manner.

### **Recommendation 5 – Independent review of the assessment and ratings process**

An independent review should be commissioned to examine potential opportunities to improve the assessment and rating process as it is implemented in NSW. Sector feedback should be obtained to ensure the assessment and ratings process, including current approach and practices, supports providers to deliver high quality education and care to children and does not give rise to unnecessary regulatory burden.

The independent review should be conducted with terms of reference that consider both the need to promote high quality services as well as the practical challenges and experiences of providers. It should also consider whether current approaches provide a clear signal to providers as to how they can improve quality standards and ensure ratings are widely regarded, including by the sector and families, as an accurate indicator of quality.

The independent review should consider:

- The development of clear, objective measures for each assessment rating.
- Options to transition to a more collaborative regulatory approach with a productive, ongoing working relationship between the service and a single allocated assessor.
- Options for implementing more regular and targeted assessments on particular focus areas.
- Ensuring that services are given clear, specific guidance regarding exactly what they need to improve when any deficiencies are identified.
- Explore options to enhance the assessment and rating of family day care providers in consultation with family day care educators.
- Reviewing the assessment process for OSHC services to reflect that amenities are the responsibility of the school, council or community centre, rather than the OSHC service.

### **Recommendation 6 – Rectification list and period**

To incentivise the provision of the high quality of care and education, services should be provided with a clear list of deficiencies and a rectification period so that providers can address matters and improve their rating outcome immediately.

### **Recommendation 7 – Immediate relaxation of higher staff ratio requirements**

Consideration should be given to the immediate temporary suspension of NSW's higher staff ratio requirements to mitigate critical staff shortages. This could inform a permanent transition to nationally consistent requirements.

### **Recommendation 8 – Labour market data to inform waiver application process**

Waiver application processes should be informed by data on staff availability by location for degree qualification, diploma qualified and certificate qualified staff.

Areas with known skilled labour shortages should be identified and waiver application processes for providers located in these areas should be streamlined. This includes the provision of waivers with less onerous requirements to demonstrate they have attempted to fill a vacancy.

Recognising that skilled labour shortages are more severe in some regions, this could be implemented by adopting a traffic light system with tiered requirements subject to the severity of conditions.

### **Recommendation 9 – Removing restrictions on work placements**

Representations should be made to universities to consider changing mandatory unpaid work placement requirements for early childhood education degrees to recognise paid employment undertaken with the student's existing ECE employer.

### **Recommendation 10 – Family day care Certificate III requirements**

Work should be undertaken, in collaboration with family day care services, to analyse the impact of the recently announced NQF requirements that all educators have a Certificate III as at 30 June 2023 and to develop a transition strategy.

### **Recommendation 11 – Template policies and procedures**

Template policies, procedures and forms should be developed to assist providers to comply with NQS and other requirements.

### **Recommendation 12 – Coordinate approval requirements**

To reduce the time required to establish new centres, consideration should be given to establishing a joint State-Federal project team to review, streamline and coordinate approval requirements, processes and timeframes. This should include:

- ACECQA processes, childcare subsidy approvals, NSW planning requirements, council requirements, and all other registration and licensing processes.
- Establishment of reasonable approval times and KPIs for applications.
- A customer-centric approach that eliminates inconsistent requirements, supports principles of ‘telling government once’ and provides up-to-date and correct advice and guidance. Development of a single, digitised application process.

Coordinated approval processes could be complemented by the implementation of a concierge service to support the establishment of new centres.

### **Recommendation 13 – Audit to ensure services were not charged waiver fees**

An audit should be undertaken to ensure that all NSW providers that were eligible for fee waivers received either the fee waiver when they lodged their application or a subsequent refund. Any outstanding refunds should be immediately repaid.

### **Recommendation 14 – Neutral treatment for for-profit providers**

Consideration should be given to current policies that may disadvantage for-profit providers and seek to neutralise distortions. This includes examination of differences in payroll tax treatment, pre-school funding and special arrangements made available by local governments.

The Commission notes the Independent Pricing and Regulatory Tribunal (IPART) is considering key competitive neutrality issues as part of the Review of NSW Competitive Neutrality Policies and Process.

## Introduction

The early childhood education (ECE) and out of school hours care (OSHC) sector is instrumental to providing the best start in life for children. They are also vital to economic participation and productivity by enabling parents and caregivers to enter the workforce or pursue further study.

Small business providers are essential to meeting the educational, social and economic needs of children and families in NSW. Small businesses are a significant provider of ECE and OSHC services in NSW and are crucial to ensuring the availability of affordable education and care.<sup>1</sup> Private for-profit providers account for more than half of services nationally<sup>2</sup> and around 88 per cent<sup>3</sup> of these are small businesses with fewer than 20 employees.

In recent years, a growing number of small businesses operating within the sector have contacted the Commission to report regulatory and other business challenges. Reported challenges include but have not been limited to:

- Challenges navigating the complex regulatory system comprising different agencies and three tiers of government.
- Perceptions of overly onerous administrative and regulatory burden.
- Difficulties undertaking rating and assessment processes associated with national standards.
- Severe limitations in managing staff shortages and meeting regulated staffing requirements.
- Engaging with agencies responsible for overseeing the regulatory framework.

Small businesses report these challenges increase costs and hinder their ability to efficiently deliver high quality education and care to children, despite their significant expertise and commitment. Reporting from the Australian Department of Education confirms that NSW has some of the highest ECE costs in Australia. Nationally, the average hourly cost of centre-based ECE is \$10.80, while in NSW, the hourly cost is \$11.05.<sup>4</sup> Eight of the ten most expensive areas for centre-based ECE in Australia are in NSW, with hourly costs ranging from \$12.93 to \$14.75.<sup>5</sup>

To better understand industry concerns, the Commission initiated a consultation with ECE and OSHC providers. The purpose of the consultation was to better understand reported challenges and assess their impact on the sector. While the Commission examined the experiences of small business providers, it is noted some reported challenges may be experienced by larger businesses within the sector.

This report presents feedback contained as part of the Commission's consultation and identifies potential opportunities to improve outcomes for both providers and families. Recommendations are

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<sup>1</sup> In this report, references to 'the sector' cover all early childhood education and care providers, including those operating in the ECE and OSHC sector, except where otherwise specified.

<sup>2</sup> ACECQA (2022). 'NQF Snapshot: Q2 2022', p. 8.

<sup>3</sup> Australian Bureau of Statistics. 8165.0 Counts of Australian Businesses.

<sup>4</sup> Department of Education. (2022) Child Care in Australia Report June Quarter 2021.

<sup>5</sup> Ibid.

provided to address specific issues raised by stakeholders while recognising broader policy objectives, including to raise the quality of early childhood education and care.

Part I of this report provides an overview of the ECE and OSHC sector including the regulatory framework. Part II summarises stakeholder feedback on contemporary challenges and Part III identifies opportunities to improve outcomes.

## **Outline of consultations**

The Commission consulted with the sector through an online survey and virtual workshop. The online survey was completed by 240 respondents (see **Appendix A** for survey results and details). Most respondents were small business providers, with 67.9 per cent of respondents reporting they owned or worked in a privately-owned for-profit organisation. Similarly, most respondents were smaller providers with 65.8 per cent of respondents owning or working in organisations that operated one service.

Survey feedback was complemented by an interactive workshop held on 9 June 2022. Participants were invited to provide feedback, including in relation to contemporary challenges and opportunities to improve outcomes. Participants were asked to reflect on matters raised by survey respondents to verify experiences and further explore key themes.

Feedback previously provided to the Commission was also considered. The Commission conducted two separate workshops for regional and metropolitan based services in late 2020 and has received feedback from a number of industry associations representing small businesses in the childcare sector.

## Part I - Sector overview and regulatory environment

The sector comprises a range of service and provider types, which provide different options of care and education to families. Providers are required to comply with the NQF to ensure the education and care of children is to an appropriate standard, as well as comply with a range of other federal, state and local government requirements.

NSW has mandatory staffing requirements that exceed national standards. The NSW Productivity Commission has identified that these requirements impact the sector's workforce, service providers, families, and the cost and accessibility of services.<sup>6</sup>

Key components of the sector and regulatory environment are summarised below. A more comprehensive overview is included at **Appendix B**.

### Early childhood education and care sector

Long day care, family day care and pre-school are ECE service types regulated under the NQF.

- **Long day care** is centre based care, generally operating from at least 8am until 6pm, for children aged 6 weeks until school age.
- **Pre-school** prepares children aged three to five to transition to school. Pre-schools generally operate from 9am until 3:30pm during NSW school terms.
- **Family day care** provides education and care to children in an educator's home or approved venue. A family day care educator is registered with a family day care service. The family day care service supports and monitors the family day care educator.

Outside of school hours care (OSHC) services are also regulated under the NQF.

- **OSHC** generally provides education and care to school aged children before and after school, and sometimes during school holidays or pupil free days.<sup>7</sup>

### The regulatory environment

Since 2012 the National Quality Framework (NQF) has provided quality standards for ECE and OSHC. The NQF includes the National Quality Standards (NQS), which provide the national benchmark for services in Australia. In NSW, the Department of Education (NSW Education) is the regulatory authority that assesses and rates services against the NQS.

Key elements of the NQF regulatory environment include staffing requirements, defined through the National Law and National Regulation, and the NQS and assessment and quality ratings process.

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<sup>6</sup> Productivity Commission. (2021). 'Productivity Commission White Paper 2021: Rebooting the Economy', p. 157-158.

<sup>7</sup> NSW Government. (2022) 'Choosing a Quality Service'. Available at: <https://education.nsw.gov.au/early-childhood-education/information-for-parents-and-carers/choosing-a-service>.

## Staffing requirements

The National Law and National Regulation establishes staffing requirements by specifying educator and child ratios and educator qualification requirements. However, NSW applies state-specific provisions to long day care and pre-schools that are more resource intensive than the national standards. This means long day care and pre-school operators are required to meet higher staffing requirements than operators in other states and territories.

NSW's higher state-specific provisions are outlined in Additional Staffing Requirements in **Part II** and in more detail in **Appendix B**.

## National Quality Standards

The NQS establishes the national quality benchmark for ECE and OSHC services. The state regulatory authority assesses and rates services against the NQS. In NSW, this is NSW Education.

The NQS sets out seven quality areas that promote the safety, health and wellbeing of children and the delivery of high-quality education programs. Services receive an overall quality rating, based on their assessment against the seven quality areas. The ratings are 'significant improvement required', 'working towards the NQS', 'meeting NQS', 'exceeding NQS', and 'excellent'.

This quality rating ensures services are meeting a minimum safety and education standard, as well as incentivising services to strive for high quality care. Services have the option of displaying their rating and using it to promote their service.<sup>8</sup>

## Review of NSW-specific regulations

The *NSW Productivity Commission White Paper 2021* (White Paper) identified higher educational costs for workers, higher staffing costs for service providers and higher fees for families as impacts of NSW-specific requirements. As a result, some families may also be unable to access services.<sup>9</sup> The White Paper recommended the evaluation of NSW-specific staffing requirements, including the costs and benefits resulting from additional staff ratio and qualifications requirements.<sup>10</sup>

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<sup>8</sup> ACECQA. 'Promote Your Rating'. Available at: <https://www.acecqa.gov.au/assessment/promote-your-rating>.

<sup>9</sup> Productivity Commission. (2021). 'Productivity Commission White Paper 2021: Rebooting the Economy', p. 157-158.

<sup>10</sup> Productivity Commission. (2021). 'Productivity Commission White Paper 2021: Rebooting the Economy', p. 160.

## Part II - Contemporary challenges

The Commission has received feedback from the sector indicating a range of contemporary challenges that make it more difficult for services to provide essential early learning and care for children in NSW. Stakeholder feedback relates to experiences with:

- Administration of the NQF in NSW.
- Workforce shortages.
- Government processes, particularly when engaging with different agencies and three tiers of government.
- The competitive environment between private, not-for-profit, community and government services.

These challenges are summarised below.

### Administration of the NQF in NSW

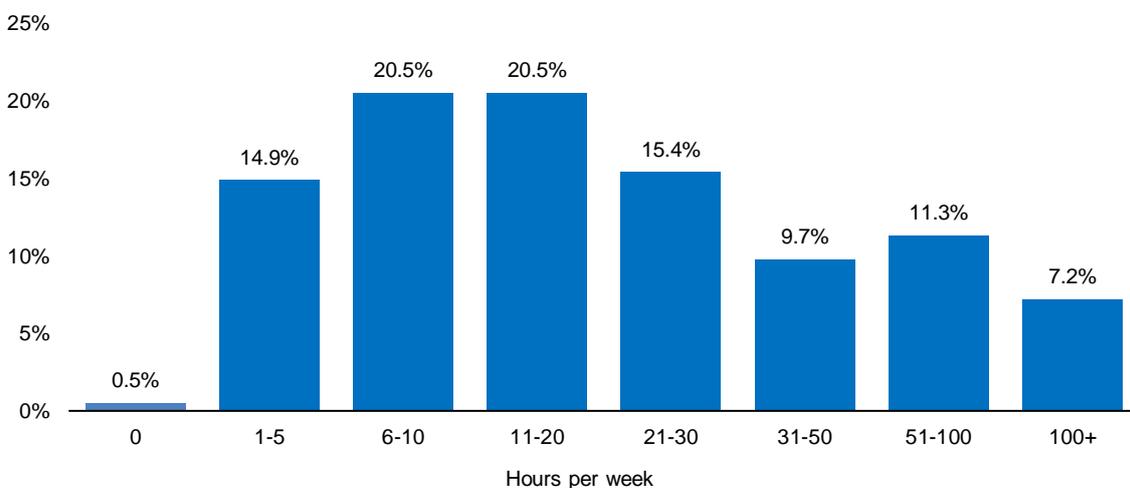
Overall, the sector is supportive of a national approach to achieve quality care and development outcomes for children in ECE and OSHC. The sector is also committed to achieving and delivering high quality care and education.

However, stakeholder feedback indicates that the NQF requirements are considered to be overly burdensome and there are a number of additional challenges in how the NQF is being administered in NSW. NSW specific challenges include additional NSW staffing requirements, application of the NQS and the assessment and quality ratings process, and the staff waiver process.

### NQF administration requirements

Survey respondents were asked to indicate approximately how many hours they collectively spend each week undertaking mandatory administrative and compliance work relating to NQF requirements (see Chart 1).

**Chart 1 — Complying with NQF requirements: reported hours per week**



Source: NSW Small Business Commission Childcare Survey, June 2022 (n=195).  
See Appendix A, Q3.3 for survey question.

The median response across the sample was just below 20 hours per week, or around \$800 per week when calculated using the economy-wide<sup>11</sup> default labour-cost rate. Administration costs are in addition to costs relating to staffing requirements that are higher in NSW (such as labour costs associated with the higher staffing ratios).

Stakeholders also reported that prescriptive staff ratios and administrative and reporting requirements, even when aligned with national requirements, can make it difficult for them to manage their businesses.

### Additional NSW staffing requirements

Stakeholders report considerable staffing challenges resulting from additional NSW staffing requirements. The key challenges identified are:

- Educator to child ratio of 1:10 for children aged three to six in NSW, compared to a national standard of 1:11.
- The number of Early Childhood Teachers (ECTs) required for services with 40 or more children is more than three times the national requirement, and in some cases more than four times the national requirement (**Appendix B**, Table 2 refers)
- Requiring ECTs to be engaged during all operating hours, rather than 60 per cent of operating hours, in centres with more than 30 children.
- Inability for staff to take short breaks, which requires centres to employ additional staff to ensure educator to child ratios are always maintained. Other states and territories also have state-specific provisions which provide flexibility to meet ratio and ECT requirements. In Queensland, Tasmania, South Australia and Western Australia there are specific provisions enabling staff ratios to be modified when educators are taking short breaks and not working directly with children.<sup>12</sup>
- Inability to substitute additional ECTs with 'suitably qualified persons', which is an option under the national standards.

**Appendix B** provides more detailed information regarding NSW's additional requirements.

Survey respondents were asked to indicate their views about the impact of both NSW-specific educator to child ratio requirements, and additional requirements for ECTs (see Chart 2 and 3). Respondents generally agreed additional requirements positively impacted learning outcomes of children. However, in both cases only slightly more than half (55 per cent) indicated positive impact.

Survey responses also highlighted the potential for these additional requirements to negatively impact on the cost of childcare, and their ability to meet staffing requirements and offer places to new families. These responses are captured in Chart 2 and 3.

### *ECT requirements*

Additional NSW requirements for ECTs are regarded as particularly difficult for long day care providers with 30 to 80 children as they are significantly higher than the national standards.

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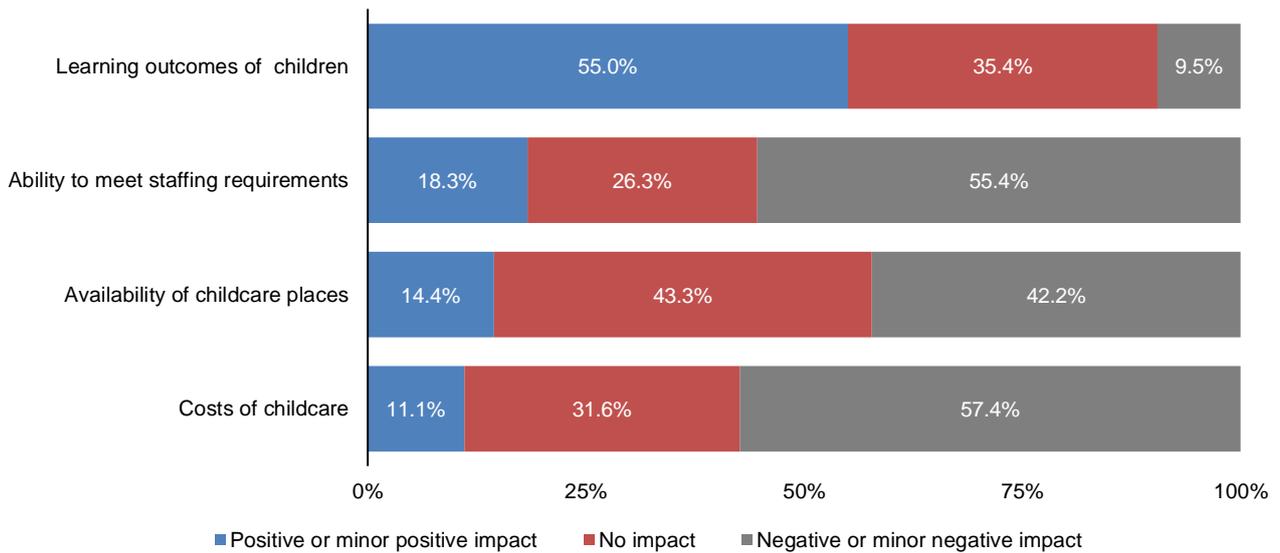
<sup>11</sup> NSW Government Guide to Better Regulation (TPP 19-01).

<sup>12</sup> ACECQA. (2022). 'Guide to the National Quality Framework', p. 432.

Stakeholders also feel that NSW’s additional requirements are less burdensome for larger centres, as the requirement for 4 ECTs applies to all centres with 80 or more children.

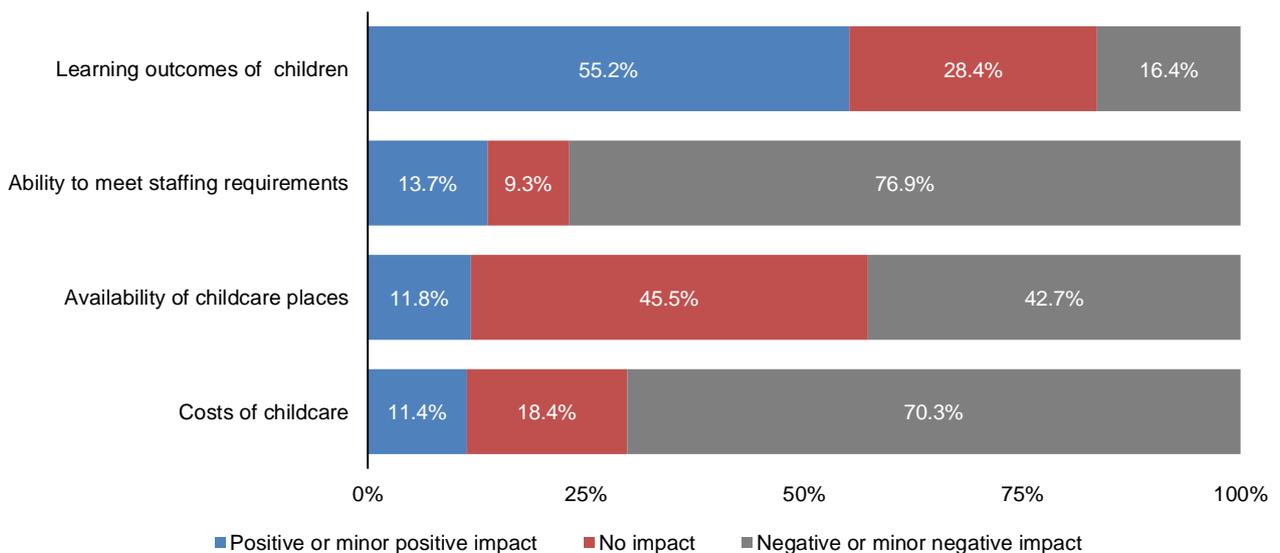
Stakeholders raised doubts as to whether the additional NSW requirements produced any observable benefits in NSW, suggesting that other state and territories are achieving similar learning outcomes for children.

**Chart 2 — Perceived impact of higher educator requirements**



Source: NSW Small Business Commission Childcare Survey, June 2022 (n=210).  
See Appendix A, Q4.1 for survey question.

**Chart 3 — Perceived impact of higher ECT requirements**



Source: NSW Small Business Commission Childcare Survey, June 2022 (n=209).  
See Appendix A, Q4.2 for survey question.

### *Centres with more than eighty children*

Because the ratio requirement maxes out at four ECTs per 80 children, larger centres with more than 80 children may require fewer ECTs per child than some smaller centres. For example, the number of ECTs required per child is 25 per cent higher for a centre with 40 children when compared to a centre with 100 children.

Some smaller providers highlighted that having high ECT requirements for centres between 40 and 80 children, coupled with the ability for larger centres to realise economies of scale as they expand beyond 80 children, may exacerbate industry consolidation and trends towards larger centres.

### Application of the NQS

The NQS specifies seven quality areas, with centres assessed according to five quality ratings. While stakeholders are committed to high quality care, many expressed frustrations at the performance of their centre being reduced to a single rating. Some stakeholders drew parallels with the approach taken when measuring the energy efficiency of whitegoods, noting that ECE and OSHC services are fundamentally different with performance being multifaceted, contextual, and difficult to synthesize into a single rating.

Stakeholders indicated widespread concerns that ratings are subjective, and dependent on the view of the individual assessor, rather than based on clear, objective measures. They indicated a perception that there are no clear guidelines on the assessment criteria or specific requirements that need to be met to achieve a particular rating.

Many found the application of the NQS lacked transparency and clarity. Stakeholders felt the standards prescribed to the five quality ratings do not reflect the quality of care delivered by providers or valued by parents. Some stakeholders noted that some centres are rated highly yet might not be regarded as high-quality providers by their peers or families, while features valued by families do not form part of their rating. Stakeholders reported that the NQS does not fully recognise innovation and the different ways centres are addressing the needs of parents and children.

During consultations, it was apparent that providers are highly committed to early childhood education and strive to provide quality education and care. The Commission did not receive any feedback suggesting the sector is unsupportive of policy objectives that have the intent of lifting quality and ensuring services are delivered to a standard that meets or exceeds community expectations.

### Assessment and ratings process

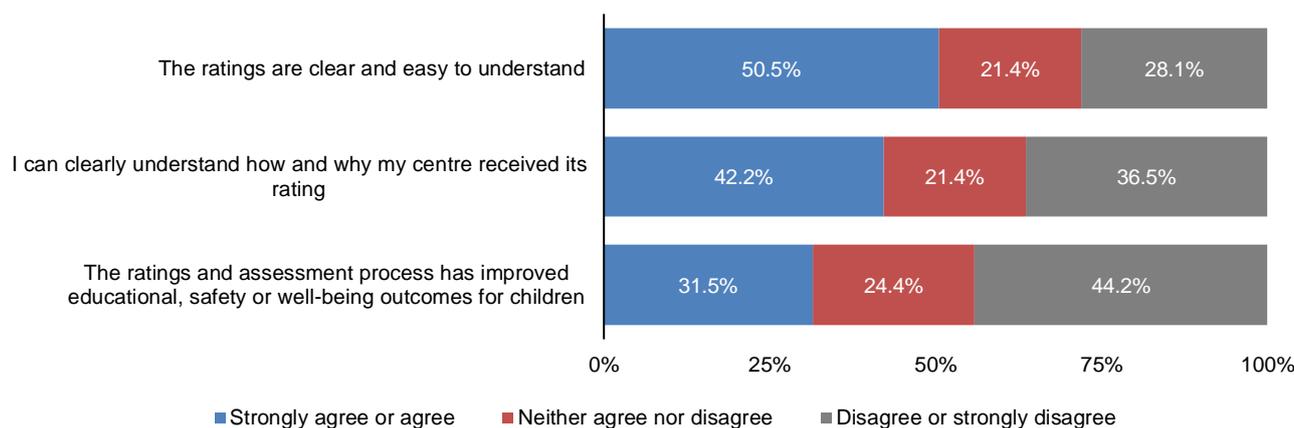
Apart from the NQS and associated criteria, stakeholders also report high levels of dissatisfaction with the way they are assessed and rated. Stakeholders reported that the assessment and ratings process is onerous and costly.

As noted above, stakeholders are concerned that assessments focus on compliance with subjective or ambiguous requirements and do not provide a clear signal as to any specific deficiencies or an opportunity to improve those deficiencies. While more than half (51 per cent) of respondents indicated they felt ratings were clear and easy to understand, more than a third of respondents (37

per cent) indicated they did not clearly understand how and why their centre received their rating (See Chart 4).

Almost half (44 per cent) of respondents indicated they did not agree that the ratings and assessment process had improved educational, safety of wellbeing outcomes for children (compared to 32 per cent who agreed).

**Chart 4 — Perception about ratings**



Source: NSW Small Business Commission Childcare Survey, June 2022 (n=197).  
See Appendix A, Q3.2 for survey question.

The rating and assessment process may be more effective if it was calibrated to be more widely respected as a genuine indicator of performance and objective measures.

Rather than being internalised as a core part of their caring and teaching operations, assessments are viewed as a separate administrative process. Feedback suggests this is due to the impracticality of embedding some elements, while others are viewed as a lower-order priority for families in attendance and are difficult to prioritise given competing demands.

Centres report spending large amounts of money, time and resources to prepare for the assessment day, with the process found to be stressful for owners and staff. Concerns were also raised that the system could be ‘gamed’ and reported perceptions that some large centres have teams that come in to transform a centre for assessment day. This included feedback that experienced staff and equipment are shared around between centres to ensure good ratings.

Some stakeholders reported a perception that the assessment process had shifted towards a ‘police and compliance’ model. Stakeholders contrasted the current approach with previous NSW assessment models where the assessor was a ‘mentor’ who worked with the service regularly. Stakeholders report greater scrutiny of minor compliance components, and an inflexible approach that does not properly accommodate innovation or alternative approaches to achieve desired outcomes. In this regard the approach is described as being overly focused on ‘means’ and not ‘ends’.

Some stakeholders provided feedback that that adoption of a more customer-focused approach by assessors would be helpful, together with additional training to ensure new assessors have a good knowledge base and understanding of the sector.

Some stakeholders suggested potential improvements to the current approach, including regular and ongoing dialogue between providers and NSW Education so they can work towards shared goals and outcomes, with authorised visits more focused on guidance and the provision of constructive rather than critical feedback.

### Ratings for family day care

Family day care is delivered by individual educators, who typically work in their home, and are registered with a family day care service. Rather than assessing every family day care educator, NSW Education assess a sample of educators engaged with a service.

Family day care educators and some family day care services raised concerns that the performance of a single educator can jeopardise the rating of all others. The Commission has been advised that NSW Education has reformed elements of this process, including allowing the service to select some educators for assessment. However, feedback received by the Commission indicates that concerns remain.

### Ratings for OSHC

OSHC stakeholders reported receiving poor ratings assessments for their service due to factors outside their control like limited or poor-quality toilet facilities, when these amenities are the responsibility of the school or local council. Unlike early childhood education providers who may be able to choose and improve their premises, many OSHC providers have limited control over the facilities of their service as they typically tender to operate as the provider within a specific school.

### Waiver process

The NQF incorporates a waiver process to help providers deal with special circumstances or unexpected events which make it difficult or impossible to meet requirements, such as staff requirements.

Some survey respondents reported spending years trying to hire qualified staff or being forced to reduce the number of available places for children due to staff shortages. Providers can apply for a waiver when they are unable to meet ECT or other staffing requirements. Around a quarter (24.2 per cent) of respondents reporting challenges meeting staffing requirements indicated they had applied for an exemption from mandatory staffing ratios.

Stakeholders have reported challenges and inefficiencies when undertaking this process. Stakeholders reported the need to provide evidence of unsuccessful recruitment attempts as part of the waiver application process, even when there is a known lack of ECTs in an area. Stakeholders reported this requirement had the effect of incurring significant job advertising costs even though they did not expect to be successful, and if they were successful, it would likely create a vacancy at another centre.

There is a \$111 application fee to apply for a staffing waiver. Stakeholders indicated they were informed the application fee would be waived during the COVID-19 pandemic, however the online application system continued to charge providers. Stakeholders reported they were unable to resolve and continued to be charged a fee and did not get a refund.

## Skills and staffing shortages

The sector is currently challenged by a critical shortage of suitably qualified staff with stakeholders reporting there are insufficient qualified staff relative to sector demand. These shortages may be more severe in regional areas where labour markets are of insufficient depth with few qualified jobseekers.

Around eight in ten survey respondents (78 per cent) indicated they had experienced issues meeting staffing requirements or attracting/retaining qualified staff. Of those who indicated they had experienced challenges, hiring casual staff was reported as the biggest challenge with 91 per cent indicating it was a challenge (see Chart 5). Meeting degree qualified staff requirements was also reported as a major challenge by more than half (56 per cent) of respondents with staffing challenges.

The National Skills Commission reported that in June 2022 in NSW, there were 790 job vacancies for early childhood teachers and 1,418 job vacancies for child carers<sup>13</sup> in June 2022.<sup>14</sup> In NSW, service waivers relating to staffing requirements are issued to 8.8 per cent of providers.<sup>15</sup>

In addition to regulatory requirements, stakeholders reported that skills shortages can be driven by factors which reduce the appeal of the sector to potential entrants or cause qualified professionals to leave the sector. These factors include:

- Perceptions of low pay and conditions, particularly relative to qualification requirements.
- Rigorous regulation and assessment requirements, which place a high administrative burden on educators.
- Competition within the early childhood sector, the broader education sector, and other sectors.
- Impacts of COVID-19, including impacts of staff stress and burn out.
- Barriers to individual services delivering innovation to improve workforce supply.

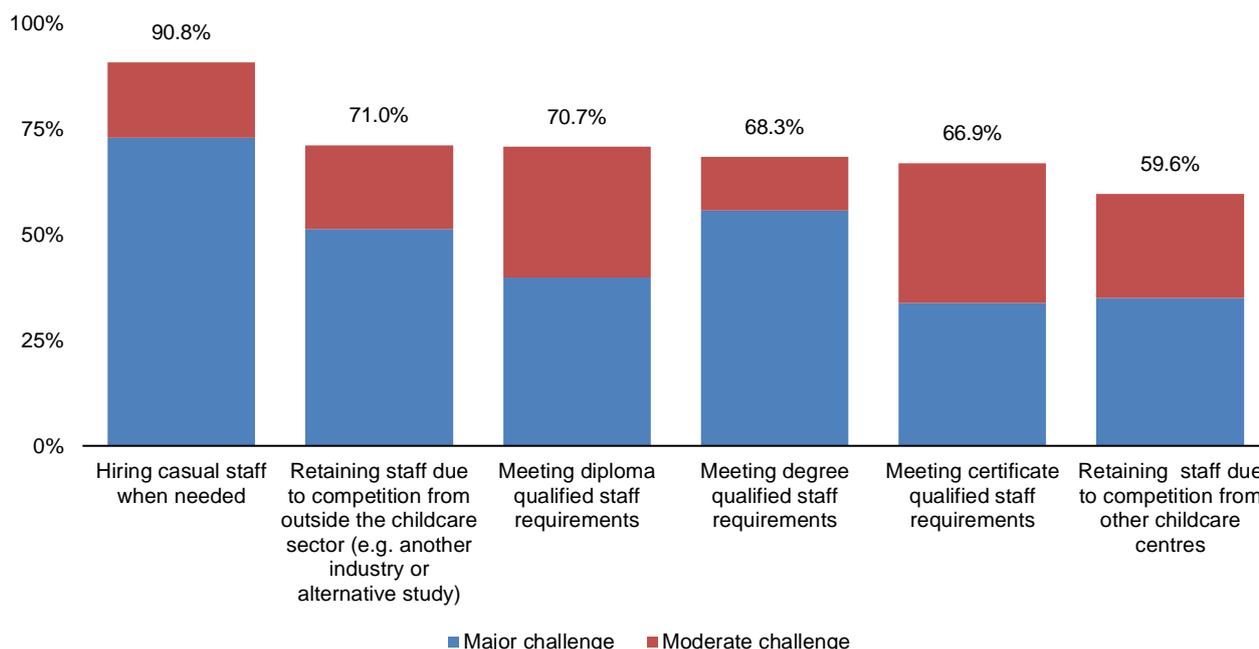
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<sup>13</sup> This includes child carers in children's residential homes and non-residential childcare centres.

<sup>14</sup> National Skills Commission. (2022). 'Internet Vacancy Index'. Available at: <https://www.nationalskillscommission.gov.au/topics/internet-vacancy-index>

<sup>15</sup> Figure at 1 July 2022. ACECQA. (2022). 'NQF Snapshot: Waivers'. Available at: <https://snapshots.acecqa.gov.au/Snapshot/waivers.html>.

**Chart 5 — Reported staffing challenges**



Source: NSW Small Business Commission Childcare Survey, June 2022 (n=184).

Note: Based on respondents indicating they had experienced issues meeting staffing requirements or attracting staff. See Appendix A, Q2.2 for survey question.

Family day care stakeholders also expressed concerns that changing education requirements for family day care educators may lead to additional staff shortages. From July 2023, family day care educators will be required to have a Certificate III prior to commencing a service. Currently, family day care educators are required to be ‘working towards’ a Certificate III. This change may lead to a reduction in educators, leading to less childcare places, particularly in some regional areas where long day care services are unavailable.

### Pay and working conditions for educators

While some providers have sought to attract and retain talent by providing more generous employment arrangements, respondents indicated the sector generally struggles to be an attractive career path as it is perceived to have poor pay and conditions. The National Skills Commission reports the median full-time earnings for educators as \$1,059 per week. This compares to a median of \$1,593 for all other jobs.<sup>16</sup>

Providers that utilise a strategy of adopting higher pay and conditions to attract staff have commented they face difficulties in remaining cost competitive.

<sup>16</sup> National Skills Commission. (2021). ‘Child Carers’. Available at: <https://labourmarketinsights.gov.au/occupation-profile/Child-Carers?occupationCode=4211>

## Administrative burden for educators

Stakeholders reported educators have left the sector due to high levels of administrative burden due to NQF requirements, and lack of autonomy which has the effect of undermining respect for their professionalism and qualifications. This administrative burden is reported to be disproportionate relative to other sectors, including primary school teaching and aged care.

## Competition within the education sector

ECTs can typically choose employment in long day care, pre-schools and primary schools. This is because many degree qualifications are for educating children aged 0-12.

Stakeholders reported the sector is losing degree qualified staff to the school system, in part because of perceptions that ECTs teaching in a primary school have higher job status, receive materially higher pay, and more favourable working hours and holidays compared to those employed in long day care.

## Impact of COVID-19

Stakeholders reported the stress and burnout resulting from operating throughout the COVID-19 pandemic, and the impact of vaccine mandates has had a lasting impact on staff shortages. Quality educators left the sector due to stress from centres operating during COVID-19 and due to mandatory vaccination requirements. Vaccine mandates also impacted the ability of centres to recruit.

## Barriers to addressing staffing shortages

Stakeholder feedback indicates that it is difficult for individual services to implement initiatives to solve workforce supply challenges. For example, one centre sought to improve their supply of ECTs by supporting diploma qualified staff to undertake a university qualification. However, as part of their university degree, educators are required to gain three months unpaid professional experience from a different centre.

Mandatory unpaid professional experience requirements of universities were criticised as deterring upskilling, as staff cannot afford to work unpaid for three months while forcing the original centre to hire casuals during work experience periods. Further concerns were raised about the potential for other centres to poach staff. Some contrasted it with trade skills and apprenticeships where students stay with their current employer and are paid apprentice wages for work experience.

Another stakeholder wanted to address staff shortages by engaging older people who had extensive experience raising and educating children (for example to maintain staff ratios over educator break times). These arrangements are generally not accepted due to NSW's qualification requirements.

## Difficulties hiring casual staff

Services often rely on hiring casual staff to manage and maintain staff ratios over staff break times, as well as during staff absences due to leave, COVID-19 illness and isolation period, other illness, and commitments such as jury duty. Survey feedback indicated that hiring casual staff presented difficulties with 73 per cent of respondents indicating hiring casual staff was a major challenge, and a further 18 per cent indicating it was a moderate challenge.

## Government processes

Stakeholders report challenges across a number of government processes including establishing a new centre, managing COVID-19 and engaging with the regulator.

### Establishing a new centre

Stakeholders reported that establishing a new centre is challenging, as they are required to meet a range of interdependent government approvals or requirements across different tiers of government and government agencies. Key approvals and requirements include:

- Council requirements for development approvals for the physical ECE or OSHC centre or to increase enrolment numbers.
- Provider and service approval from NSW Education to operate an ECE or OSHC centre in NSW.
- Approval under Family Assistance Law from Australian Department of Education, Skills and Employment (DESE) to administer the CCS.

Stakeholders reported that it can be difficult to coordinate and negotiate these multiple processes and approval timeframes across multiple tiers of government and government agencies. A perceived delay in one approval process, either due to not understanding requirements or a government agency delay, can cause a delay for a subsequential approval. This can lead to considerable financial stress for providers.

Stakeholders identified specific challenges when undertaking NSW Education approval processes, meeting council requirements, and seeking approval to administer the CCS.

### *Provider and service approvals*

According to the National Law and Regulation, NSW Education has 60 days to process a provider approval and 90 days to process a service approval. However, some stakeholders perceive that these timeframes do not support small businesses establishing ECE or OSHC services, and in practice approval times can be much longer. Stakeholders reported that delays can occur due to:

- Absence of clear guidance or templates for mandatory policies, procedures, forms and other tools up-front, resulting in every business being required to develop their own.
- Requiring documentation that was not listed as a requirement on NSW Education checklists.
- 60 or 90 day approval processes being restarted when assessors seek additional information at a late stage.
- Delays with NSW Education completing the mandatory site visit once a centre is ready.

- Applications being handled by staff who are unqualified or inexperienced with planning requirements, leading to additional and unnecessary costs and delays for providers.
- Approved providers being required to sit exams and have an interview when seeking to open a new centre, despite being able to demonstrate significant experience in the sector and already being an approved provider for other services.
- Discouraging centres from accepting enrolments prior to receiving service approvals, impacting cash flow and financial viability.

### *Council requirements*

Providers reported experiencing challenges with some councils when seeking development approval for their service or engaging with council to increase the number of children at their centre. Reported challenges include costly processes that providers consider are unnecessary, and inconsistencies between how council and NSW Education interpret State Environment Planning Policies or enrolment capacity, and councils requiring development approval for what should be exempt development.

### *Childcare subsidy approval process*

Survey respondents indicated the Australian Government's Childcare Subsidy (CCS) approval process is complicated and can involve long wait times, even for existing approved providers.

## Processes related to COVID-19

Stakeholders reported a number of challenges emerged during the COVID-19 pandemic, including additional reporting requirements, workers compensation presumption and clarity regarding requirements.

### *COVID reporting requirements*

Providers must report every COVID positive staff and child to NSW Education through the National Quality Agenda IT System. Stakeholders indicated this can be a time-consuming process and contributes additional administrative burden on management. While providers understood the need to provide information to families and other close contacts, stakeholders were concerned information provided to the regulator was being requested without a purpose, particularly as COVID-19 has become more common in the community.

### *Workers compensation*

On 14 May 2020, the NSW Parliament passed an amendment to the *Workers Compensation Act 1987* making it easier for certain types of employment to establish the link between work and contracting COVID-19. Section 19B states that workers with COVID-19 who work in certain types of employment will be presumed to have contracted the virus at work or while working. This includes employment at pre-schools and childcare facilities.

Providers indicated their concern at COVID-19 continuing to automatically being deemed as an occupational disease for the purpose of workers compensation. COVID-19 is far more prevalent in the community now than when the 2020 amendment was implemented, and it is no longer reasonable to presume that an infection occurred within the workplace.

Implications include reporting requirements (with 48 hours of being made aware of a COVID-19 infection) and potentially increased future premiums. Providers reported being advised by their professional advisers to continue to pay staff their ordinary hours while isolating and to avoid making a workers compensation claim to minimise the impact on their business' future premium calculations.

### *Clarity regarding requirements*

Respondents highlighted there continued to be areas of confusion and uncertainty about COVID-19 operating requirements. For example, some indicated they were unsure of how specific concepts or definitions apply to individual cases or circumstances. For example, requirements for children to be symptom free before returning can be viewed subjectively.

### **Policies, processes and forms**

Stakeholders advise that the NQF (Regulation 168) and NSW Education requires them to prepare policies, processes and forms without clear guidance.

Stakeholders indicated that developing documents was a costly exercise, requiring considerable time and potentially consultancy fees. Stakeholders also indicated further resources are required to update policies, processes and forms when NSW Education requirements change. Some stakeholders feel they are not supported to operationalise NSW Education policy and requirement changes, some fear they will be penalised if they make wording mistakes or omissions on policies, processes and forms for their centre, and others have experienced negative interactions with NSW Education due to wording.

Some stakeholders suggested that templates or optional 'best practice' policies, processes and forms could assist.

### **Transportation requirements**

Stakeholders, particularly OSHC providers, have raised challenges relating to how staffing ratios apply when transporting children.

For example, an OSHC service reported they had three ten-seater buses and required six staff to transport children as the driver is not counted towards the staff ratio. OSHC services are generally required to have a ratio of 1:15 (Regulation 123(1)(d)), whereas the above example effectively requires a ratio of 1:5. In these circumstances, services must seek a waiver from the requirement or maintain additional staff to ensure compliance.

While the Commission understands that waivers have been granted in these circumstances, the continual waiver application process contributes additional administrative burden and cost.

## The competitive environment

Stakeholders that run for-profit services perceive that an unfair competitive environment exists between private, not-for-profit, community and government services. Key factors include free pre-school, payroll tax exemptions and centres operating with subsidies such as nominal rent for community or council run centres.

### Free pre-school

Small business long day care providers reported that the NSW Government's provision of free preschool for children in recent years has had a material adverse impact on long day care centre enrolments. Under the Start Strong for Community Preschools program, services must be a not-for-profit community-based preschool or mobile preschool service.

Long day care centres advised parents have chosen to reduce days of attendance in long day care, to take up the free two days in community preschools.

The Commission notes the NSW Government has recently made changes to address some of these impacts, including by introducing the Start Strong Long Day Care program

### Payroll tax

Payroll tax exemptions apply to non-profit educational institutions that provide education at or below the secondary level. As ECE includes both profit and not-for-profit providers, some providers are required to pay payroll tax when their salary and wages exceed the relevant threshold,<sup>17</sup> while others are not.

Stakeholders advised that this discrepancy creates an unequal playing field between providers, as not-for-profit providers do not have payroll tax obligations. As a result, stakeholders perceive that not-for-profit providers are able to pay their staff higher wages, as they do not need to consider implications for payroll tax.

### Nominal rent for community or council run centres

Some stakeholders reported that some community and council run centres benefit from peppercorn lease arrangements where rents do not reflect the fair value of the property being leased.

Stakeholders suggested that this creates an unlevel playing field as it enables these community and council run centres to compete on price and non-price factors such as their ability to attract qualified staff through more favourable wages and conditions.

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<sup>17</sup> Smaller for-profit ECE providers are payroll tax exempt if they have an annual payroll of under \$1.2 million.

## Part III - Opportunities to improve outcomes for providers

The experiences and outcomes of providers can be improved through delivering improvements to the administration of the NQF in NSW, mitigating contemporary workforce challenges, improving government coordination, improving customer experiences and addressing the competitive landscape.

### Improvements to the administration of the NQF in NSW

Stakeholder feedback suggests potential opportunities to improve aspects of how the NQF is administered in NSW. While the Commission also received feedback relating to the national requirements of the NQF, addressing these challenges requires national change.

As the purpose of the NQF is to deliver high quality care and education to children, and the sector is committed to these goals, improving the administration of the NQF requires further analysis and review that is beyond the scope of this report.

### Review of additional NSW provisions and requirements

NSW ECE operators are required to comply with some standards that are more resource intensive than the nationally agreed standards, due to NSW-specific provisions. In addition, operators in some other states have access to state-specific provisions that provide greater flexibility to meet requirements.

As previously noted, stakeholders are particularly concerned about educator to child ratios and ECT requirements which are above national requirements. Due to higher ECT requirements, these present particular challenges for ECE providers with 30-80 children.

These additional requirements intend to deliver a higher quality of education and care to children, but also increase staffing and administrative costs which are ultimately passed onto families. Higher staff requirements also exacerbate staff shortages, which are currently particularly acute, making it more difficult for providers to meet community demand.

The policy merits of NSW's higher requirements should be justified by their benefits exceeding their cost. While measuring benefits can be difficult, there should be reasonable confidence that benefits outweigh costs if maintaining standards that are higher than national requirements. Some stakeholders are highly sceptical as to whether the additional requirements are of sufficient benefit to justify their cost.

The NSW Productivity Commission is undertaking an evaluation to determine the costs and benefits of the NSW-specific childcare staffing regulations where they differ from national standards.

### **Recommendation 1 – Staffing requirements**

The benefits of NSW’s higher educator to child ratio requirements should be assessed, with additional requirements removed unless clear and measurable benefits are found to outweigh their cost.

In some states<sup>18</sup> allowances are made to provide flexibility in educator to child ratios to accommodate short staffing breaks, or reduced ratios during rest periods. In NSW, educator to child ratios must be always maintained, so additional staff are required to cover all staff breaks, regardless of the length of break, or if it occurs during rest periods for children.

Additional challenges relating to staff breaks for ECTs are also mitigated in other jurisdictions as ECTs are required 60 per cent of the time, whereas in NSW services with more than 30 children must have an ECT in attendance at all times.

### **Recommendation 2 – Staff-break provisions to be adopted in NSW**

Additional provisions in other jurisdictions that provide flexibility to facilitate staff breaks appear to sensibly balance the need to maintain quality care with the practical need for staff to take breaks.

Feedback should be sought on the operation of these provisions, and if they are functioning well in other jurisdictions, then equivalent provisions should be adopted in NSW.

### **Transportation requirements that are proportionate to risk**

When transporting children, providers are required to have maintain educator to child ratios. However, Regulation 122(1) of the Education and Care Service National Regulations states “*An educator cannot be included in calculating the educator to child ratio of a centre-based service unless the educator is working directly with children at the service*”. This means that an educator that is also driving a vehicle cannot count towards the educator to child ratio.

Services that rely on educators to drive vehicles must therefore either maintain additional staff or seek a waiver from the staffing requirement.

Requirements for providers when transporting children should be proportionate to risk, and if waivers are generally provided for these circumstances (such as for OSHC providers servicing multiple schools within a regional district) then there is merit in incorporating flexibility into the regulations so that waivers are no longer required. Alternative risk mitigation strategies should be considered if they are found to be effective and more efficient. Examples of alternative approaches implemented to mitigate risks include:

- a system where a staff member from the service who is not travelling on the bus counter-checks the bus when it arrives

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<sup>18</sup> These include Queensland (reg 299C), Tasmania (reg 342A), South Australia (reg 325A)

- a system where there is an internal alarm at the back of the bus, and the driver is required to walk to the back of the bus to turn the alarm off, facilitating checking that no children are remaining on the bus.

### **Recommendation 3 – Review of transportation requirements**

The efficiency and effectiveness of staffing requirements when transporting children should be reviewed. The review should consider options that have been found to be effective in other jurisdictions, and whether different requirements, aligned with those for school buses, are appropriate for OSHC services. Requirements should be amended if alternative approaches are found to be effective and more efficient.

### **Assessment against the National Quality Standards**

Stakeholder feedback indicates that the five quality ratings levels defined in the NQS can create a challenging regulatory environment for providers. The feedback suggests that many providers spend considerable time and effort on ensuring they are delivering high quality education and care and are disappointed when they do not receive a rating that corresponds with the quality of education and care they perceive themselves as delivering.

Feedback also indicates that many stakeholders view 'Exceeding NQS' as the assessment required to be credible and competitive in the sector. However, some stakeholders indicated a perception that in NSW providers are rated relative to their peers (for example, assessed on a bell curve) rather than an objective assessment of their own performance against the NQS.

While the Commission understands that providers are not assessed to a bell curve, differences in ratings across jurisdictions may contribute to this perception.

ACECQA data indicates that, despite the higher educator to child ratio requirements, when compared to other states and territories, NSW has fewer centres achieving an 'Exceeding NQS' rating and more centres receiving a 'Meeting NQS' rating.<sup>19</sup> Nationally, private for-profit providers are also less likely to receive an 'Exceeding NQS' rating than all other provider types.<sup>20</sup> This suggests private for-profit providers in NSW are generally marked harder than their counterparts in other jurisdictions.

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<sup>19</sup>ACECQA. (2022). 'NQF Snapshot: Q2 2022', p. 15.

<sup>20</sup> ACECQA. (2022). 'NQF Snapshot: Q2 2022', p. 17.

#### **Recommendation 4 – Consistency of ratings**

Providers should be objectively assessed against the NQS and their rating should not depend on their performance relative to peers.

To ensure providers are objectively assessed against the NQF, NSW ratings and rating processes should be calibrated and benchmarked with other jurisdictions to provide greater confidence that the NQS are assessed in an objective manner.

#### **Improving provider experiences with the assessment ratings process**

Stakeholder feedback indicates that many smaller providers find the assessment and quality ratings process stressful, administratively burdensome, and a distraction from their core responsibilities of providing essential care and education to children.

Stakeholders find it difficult to understand how or why they achieved their rating or how to improve. Stakeholders feel they are often marked down for minor issues, that could be easily rectified, and as a result receive a rating that is lower than the quality of care and education they deliver.

Stakeholders also expressed a desire for the assessment and quality rating process to be relationship-based, where they work collaboratively with NSW Education to deliver the highest quality of care and education to children. In comparison, stakeholders perceive that the current approach to the assessment and quality ratings process is compliance driven.

The purpose of the NQS is to deliver high quality care and education. There is an opportunity to improve the assessment and ratings process so that providers have a clearer understanding of what they should be doing.

Stakeholders also suggested the five-scale quality rating system may be creating additional compliance burden as they feel compelled to exceed NQS requirements. While this has advantages in terms of incentivising high-quality services in the dimensions nominated by the NQS, it may distort behaviour and discourage providers from taking a more holistic approach, including by improving quality in areas not included in the NQS. It may also be counterproductive if providers are incentivised to over-resource and engage in staging to maximise their rating. A simpler rating scale may offset some of these challenges.

As previously noted, the Commission observes that many providers do not view the rating and assessment process as contributing to improved outcomes or as providing an accurate indication of their actual quality or performance. For this reason, the Commission recommends an independent review of the assessment and rating process to improve sectoral support for the process.

### **Recommendation 5 – Independent review of the assessment and ratings process**

An independent review should be commissioned to examine potential opportunities to improve the assessment and rating process as it is implemented in NSW. Sector feedback should be obtained to ensure the assessment and ratings process, including current approach and practices, supports providers to deliver high quality education and care to children and does not give rise to unnecessary regulatory burden.

The independent review should be conducted with terms of reference that consider both the need to promote high quality services as well as the practical challenges and experiences of providers. It should also consider whether current approaches provide a clear signal to providers as to how they can improve quality standards and ensure ratings are widely regarded, including by the sector and families, as an accurate indicator of quality.

The independent review should consider:

- The development of clear, objective measures for each assessment rating.
- Options to transition to a more collaborative regulatory approach with a productive, ongoing working relationship between the service and a single allocated assessor.
- Options for implementing more regular and targeted assessments on particular focus areas
- Ensuring that services are given clear, specific guidance regarding exactly what they need to improve when any deficiencies are identified.
- Explore options to enhance the assessment and rating of family day care providers in consultation with family day care educators.
- Reviewing the assessment process for OSHC services to reflect that amenities are the responsibility of the school, council or community centre, rather than the OSHC service.

An immediate opportunity to improve user experiences with the assessment and ratings process would be to improve feedback processes and to provide an opportunity for minor issues to be resolved prior to the finalisation of their rating.

Specific feedback is essential to providing a clear signal to providers as to what they need to do to improve. If providers do not have clear guidance as to what is required to achieve a higher rating, there is a missed opportunity to support providers to improve the quality of their services. Providers are less likely to improve their services if they cannot identify specific deficiencies.

In some cases, it may be a relatively minor issue that prevents a provider from achieving a higher rating. To incentivise immediate improvements in quality, it would be beneficial to provide an opportunity for services to rectify identified deficiencies prior to finalising their rating.

### **Recommendation 6 – Rectification list and period**

To incentivise the provision of the high quality of care and education, services should be provided with a clear list of deficiencies and a rectification period so that providers can address matters and improve their rating outcome immediately.

## Mitigating contemporary workforce challenges

Stakeholder feedback indicates that current workforce challenges are systemic and widespread. Addressing the drivers of staff shortages in the short term requires immediate government involvement as childcare is an essential service. Mitigating contemporary workforce challenges in both the short and medium term is a complex problem, that requires a number of actions. Some key areas of opportunity are discussed below.

### Removal of additional NSW staffing requirements

This report has recommended for additional staffing requirements in NSW to match national standards unless there is compelling evidence that their benefits outweigh their cost.

Notwithstanding the outcome of this analysis, there may be merit in exploring a temporary relaxation of requirements in response to contemporary staff shortages. It is likely that the cost of the additional requirements in NSW increases when there is insufficient supply of skilled labour to meet regulated requirements.

#### **Recommendation 7 – Immediate relaxation of higher staff ratio requirements**

Consideration should be given to the immediate temporary suspension of NSW's higher staff ratio requirements to mitigate critical staff shortages. This could inform a permanent transition to nationally consistent requirements.

### Improved oversight of workforce shortages and integration into waiver application process

Stakeholder feedback indicates that staff shortage can be more acute in some areas or for some qualification types. Oversight of specific workforce shortages, by location and qualification type through data analysis and monitoring, will enable NSW Education to better support providers to manage staff shortages, undertake workforce planning and improve the waiver application process. Data monitoring and analysis should seek to use already collected forms of data to reduce reporting burden for providers.

A concern raised by providers unable to find staff is that they are reliant on the waiver process. While in some cases the waiver process was able to accommodate their needs, they reported significant cost and compliance burden in demonstrating they attempted to comply with staff ratio requirements as set out in the Evidence for Waiver Applications<sup>21</sup> fact sheet. This was particularly frustrating for providers that operate in markets where there are known staff shortages.

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<sup>21</sup> ACECQA. (2019). 'Evidence for Waiver Applications'.

### **Recommendation 8 – Labour market data to inform waiver application process**

Waiver application processes should be informed by data on staff availability by location for degree qualification, diploma qualified and certificate qualified staff.

Areas with known skilled labour shortages should be identified and waiver application processes for providers located in these areas should be streamlined. This includes the provision of waivers with less onerous requirements to demonstrate they have attempted to fill a vacancy.

Recognising that skilled labour shortages are more severe in some regions, this could be implemented by adopting a traffic light system with tiered requirements subject to the severity of conditions.

### **Alignment of incentives to upskill**

Stakeholders advised that a key barrier to upskilling existing staff is that universities require students studying early childhood education to undertake three-month unpaid placements in centres which cannot be the same as their usual place of employment. This creates a disincentive for providers to support and encourage upskilling. A model like apprenticeships, where paid work undertaken on the job with the student's current employer is recognised for mandatory work experience requirements for early childhood education degree courses, was suggested.

### **Recommendation 9 – Removing restrictions on work placements**

Representations should be made to universities to consider changing mandatory unpaid work placement requirements for early childhood education degrees to recognise paid employment undertaken with the student's existing ECE employer.

### **Changes to Family Day Care Requirements**

From July 2023, family day care educators will be required to hold an approved Certificate III qualification prior to commencing their role in a family day care service.<sup>22</sup> There is concern that this new requirement will create additional staffing pressures by deterring the entrance of new educators and by restricting current providers who do not meet the qualification requirement.

### **Recommendation 10 – Family day care Certificate III requirements**

Work should be undertaken, in collaboration with family day care services, to analyse the impact of the recently announced NQF requirements that all educators have a Certificate III as at 30 June 2023 and to develop a transition strategy.

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<sup>22</sup> NQF Review 2019. (2022). 'Decision Regulation Impact Statement'.

## Improving user experiences

Feedback suggests opportunities to improve user experiences when establishing and operating an ECE and OSHC service.

## Supporting compliance

Currently, providers are generally required to develop their own policies, procedures and forms, many of which are mandatory under the NQF or other requirements.<sup>23</sup> Some have reported this can be time consuming, onerous and costly. Providers have also reported frustration due to arguments with assessors over specific wording or their policies, procedures or forms not being compliant.

There is an opportunity to assist providers with their compliance obligations and reduce disputes between providers and assessors, by developing tools and resources that can be adopted (or adapted). Template policies, procedures, checklists and forms can assist providers by reducing the time taken and cost to develop policies independently. While policies may need to be adapted to meet specific needs and family preferences, template policies reduce unnecessary red tape and duplication of effort.

### **Recommendation 11 – Template policies and procedures**

Template policies, procedures and forms should be developed to assist providers to comply with NQS and other requirements.

## Government coordination when establishing a new centre

Challenges for small businesses are particularly acute when establishing a centre, as they may be required to pay rent and undertake costly improvements, before securing an income.

Establishing and operating a ECE or OSHC centre requires concurrent engagement with Commonwealth Government agencies, various NSW Government agencies and local council. Stakeholder feedback indicates application processes are not user centric and make it difficult to establish a centre or undertake ongoing operations. This could be improved by establishing a joint State and Federal initiative to review, streamline and coordinate the requirements and processes for establishing new ECE and OSHC centres. A coordinated approval process should aim to reduce the time required to establish a new centre, which will also increase the availability of ECE and OSHC for families.

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<sup>23</sup> For example, under Regulation 168 of the Education and Care Services National Regulations.

## **Recommendation 12 – Coordinate approval requirements**

To reduce the time required to establish new centres, consideration should be given to establishing a joint State-Federal project team to review, streamline and coordinate approval requirements, processes and timeframes. This should include:

- ACECQA processes, childcare subsidy approvals, NSW planning requirements, council requirements, and all other registration and licensing processes.
- Establishment of reasonable approval times and KPIs for applications
- A customer-centric approach that eliminates inconsistent requirements, supports principles of 'telling government once' and provides up-to-date and correct advice and guidance. Development of a single, digitised application process.

Coordinated approval processes could be complemented by the implementation of a concierge service to support the establishment of new centres.

### **Audit of waiver fees**

Some stakeholders reported that during the COVID-19 pandemic, there was a commitment that fees would not be charged on certain waiver applications, including staffing waivers. Waivers are applied for through the National ASECQA system, and stakeholders have indicated the system did not allow for fees to be waived. They have also suggested that attempts to have the fees refunded subsequently were also unsuccessful.

## **Recommendation 13 – Audit to ensure services were not charged waiver fees**

An audit should be undertaken to ensure that all NSW providers that were eligible for fee waivers received either the fee waiver when they lodged their application or a subsequent refund. Any outstanding refunds should be immediately repaid.

### **Competitive neutrality and other distortions**

Stakeholder feedback suggests widespread industry perceptions they face unfair competition as they compete with not-for-profit providers that are perceived to be provided with artificial advantages. Examples raised by stakeholders include:

- Free pre-school arrangements which are not available to for-profit providers.
- Perceptions of widespread peppercorn lease arrangements or other subsidies.
- Payroll tax exemptions for employers with a payroll of more than \$1.2 million only apply to not-for-profit education providers.

These advantages may not always result in increased price competition. It is plausible that these advantages provide other advantages that make it more difficult for private for-profit operators. For example, subsidies or more favourable operating conditions may translate to higher wages and working conditions for staff which make it more difficult for for-profit providers to meet their workforce needs.

Some for-profit providers perceive they are unfairly maligned as profit driven and uninterested in the quality of their care. If such perceptions are guiding policy decisions, then clear evidence should be provided to justify the approach.

The Commission notes the NSW Government aims to eliminate any net competitive advantages through the Policy Statement on the Application of Competitive Neutrality. IPART is currently undertaking a review of NSW competitive neutrality policies and processes and is considering key competitive neutrality issues.

#### **Recommendation 14 – Neutral treatment for for-profit providers**

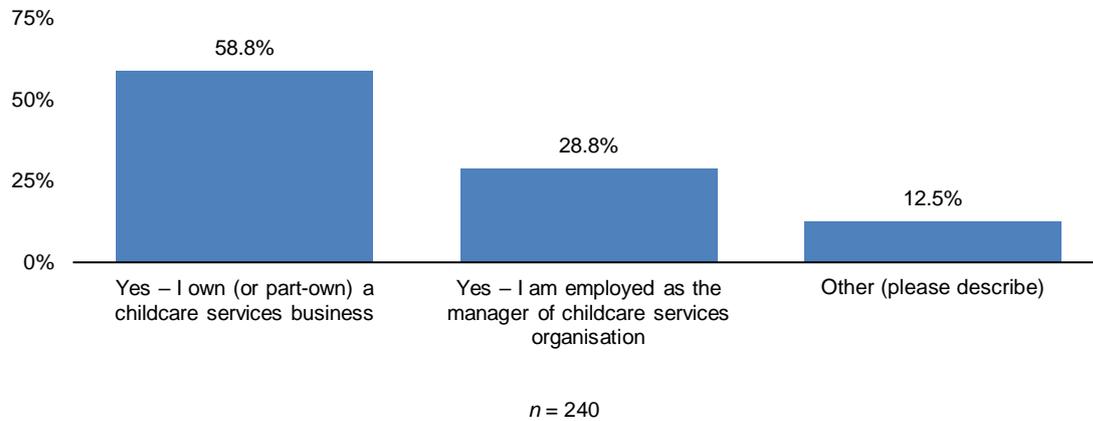
Consideration should be given to current policies that may disadvantage for-profit providers and seek to neutralise distortions. This includes examination of differences in payroll tax treatment, pre-school funding and special arrangements made available by local governments.

The Commission notes IPART is considering key competitive neutrality issues as part of the Review of NSW Competitive Neutrality Policies and Process.

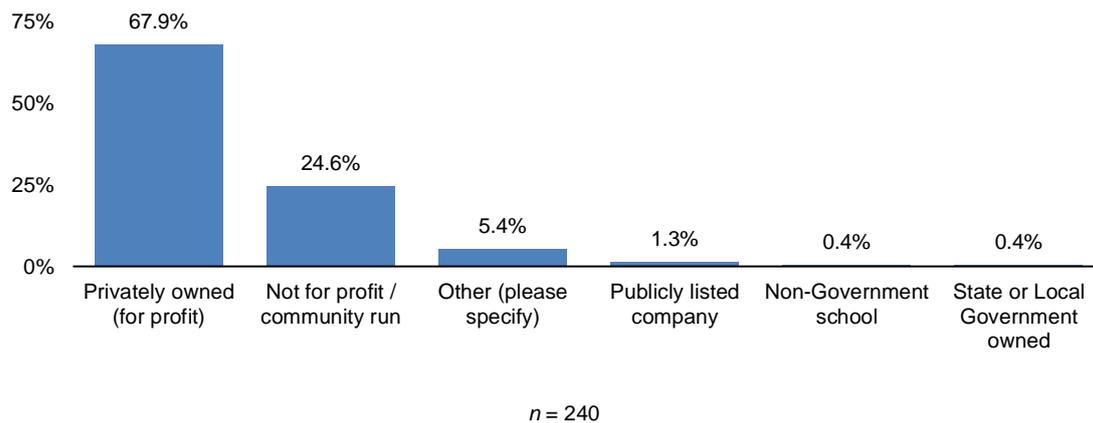
# Appendix A

## 1. Demography

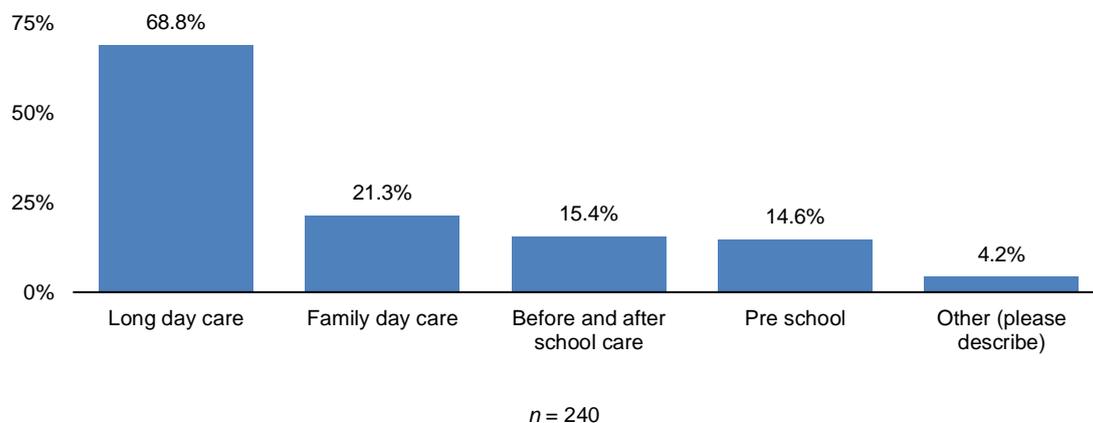
### 1.1 - Are you involved in the operation or management of a childcare service?



### 1.2 - Could you please describe the ownership of your childcare service?



### 1.3 - What kind of childcare services do you provide (select any that apply)?

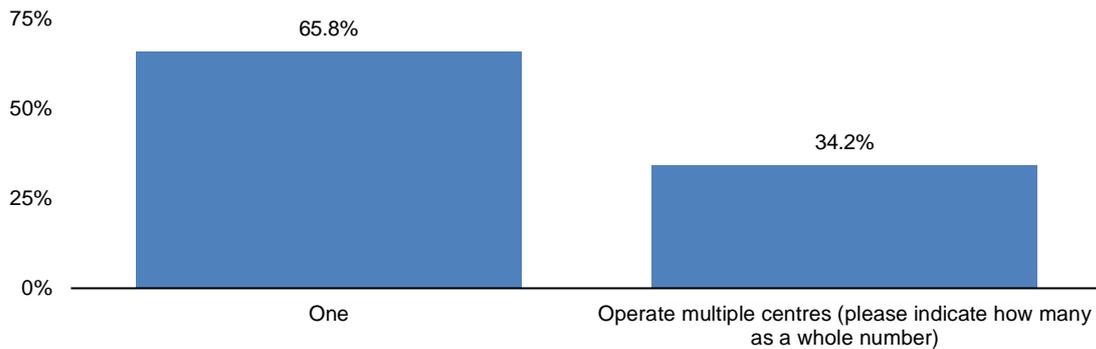


1.4 - On average, how many full-time equivalent places for children do you have available across all your centres (please enter a whole number)?

<b>Mean</b>	76 full-time equivalent places for children
<b>Trimmed mean (10 per cent)</b>	62 full-time equivalent places for children

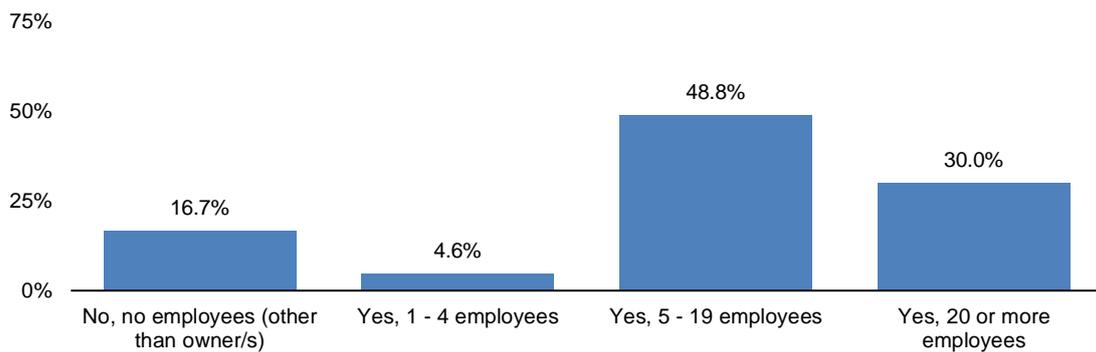
n = 240

1.5 - How many centres does your organisation operate?



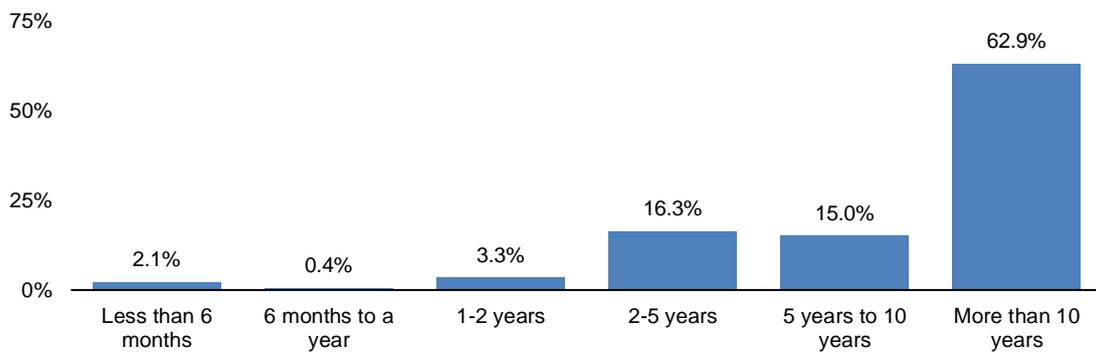
n = 240

1.6 - Does the centre you work in employ people?



n = 240

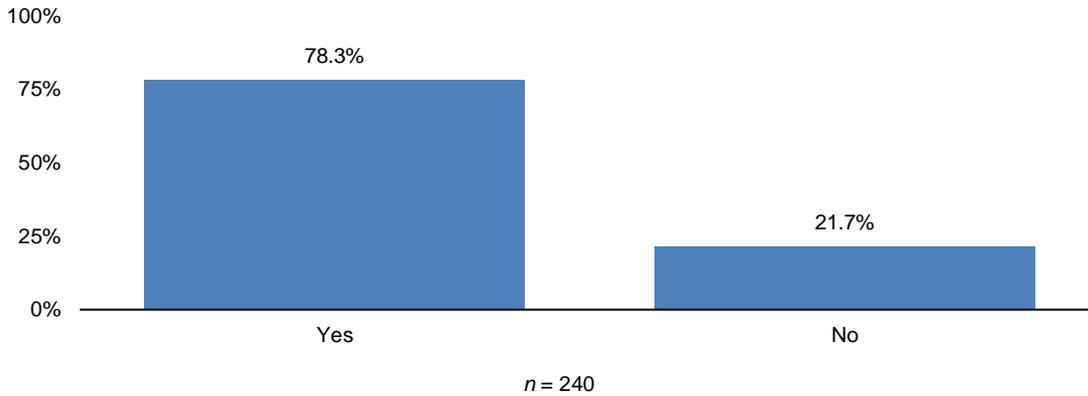
1.7 - How long has your business been operating?



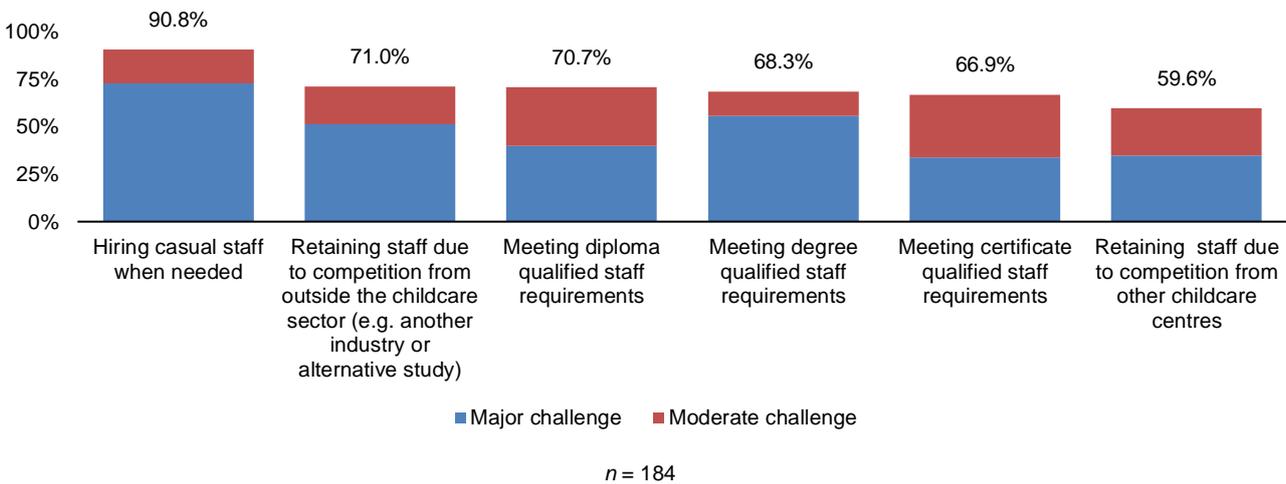
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## 2. Workforce

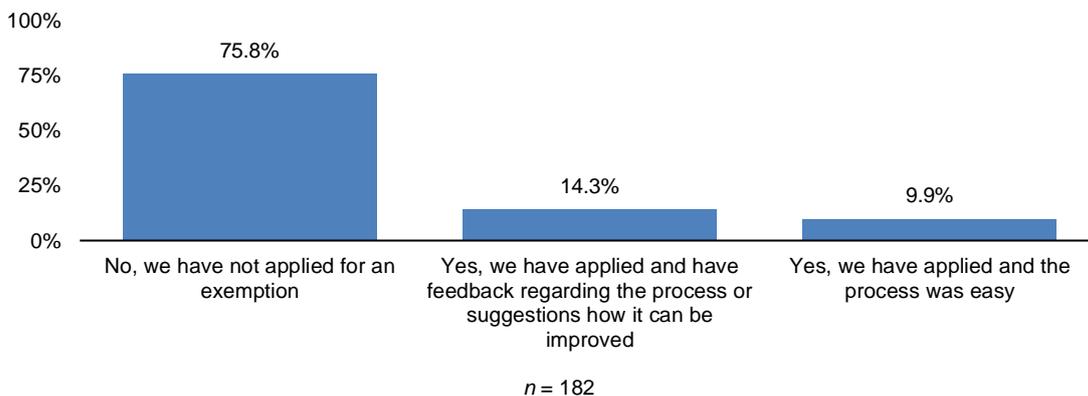
2.1 - Has your centre/s experienced any issues with meeting staffing requirements or attracting/retaining qualified staff over the past 2 years?



2.2 - If respondent answered 'Yes' to 2.1, Please indicate the extent to which the following have been a challenge for your business in the last 3 years:

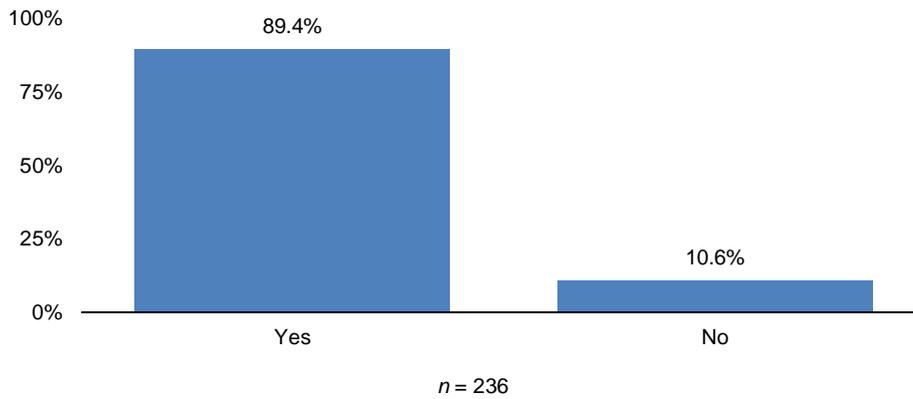


2.3 – If respondent answered 'Yes' to 2.1, In certain circumstances it may be possible to request consideration of an exemption from mandatory staffing ratios. If your centre has applied for an exemption from mandatory staffing ratios, is there any feedback you would like to share regarding the application for exemption process in the last two years?

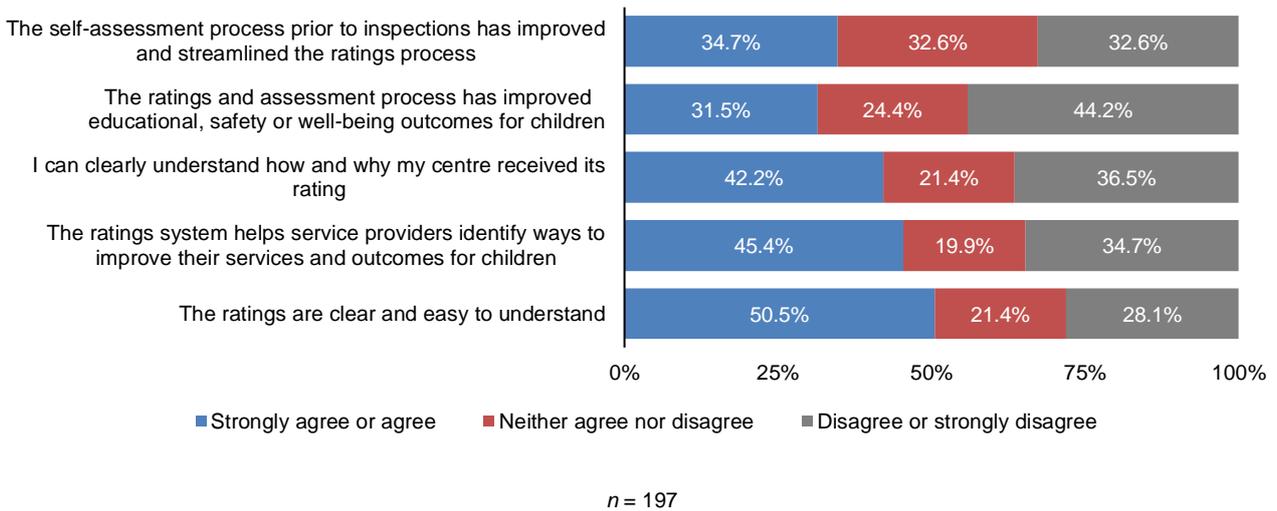


### 3. Ratings

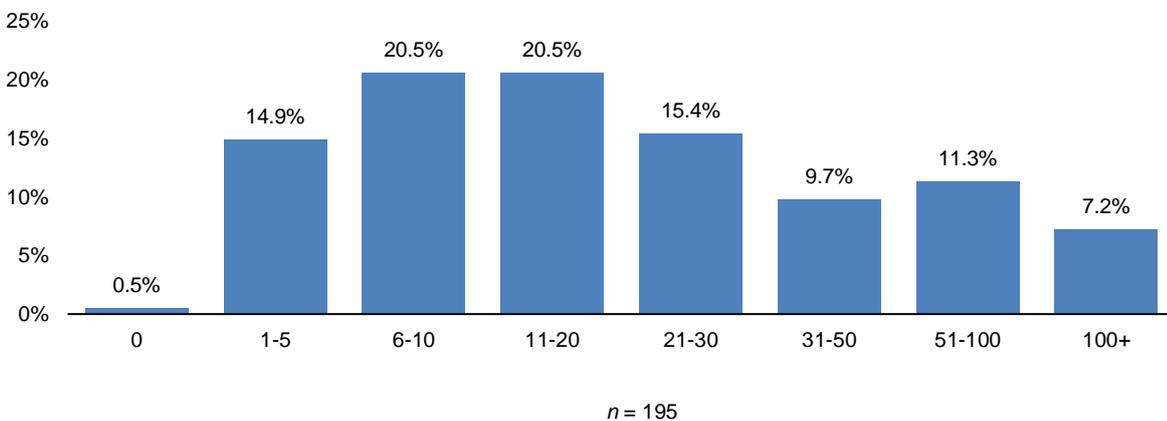
#### 3.1 - Are you directly involved in the NQF rating process for your centre?



#### 3.2 – If respondent answered ‘Yes’ to 3.1, Please select how strongly you agree or disagree with the following statements about the NQF rating system in NSW

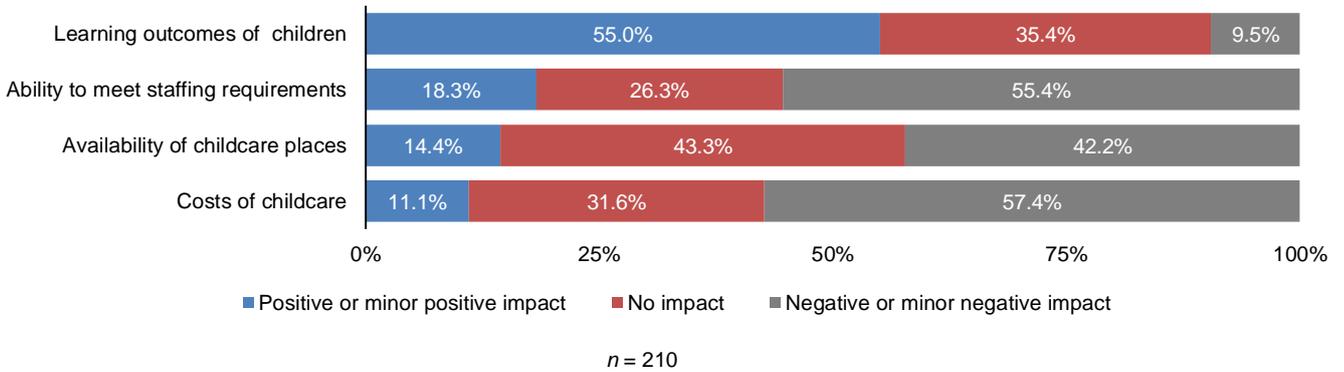


#### 3.3 -If respondent answered ‘Yes’ to 3.1, Approximately how many hours do you and your staff collectively spend a week undertaking mandatory administrative and compliance work related to NQF requirements?

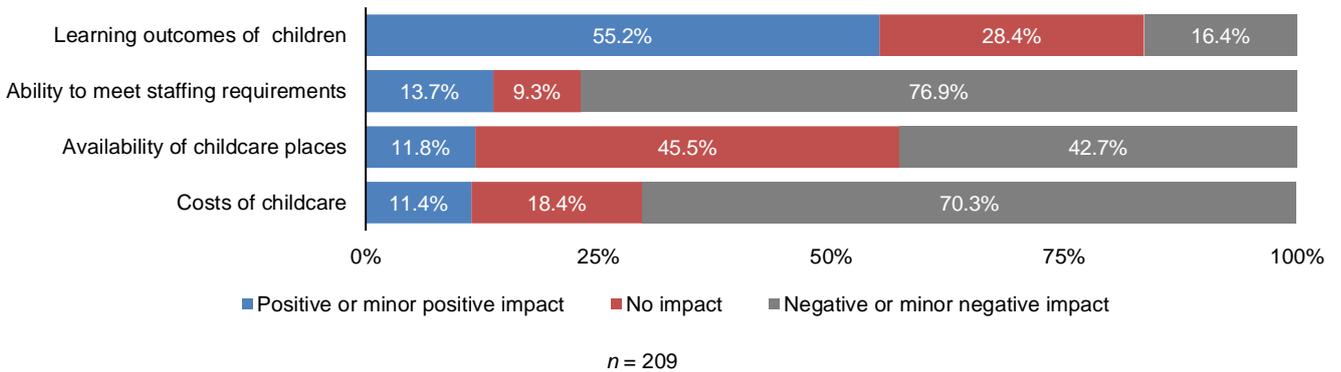


## 4. Staffing requirements

**4.1** - NSW has lower child-to-educator ratios (10:1) in early childcare centres compared with national requirements (11:1) (for children aged from 36 months up to and including preschool age). Please indicate your view on how these lower child-to-educator ratios in NSW are impacting on the following:

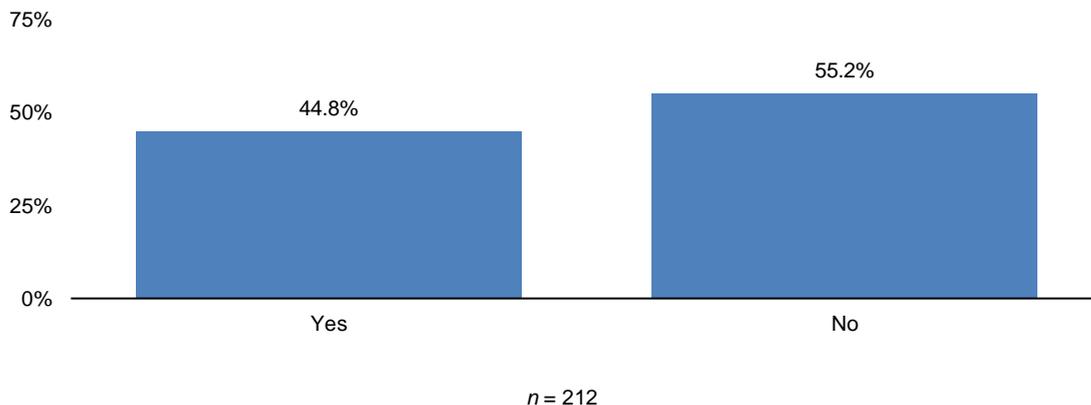


**4.2** - NSW has higher educational requirements for early childhood educators relative to the national requirements (e.g. at least four full-time early childhood teachers relative to two teachers required for 60 per cent of the time by providers with 80 or more children). Please indicate your view on how these higher educational requirements are impacting on the following:



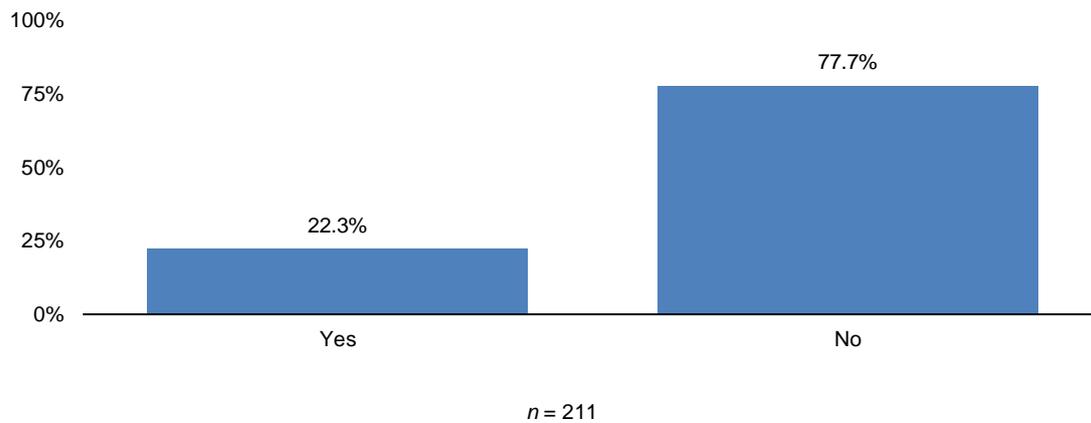
## 5. User experience

**5.1** - Have you contacted the NSW Education Helpline for childcare operators in the past two years for assistance?



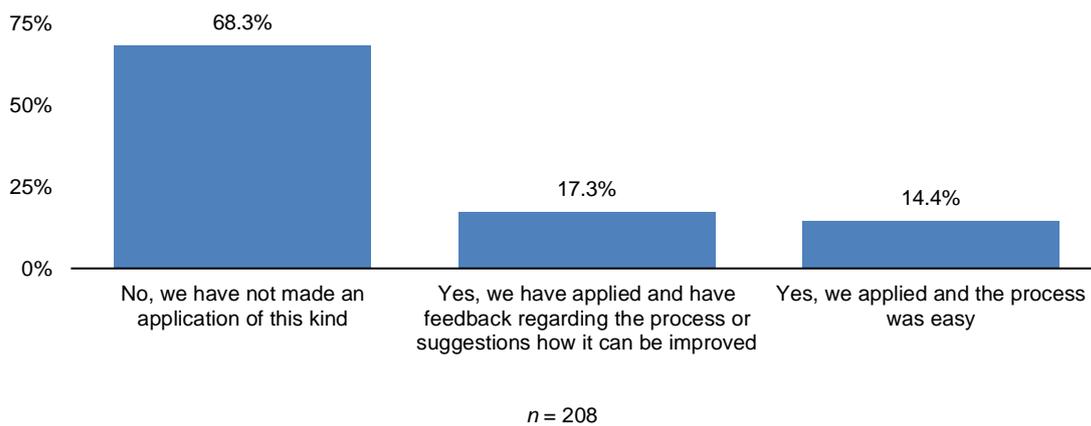
## 6. Opening a new centre

6.1 - Over the last 3 years have you opened or are you in the process of opening a new centre?



## 7. Approvals and applications

7.1 - Have you made an application to any level of government seeking an approval, variation of an existing approval, or exemption in relation to your childcare centre within the last 3 years?



## Appendix B

### Overview of ECE and OSHC sector and regulatory environment

This section provides an overview of the ECE and OSHC sector and regulatory environment.

#### Early childhood education services

The sector comprises a range of service and provider types. Long day care is the most common service type in NSW. Small privately owned businesses are a significant provider of ECE and OSHC services nationally.

Long day care, family day care and pre-school are ECE service types regulated under the NQF.

**Long day care** is centre based care, generally operating from at least 8am until 6pm, for children aged 6 weeks until school age. Long day care supports parents to attend work and provides pre-school programs. In NSW, 58 per cent of services are long day care<sup>24</sup> and 75 per cent of services are private for-profit.<sup>25</sup>

**Pre-school** prepares children aged three to five to transition to school. Pre-schools generally operate from 9am until 3:30pm during NSW school terms. Pre-schools are typically not-for-profit and community run. In NSW, 13 per cent of services in NSW are preschools.<sup>26</sup>

**Family day care** provides education and care to children in an educator's home or approved venue. A family day care educator is registered with a family day care service. The family day care service supports and monitors the family day care educator. Just 2 per cent of services in NSW are family day care services.<sup>27</sup>

#### Outside of school hours care

Outside of school hours care providers are also regulated under the NQF.

**Outside of school hours care (OSHC)** providers generally provides education and care to school aged children before and after school. It can also provide education and care during school holidays or pupil free days.<sup>28</sup> In NSW, 26 per cent of services are OSHC in NSW.<sup>29</sup>

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<sup>24</sup> ACECQA. (2022). 'NQF Snapshot: Q2 2022', p. 7.

<sup>25</sup> NSW Department of Education. (2022). 'Early Years Commitment: Transforming Early Childhood Education and Development for NSW Families'.

<sup>26</sup> ACECQA. (2022). 'NQF Snapshot: Q2 2022', p. 7.

<sup>27</sup> Ibid.

<sup>28</sup> NSW Government. (2022) 'Choosing a Quality Service'. Available at: <https://education.nsw.gov.au/early-childhood-education/information-for-parents-and-carers/choosing-a-service>.

<sup>29</sup> ACECQA. (2022) 'NQF Snapshot: Q2 2022', p. 7.

## Size and structure

The providers are classified as small, medium and large providers based on the number of approved services they operate. Providers may operate a single service or multiple service types or services at different locations.

Small providers are classified as providers with one service and account for a significant share of approved ECE and OSHC providers. Nationally, single-service providers comprise 80 per cent of ECE and OSHC providers. They operate 35 per cent of total approved services.<sup>30</sup>

Medium-sized providers, classified as those who operate between 2 and 24 services, comprise 19 per cent of ECE and OSHC providers and operate 31 per cent of approved services. Large providers, classified as those who operate 25 or more services, comprise 1 per cent of ECE and OSHC providers and 34 per cent of approved services.

Private-for-profit services account for 51 per cent of total approved services with a further 34 per cent operated by private not for profit organisations.<sup>31</sup> The remaining are managed by state, territory, or local governments; state or territory schools, or independent or Catholic schools.

## The regulatory and policy environment

Providers are required to comply with the NQF to ensure the education and care of children is to an appropriate standard. ECE and OSHC providers are also subject to a range of other federal, state and local government requirements.

### *National Quality Framework*

The NQF provides quality standards for childcare services. It was developed by the Council of Australian Government (COAG) and introduced in 2012. It includes four key components:

- **The National Law and National Regulations** which sets the national standard and operational requirements for children's education and care across Australia. This includes educator and child ratios, and qualification requirements for educators.
- **National Quality Standards (NQS)** which sets the national benchmark for ECE and OSHC in Australia. The NQS includes seven quality areas that services are assessed according to five quality ratings.
- **Assessment and quality ratings process** completed by the state regulatory authority. In NSW, this is NSW Education.
- **National learning frameworks** for underpinning educational programs in services.

The NQF applies to long day care, family day care, pre-school and OSHC services.

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<sup>30</sup> Ibid, p.9.

<sup>31</sup> Ibid, p.8.

### *Administrative bodies*

The NQF is administered by state regulatory authorities, which are supported by the Australian Children's Education and Care Quality Authority (ACECQA). In NSW, the state regulatory authority is NSW Education, through the Early Childhood Education Directorate.

ACECQA supports NSW Education in administering the NQF through a range of functions, including:

- Hosting the National Quality Agenda IT System (NQA IT System) which supports communications between state regulatory authorities and providers, including lodging applications and notifications, to reduce paperwork and duplication.
- Publishing resources, including the Guide to the NQF, and quarterly NQF snapshots.
- Maintaining the national registers of approved providers and services.
- Awarding the Excellent rating to providers.

### *2019 NQF review*

The NQF was most recently reviewed in 2019 (the 2019 review). From December 2019 to April 2022 consultation on the issues and options identified in the 2019 review occurred and the Decision Regulation Impact Statement (DRIS) was released in May 2022.

The DRIS identified key changes in safety requirements, regulatory authority oversight and compliance tools, workforce requirements and regulatory guidance. Most of the above changes will come into effect from mid-2023.<sup>32</sup>

### **Administration of the National Law and National Regulation in NSW**

Key elements of the administration of the National Law and National Regulation for different service types in NSW are summarised below. NSW also has state-specific regulations with requirements that differ from national requirements. Some of the key differences relate to staffing requirements. Staffing requirements and their difference from national requirements are summarised below.

#### *Long day care and pre-school services*

The National Law and National Regulation set educator and child ratios and educator qualification requirements for long day care. However, NSW has a number of state-specific provisions that exceed the national standards. This means long day care and pre-school operators are required to meet higher staffing requirements than operators in other states and territories. NSW's state-specific provisions include:

- Educator to child ratio of 1:10 for children aged three to six in NSW, compared to a national standard of 1:11.

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<sup>32</sup> See NQF Review 2019. (2022). 'Decision Regulation Impact Statement'.

- Requirements for Early Childhood Teachers (ECTs) that exceed national standards for services with 40 or more children.<sup>33</sup>
- Requirements to meet ratios and ECT requirements for centres with more than 30 children 'at all times' compared to national standards where ECTs are required 60 per cent of the time.

NSW's educator to child ratio and ECT requirements for centre-based care (which applies to long day care, pre-school and OSHC) are summarised in Table 1 below.

**Table 1 – Educator to child ratio requirements for centre-based services**

Age of children	NSW educator to child ratio	Relationship to minimum requirements in other state and territories
<b>Birth to 24 months</b>	1:4 at all times	Consistent ratio Provisions in QLD, Tas, SA and WA allow staff to take short breaks
<b>Over 24 months and less than 36 months</b>	1:5 at all times	Consistent ratio Provisions in QLD, Tas, SA and WA allow staff to take short breaks
<b>36 months up to and including preschool age (3 to 6 years)</b>	1:10 at all times	Higher ratio (national ratio is 1:11) Provisions in QLD, Tas, SA and WA allow staff to take short breaks
<b>Over preschool age</b>	1:15 at all times	Consistent ratio Provisions in QLD, Tas, SA and WA allow staff to take short breaks

**Table 2 — NSW ECTs requirements for centre-based services**

Number of children	ECTs in NSW	ECTs in other states	Multiple of national requirement <sup>34</sup>
<b>Less than 25 children</b>	1 ECT 20 per cent of the time (reg 130)	1 ECT 20 per cent of the time (reg 130)	1
<b>25-29 children</b>	1 ECT 60 per cent of the time (reg 272)	1 ECT 60 per cent of the time (reg 132)	1
<b>30-39 children</b>	1.0 ECT at all times (reg 272)	1 ECT 60 per cent of the time (reg 132)	1.67
<b>40-59 children</b>	2.0 ECTs at all times (reg 272)	1 ECT 60 per cent of the time (reg 132)	3.33
<b>60-79 children</b>	3.0 ECTs at all times (reg 272)	1.5 ECT 60 per cent of the time (reg 133)	3.33
<b>80 children</b>	4.0 ECTs at all times (reg 272)	1.5 ECT 60 per cent of the time (reg 133)	4.44
<b>80+ children</b>	4.0 ECTs at all times (reg 272)	2.0 ECT 60 per cent of the time (reg 134)	3.33

<sup>33</sup> An individual can be counted as an ECT if they hold an approved early childhood teaching qualification or equivalent.

<sup>34</sup> Difference is calculated based on a centre operating 10 hours a day.

Nationally, centres have the option to substitute additional ECTs with 'suitably qualified persons' if required. However, centres in NSW do not have this option.

Other states and territories have state-specific provisions which provide flexibility to meet ratio and ECT requirements. In Queensland, Tasmania, South Australia and Western Australia there are specific provisions enabling staff ratios to be modified when educators are taking short breaks and not working directly with children.<sup>35</sup>

#### *Family day care*

In NSW, family day care requirements are aligned with national requirements. A family day care educator can educate and care for up to seven children, with a maximum of four children at preschool age or under. This ratio includes the educator's own children if no other adult is present.<sup>36</sup>

The 2019 review changed the qualification requirements for family day care educators. Currently family day care educators are required to be 'actively working towards' a Certificate III qualification. From mid-2023 family day care educators will be required to 'hold an approved Certificate III qualification prior to commencing their role in a family day care service'.<sup>37</sup>

#### *Outside of school hours care*

NSW OSHC requirements are also consistent with national requirements. Centres with children over pre-school age can operate with a 1:15 educator and child ratio. OSHC educators are not required to have a formal qualification.<sup>38</sup>

#### *Review of NSW-specific regulations*

The *NSW Productivity Commission White Paper 2021* (White Paper) identified additional NSW-specific requirements have impacts on the workforce, service providers, families, and the accessibility of services. These impacts include higher educational costs for workers, higher staffing costs for service providers and higher fees for families. As a result of high fees, some families may also be unable to access services.<sup>39</sup>

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<sup>35</sup> ACECQA. (2022). 'Guide to the National Quality Framework', p. 432.

<sup>36</sup> ACECQA. (2022). 'Guide to the National Quality Framework', p. 432.

<sup>37</sup> See NQF Review 2019. (2022). 'Decision Regulation Impact Statement'.

<sup>38</sup> NSW Government. (2022) 'Staff Ratios and Adequate Supervisions'. Available at: <https://education.nsw.gov.au/early-childhood-education/investigation-feedback-and-complaints/regulation-assessment-and-rating/regulatory-framework/staff-ratios-and-adequate-supervision#:~:text=There%20are%20no%20qualification%20requirements,qualifications%20and%20experience>

<sup>39</sup> Productivity Commission. (2021). 'Productivity Commission White Paper 2021: Rebooting the Economy', p. 157-158.

The White Paper recommended the evaluation of NSW-specific ECE staffing requirements, including the costs and benefits of NSW ECE requirements that differ from national requirements for staff ratio and qualifications.<sup>40</sup>

## National Quality Standards

The NQS set out seven quality areas that promote the safety, health and wellbeing of children and the delivery of high-quality education programs. The seven quality areas are educational program and practice; children's health and safety; physical environment; staffing arrangements; relationships with children, collaborative partnerships with families and communities; and governance and leadership.

Services are assessed and rated across the seven quality areas, which comprise 15 standards and 40 elements, to receive an overall quality rating. There are five quality ratings ranging from 'significant improvement required' to 'excellent', which both ensures services are meeting a minimum safety and education standard and incentivises services to strive for high quality care. These ratings are summarised below:

- **Significant improvement required** is a service that does not meet any of the seven quality areas, or a section of the legislation, and there is significant risk to safety, health, and wellbeing of children. The regulator will take immediate action against these services.
- **Working towards the NQS** is a service that provides safe education and care but has one or more areas identified for improvement.
- **Meeting NQS** indicates the service is meeting the quality education and care requirements.
- **Exceeding NQS** indicates the service is going beyond the requirements of the NQS in at least four of the seven quality areas.<sup>41</sup>
- **Excellent** is a service providing exceptional education and care.

Services have the option of displaying their rating and using it to promote their service.<sup>42</sup>

## Other regulatory frameworks and interactions with government

Providers are also required to comply with a range of other regulatory frameworks and government processes when establishing and operating a service. These include:

- Approval by the Australian Government under the Family Assistance Law to administer the Child Care Subsidy (CCS) to families. This is administered by the Australian Department of Education, Skills and Employment (DESE).<sup>43</sup>
- Council planning controls and fire regulation requirements.

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<sup>40</sup> Productivity Commission. (2021). 'Productivity Commission White Paper 2021: Rebooting the Economy', p. 160.

<sup>41</sup> Services are required to be exceeding requirements in at least two of quality areas 1, 5, 6 or 7.

<sup>42</sup> ACECQA. 'Promote Your Rating'. Available at: <https://www.acecqa.gov.au/assessment/promote-your-rating>.

<sup>43</sup> Department of Education. (2022). 'Become an Approved Child Care Provider'. Available at: <https://www.dese.gov.au/child-care-package/child-care-subsidy/approval>

- Health department rules and food safety requirements.<sup>44</sup>
- Working with children checks and child protection requirements.<sup>45</sup>
- General business requirements relating to tax, work health and safety, and employment relations.

While some of these requirements are not unique to ECE and OSHC providers, they nonetheless impact their operations and may present regulatory and compliance burdens that contribute to service costs.

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<sup>44</sup> ACECQA. 'Opening a New Service'. Available at: <https://www.cecqa.gov.au/resources/opening-a-new-service>

<sup>45</sup> Ibid.