



Australian Childcare Alliance
New South Wales

A STATE OF POSITIVE POSSIBILITIES

2021+

VOLUME 1:

Immediate Solutions

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Introduction

The Australian Childcare Alliance (ACA) NSW welcomes the opportunity to provide a submission to outline our recommended solutions to the existing and future challenges ahead of the 2021/2022 NSW Budget.

The Australian Childcare Alliance (ACA) NSW is the state's peak body representing over 1,600 privately-owned centre-based childcare services who employ about 25,000 individuals and serve up to 125,000 children and their families.

Alongside other Australian states and territories, ACA NSW is the NSW representative on the national Australian Childcare Alliance.

A State of Positive Possibilities – Volume 1: Immediate Solutions

ACA NSW's submission, *A State of Positive Possibilities*, is assembled as follows:

- Volume 1: Immediate Solutions
- Volume 2: Proposal for Safer, High Quality, Lower Cost Childcare

The proposals outlined in Volume 1 leverage the NSW Government's existing abilities without the need for the Federal Government or other state/territory governments' concurrence or cooperation. Moreover, these solutions have minimal financial cost for the NSW Government and have minimal impact on overall employment.

These proposals address legacy challenges faced by NSW-based early childhood education and care (ECEC) service providers, including those highlighted by the NSW Productivity Commission's Green Paper¹ (released in August 2020). This Green Paper showed that NSW ECEC service providers are burdened with higher operational costs than any other Australian jurisdiction without any demonstrable proof of nett beneficial advantages for NSW children above other states and territories since 1 January 2012 (for example, the NSW-specific regulatory requirement² that results in 167%-333% higher costs for additional degree-qualified early childhood teachers³).

¹ NSW Productivity Commission's Green Paper (Aug 2020) - https://www.productivity.nsw.gov.au/sites/default/files/2020-11/Productivity%20Green%20Paper_Consolidated.pdf

² NSW specific Regulation 272, Education and Care Services National Regulations - <https://www.legislation.nsw.gov.au/view/html/inforce/current/sl-2011-0653#sec.272>

³ ACA NSW asks NSW Government to financially offset more costly NSW regulations toward achieving parity with other states and fee affordability for parents - <https://nsw.childcarealliance.org.au/news-archive/939-aca-nsw-asks-nsw-government-to-financially-offset-more-costly-nsw-regulations-toward-achieving-parity-with-other-states-and-fee-affordability-for-parents>

A State of Positive Possibilities – Volume 2: Proposal for Safer, High Quality, Lower Cost Childcare

Volume 2 proposes the use of the NSW Government's Regulatory Sandbox programme⁴ which was first introduced in 2016 (or a similar government platform), in order to achieve the twin objectives of:

- quality early childhood education and care within the context of children's educational and social well-being outcomes that is demonstrably reportable across the continuum of ages 0-18 years; and
- regulatory and operational efficiencies such that true fee affordability for parents and taxpayers can be realised.

It is worth noting that the NSW Government had successfully engaged in a regulatory-sandbox-like project as part of its Small Business Regulatory Reform. A project agreement for that reform was funded by the Federal Government with an estimated total budget of \$95.9m⁵ over a period ending 30 June 2021.

It is anticipated that there may be a substantial enough positive balance remaining of that project agreement that could be re-purposed for the proposed Regulatory Sandbox programme project.

Volume 2's proposal also recommends the NSW Government leverage quality early childhood education and care in a manner that maximises children's subsequent progress especially during Kindergarten through to Year 3. Given early childhood education and care is primarily funded by the Commonwealth's Child Care Subsidies⁶ as well as the Universal Access Funding⁷, these provide the NSW Government with the ability to more effectively synchronise their resources in concert with the Commonwealth's investments in children's development.

The proposal outlined in Volume 2 is envisaged initially over a 12-18 month period (ie between 1 July 2021 and 31 December 2022), with Commonwealth and NSW project funding entrusted to the NSW Productivity Commissioner to act as the project coordinator.

⁴ Innovation NSW's Regulatory Sandbox -

<https://web.archive.org/web/20200705120826/https://www.innovation.nsw.gov.au/regulatorysandboxes>

⁵ Project Agreement for Small Business Regulatory Reform - https://1drv.ms/b/s!Ao98k9p-eGjFgg0PF_q3p8ZQxSGdlw?e=GjMvdN

⁶ Federal Government's Child Care Subsidy -

<https://www.servicesaustralia.gov.au/individuals/services/centrelink/child-care-subsidy>

⁷ Federal Government's Preschool Funding (aka Universal Access) - <https://www.dese.gov.au/universal-access-early-childhood-education/announcements/preschool-funding-extended-2021>

Volume 2 also proposes the introduction of standing regulatory sandbox review every two years for the early childhood education and care sector in order to ensure evolving regulatory and operational requirements continue to be synchronised with the objective of fee affordability.

For NSW's benefit ... which can be emulated by others in Australia and the world

ACA NSW has made 10 recommendations in this submission and continues the reforms sought since 2018⁸. ACA NSW's submission should be viewed in the context of the NSW Government having jurisdictional discretion and powers that are not in conflict with or reliant upon the Federal Government or any other states/territories.

In combination, these proposals enable what were assumed to be National Laws and National Regulations to instead be acclimated to NSW's specific conditions.

More excitingly, the anticipated success of the proposal outlined in Volume 2 can enable any and other westernised democratic governments to achieve quality and affordable early childhood education and care within low-personal-income-tax environments.

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⁸ ACA NSW's Early Childhood Education and Care in NSW: A Better Direction (19 March 2018) - <https://nsw.childcarealliance.org.au/images/Documents/Submissions/2018-03-19---ACA-NSW---ECEC-in-NSW--A-Better-Direction.pdf>

List of Recommendations

Recommendation 1

Repeal NSW-specific Regulation 272 and enable NSW-based long daycare services to observe Regulations 132, 133 and 134 for the number of degree-qualified early childhood education teachers instead.

Recommendation 2

Repeal NSW-specific Regulation 271 and enable NSW-based long daycare services to observe Regulation 123(1)(c) instead for the number of educators for children aged 3-6 years old.

Recommendation 3

Amend Regulation 242(3) and replace “272(1A)” with “272” as follows:

In this regulation –

relevant regulation means regulation 130, 131, 132, 133, 134, 266, 267, 272, 279, 293, 294, 303, 304, 330, 331, 332, 333, 348, 349, 362, 363 or 379.

Recommendation 4

Re-classify all NSW-based early childhood education and care services to be NSW Payroll Tax exempt by virtue that they are educational institutions.

Recommendation 5

Recalibrate NSW Start Strong funding for all eligible children in long daycare services to be at least the national average for each child eligible to receive Universal Access funding.

Recommendation 6

Upon receiving at least the Commonwealth's national average per child of \$1,292 from Universal Access funding, the NSW Government should allow long daycare services to reduce their fees or avoid increasing fees.

Recommendation 7

The NSW Government should immediately trial for at least 12 months the emulation of Regulation 299C for NSW and upon application via a Temporary Waiver for services. And upon subsequent review of the trial, the NSW Government should consider rendering the NSW equivalent of Regulation 299C to be made permanent.

Recommendation 8

The NSW Government adopts the Victorian Government's model of helping to pay the gap for eligible parents'/guardians' children during their year-before-school for a period of 18 months beginning 1 July 2021.

Recommendation 9

For the balance of 2021, that the NSW Government immediately establishes an appropriate income test eligibility framework that would apply to all parents intending to receive the free preschool funding for 2021. And for 2022 onwards, that the NSW Government considers permanent establishment of an appropriate incomes test eligibility framework for future parents receiving the benefits of NSW preschool funding.

Recommendation 10

For the balance of 2021, that the NSW Government immediately establishes a mechanism from the NSW Department of Education such that NSW community/mobile preschools and the NSW Department of Education can ensure children receive the intended 600 hours of free preschool funding for 2021.

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1. Demand, Supply & Vacancies

The twin objectives of early childhood education and care have always been the development of children with superior education and social well-being outcomes, as well as assisting working parents to achieve higher workforce participation levels.

Contextually, using the most recently available Federal Government report on early childhood education and care (ie June Quarter of 2018), the distribution of usage by children is as follows:

Service Type	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	TOTAL
Long Daycare	233,760	166,540	165,290	40,860	56,090	11,750	5,690	16,180	694,830
Family Daycare	54,710	51,520	25,890	4,780	11,260	3,840	340	1,380	153,370
Occasional Care	1,800	2,110	300	100	840	90	0	70	5,300
Out-of-school-hours Care	144,140	102,510	103,980	40,800	36,860	8,390	4,080	13,380	453,850
TOTAL	423,280	314,000	288,110	84,220	99,180	22,580	9,900	30,240	1,269,260

Table 1: Number of children using the respective service types, June quarter 2018⁹

With the above in mind, the NSW Government should be cognisant of the existing momentum of supply of early childhood education and care services and the number of places therefore made available to parents.

And since the introduction of the current early childhood education and care framework on 1 January 2012, it is worth comparing the supply of additional long daycare (LDC) services and places that has consistently increased against population increases:

NSW	2012	2013	2014	2015	2016	2017	2018	2019	2020
New LDC Services	2,409	80	89	110	120	95	136	133	113
% increase	-	3.3%	3.6%	4.3%	4.5%	3.4%	4.7%	4.4%	3.6%
Additional Places	121,164	4,787	6,644	7,833	7,905	7,563	10,655	9,378	7,717
% increase	-	4.0%	5.3%	5.9%	5.6%	5.1%	6.8%	5.6%	4.4%

Table 2: Supply of Early Childhood Education and Care services and places in NSW¹⁰
(NOTE: Grey column in 2012 represents total numbers of existing and new services in that year)

NSW	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
Population	7.30m	7.40m	7.51m	7.62m	7.73m	7.87m	7.98m	8.09m	8.16m
% increase	-	1.37%	1.41%	1.44%	1.53%	1.75%	1.43%	1.34%	0.95%

Table 3: Population Time Series of NSW¹¹

⁹ Federal Department of Education's Early Childhood and child care report (June 2018) - <https://www.dese.gov.au/key-official-documents-about-early-childhood/early-childhood-and-child-care-reports>

¹⁰ Source: Australian Children's Education & Care Quality Authority - <https://www.acecqa.gov.au/resources/national-registers>

¹¹ Source: Australian Bureau of Statistics' Population Time Series - <https://www.abs.gov.au/statistics/people/population/national-state-and-territory-population/jun-2020/310104.xls>

The annual supply increases were to anticipate and satisfy demand and keep pace with population. However, the Federal Government’s Early Childhood and Child Care Reports show significant enough vacancies, especially across long daycare services, family daycare services and out-of-school-hours-care services.

Vacancies across Australia	Jun 2012	Jun 2013	Jun 2014	Jun 2015	Jun 2016	Jun 2017	Jun 2018
Long Daycare							
Total number of services	6,156	6,310	6,606	6,723	6,932	7,184	7,478
% of services reporting	77%	84%	90%	91%	92%	92%	91%
Proportion with vacancies	87%	89%	88%	90%	91%	92%	93%
Family Daycare							
Total number of services	376	499	714	778	823	757	612
% of services reporting	63%	50%	38%	34%	44%	36%	37%
Proportion with vacancies	84%	83%	87%	89%	87%	94%	93%
Occasional Care							
Total number of services	80	119	117	116	110	106	103
% of services reporting	59%	55%	59%	59%	68%	64%	68%
Proportion with vacancies	60%	61%	54%	51%	56%	54%	56%
Out-of-school-hours Care							
Total number of services	5,956	6,292	6,633	6,911	7,331	7,554	7,722
% of services reporting	63%	62%	63%	58%	60%	76%	79%
Proportion with vacancies	86%	87%	90%	91%	92%	94%	95%

Table 4: Vacancies across Australia¹²
(NOTE: The Federal Department of Education, Skills & Employment has not yet released their reports for 2019 or 2020.)

Governments’ policy to influence price tends to be by leveraging the economic law of demand and supply. However, that has simply not worked to date. Instead, due to the regulatory framework and economic landscape combined, increasing supply appears to have had the opposite effect on prices.

In August 2018, the financial market began to realise this and have come to the conclusion of childcare oversupply¹³.

¹² Federal Department of Education’s Early Childhood and child care reports - <https://www.dese.gov.au/key-official-documents-about-early-childhood/early-childhood-and-child-care-reports>

¹³ Australian Financial Review: Australia’s childcare oversupply explained - <https://www.afr.com/companies/infrastructure/australias-childcare-oversupply-explained-20180828-h14m0r>

2. Make NSW Regulations nationally consistent

The existing system commonly known as the National Law and National Regulations came into effect on 1 January 2012. By 31 December 2021, this governing framework for early childhood education and care service providers will have been operating for 10 years.

As their names imply, the original intentions prior to 2012 were for all Australian jurisdictions to be nationally consistent with each other. However, the same National Law and National Regulations (which had to be legislated through Australian state and territory governments) facilitated deviations for any jurisdiction.

Unfortunately, as highlighted by the NSW Productivity Commission’s Green Paper¹, NSW to date continues to perpetuate the largest pool of substantive enough deviations from other national regulatory requirements. Disappointingly, they contribute toward operational costs without demonstrating any measurable nett positive results for NSW children, parents and/or economy.

In fact, these NSW-specific deviations create unfair competition at the expense of NSW services, children and their parents when they compete against their peer services across the borders of New South Wales.

2.1 Repeal NSW Regulation 272

As highlighted by the NSW Productivity Commissioner’s Green Paper¹, NSW-based long daycare services are unfairly disadvantaged against comparable services in other Australian states with respect to Regulation 272¹⁴.

Centre-based Services	ECTs in NSW	ECTs in other states	Difference
< 25 children	0.2 FTE (Reg130)	0.2 FTE (Reg130)	0%
25-29 children	0.6 FTE (Reg272)	0.6 FTE (Reg132)	0%
30-39 children	1.0 FTE (Reg272)	0.6 FTE (Reg132)	167%
40-59 children	2.0 FTE (Reg272)	0.6 FTE (Reg132)	333%
60-79% children	3.0 FTE (Reg272)	1.5 FTE (Reg133)	200%
80 children	4.0 FTE (Reg272)	1.5 FTE (Reg133)	267%
> 80 children	4.0 FTE (Reg272)	2.0 FTE (Reg134)	200%

Table 5: Differences between NSW regulatory requirement for degree-qualified early childhood teachers compared to other Australian states¹⁵

¹⁴ Regulation 272 - <https://www.legislation.nsw.gov.au/view/html/inforce/current/sl-2011-0653#sec.272>

¹⁵ Source: Australian Bureau of Statistics’ Population Time Series - <https://www.abs.gov.au/statistics/people/population/national-state-and-territory-population/jun-2020/310104.xls>

ACA NSW would strongly argue that there has been a persistent absence of any independent report showing broad, measurable and consistently positive educational outcomes for NSW-based children aged 0-5 years old as a direct result of the higher requirements from Regulation 272.

Due to the severe labour shortages of degree-qualified early childhood teachers, there had been an increase in the number of waivers granted by the NSW Department of Education as well as the number of approved applications for overseas-degree-qualified early childhood teachers.

Waivers for Reg272	2013	2014	2015	2016	2017	2018	2019
NSW Waivers Granted	206	103	273	359	285	437	476

Table 6: Waivers for NSW Regulation 272 granted by the NSW Department of Education

Overseas applicants approved	2017	2018	2019	TOTAL
New Zealand	218		81	299
Ireland	105		48	153
South Africa	63		25	88
United Kingdom	58		16	74
Philippines	18		-	18
Spain	12		-	12
United States	12		-	12
Hong Kong	9		-	9
Columbia	8		-	8
Chile	7		-	7
Brazil	6		-	6
TOTAL	516		170	686

Table 7: Number of overseas degree-qualified early childhood teachers approved by ACECQA

In response to the ongoing and severe labour shortages (especially for degree-qualified early childhood teachers), the Australian Children's Education & Care Quality Authority (ACECQA) and the Education Council have been developing a new workforce strategy¹⁶ for 2021-2030. However, no short term solution is available, and the option to source overseas applicants has virtually stopped due to COVID-19.

The repercussions are even more acute for long daycare services in regional and rural areas.

There is also the concern that the results of having such degree qualified early childhood teachers have not been recorded in order to substantiate their impact on the children aged 0-5 years old from receiving preschool programmes, especially their benefits in terms of educational and social well-being in latter years (ie when they are in primary schools). And to that concern, ACA NSW proposes in *Volume 2: Reforming NSW's Early Childhood Education and Care* that a methodology be established

¹⁶ National Workforce Strategy - <https://www.acecqa.gov.au/national-workforce-strategy>

to measure the benefits of degree-qualified early childhood teachers for children aged 0-5 years old as well as their subsequent impacts on the same children in primary schools.

The effect of Regulation 272 on NSW-based long daycare services in terms of estimated additional costs and as a percentage to average fees are as follows:

# of Places	# of Services in NSW	With NSW's Reg272	If NSW followed all other States	% Labour Cost Savings
		Est Avg Labour Cost	Est Avg Labour Cost	
< 25 children	163	\$0	0%	0%
25-29 children	366	\$0	0%	0%
30-39 children	603	\$417,893	\$392,613	6.05%
40-59 children	1,009	\$606,177	\$517,698	14.60%
60-79 children	549	\$784,604	\$689,804	12.08%
80 children	35	\$905,784	\$747,784	17.44%
> 80 children	571	\$1,048,402	\$922,002	12.06%

Table 8: Estimated additional labour cost impact resulting from NSW Regulation 272¹⁷

Given the above, ACA NSW believes the NSW Government ought to repeal NSW's Regulation 272, and instead have NSW-based long daycare services observe Regulations 132, 133 and 134 for the number of degree-qualified early childhood teachers.

Recommendation 1

Repeal NSW-specific Regulation 272 and enable NSW-based long daycare services to observe Regulations 132, 133 and 134 for the number of degree-qualified early childhood education teachers instead.

NSW Decision-Making:
NSW Minister can make the unilateral decision and does not need the consent of the Federal Government, state/territory governments or Education Council.

NSW Budget:
No additional funding is needed from the NSW Government.

NSW Employment:
It is anticipated that there will be a net zero effect on the number of people employed because the severe labour shortages for this qualification will be offset by employment for alternative qualifications in order to meet the existing staff:children ratio.

Effect on Costs/Fees:
It is estimated that an additional 6.05% to 17.44% in labour costs is due to the impact of Regulation 272. Its repeal and having NSW be re-aligned with all other Australian states should see positive impacts on fees.

¹⁷ ACA NSW: Impact of Regulation 272 analysis - https://1drv.ms/x/s!Ao98k9p-eGjFgrAyMFUgL_xXW3MFYw?e=e6hzAJ

2.2 Repeal NSW Regulation 271

Similar to the higher regulatory requirement highlighted by the NSW Productivity Commissioner's Green Paper¹, the other higher staffing requirements imposed on NSW-based long daycare services is via Regulation 271¹⁸.

State/Territory	Educator Requirement	Educators:Children Ratio
NSW	Regulation 271	1:10
All other jurisdictions	Regulation 123(1)(c) ¹⁹	1:11

Table 9: Differences in Education-to-Children Ratio in NSW compared to all other Australian jurisdictions for children aged 3-6 years old

It should be noted that on 31 August 2020, the South Australian Government²⁰ announced that it would change its educators-to-children ratio from 1:10 to 1:11 effective 1 September 2020.

Regulation 271 on NSW-based long daycare services has the effect of an inflationary factor on fees for parents with enrolled children aged 3-6 years old without any measurable advantages in terms of outcomes for NSW compared to all other Australian states and territories.

Fee/Day	Cert III/ Year	Cert III/ Day	10 Children/ Day	% of Educator/ Fee	11 Children/ Day	% of Educator/ Fees	Difference
\$85	\$55,998	\$215	\$850	25.34%	\$935	23.03%	2.30%
\$120	\$55,998	\$215	\$1,200	17.95%	\$1,320	16.32%	1.63%
\$140	\$55,998	\$215	\$1,400	15.38%	\$1,540	13.99%	1.40%

Table 10: Impact of Regulation 271 if Educator were Certificate III qualified

Fee/Day	Dip/Year	Dip/Day	10 Children/ Day	% of Educator/ Fee	11 Children/ Day	% of Educator/ Fees	Difference
\$85	\$63,770	\$245	\$850	28.86%	\$935	26.23%	2.62%
\$120	\$63,770	\$245	\$1,200	20.44%	\$1,320	18.58%	1.86%
\$140	\$63,770	\$245	\$1,400	17.52%	\$1,540	15.93%	1.56%

Table 11: Impact of Regulation 271 if Educator were Diploma qualified

Fee/Day	ECT/Year	ECT/Day	10 Children/ Day	% of Educator/ Fee	11 Children/ Day	% of Educator/ Fee	Difference
\$85	\$74,971	\$288	\$850	33.92%	\$935	30.84%	3.08%
\$120	\$74,971	\$288	\$1,200	24.04%	\$1,320	21.84%	2.18%
\$140	\$74,971	\$288	\$1,400	20.60%	\$1,540	18.72%	1.87%

Table 12: Impact of Regulation 271 if Educator were a degree qualified Early Childhood Teacher

¹⁸ Regulation 271 - <https://www.legislation.nsw.gov.au/view/html/inforce/current/sl-2011-0653#sec.271>

¹⁹ Regulation 123(1)(c) - <https://www.legislation.nsw.gov.au/view/html/inforce/current/sl-2011-0653#sec.123>

²⁰ SA Government announces change to educator-to-children ratio (31 Aug 2020) -

<https://esb.sa.gov.au/news/changes-ratios-new-educators-and-transporting-children#:~:text=Educator%2Dto%2Dchild%20ratios,choose%20to%20engage%20more%20educators>

With the impact of Regulation 271 conservatively contributing 1.4% to 3.08%²¹ in additional costs, ACA NSW believes the NSW Government should repeal NSW’s Regulation 271 and instead have NSW-based long daycare services observe Regulation 123(1)(c).

Recommendation 2
 Repeal NSW-specific Regulation 271 and enable NSW-based long daycare services to observe Regulation 123(1)(c) instead for the number of educators for children aged 3-6 years old.

<p><u>NSW Decision-Making:</u> NSW Minister can make the unilateral decision and does not need the consent of the Federal Government, state/territory governments or Education Council.</p>	<p><u>NSW Budget:</u> No additional funding is needed from the NSW Government.</p>	<p><u>NSW Employment:</u> It is anticipated that there will be a nett zero effect on the number of people already employed.</p>	<p><u>Effect on Costs/Fees:</u> It is estimated that the replacement of Regulation 271 with Regulation 123(1)(c) can reduce costs of between 1.4% to 3.08%.</p>
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2.3 Amend NSW Regulation 242(3)

Due to the similar concerns raised about severe labour shortages in relation to the recruitment of degree-qualified early childhood teachers above, again there is a lack of national consistency afforded NSW-based early childhood education and care services.

And as the number of waivers has significantly increased in recent years (as shown in Table 6 above), those waivers reinforce the need for national consistency.

The NSW Department of Education only published its Waiver Policy²² in August 2020. While that is welcomed, it too is silent on NSW-specific regulations (ie Regulation 272) for degree-qualified early childhood teachers.

Reg242(3) flexibility	For NSW	For all other jurisdictions
< 25 children	Actively Working Toward allowed	Actively Working Toward allowed
25-29 children	Actively Working Toward allowed	Actively Working Toward allowed
30-39 children	Manual Application for Waiver Required	Actively Working Toward allowed
40-59 children	Manual Application for Waiver Required	Actively Working Toward allowed
60-79% children	Manual Application for Waiver Required	Actively Working Toward allowed
80 children	Manual Application for Waiver Required	Actively Working Toward allowed
> 80 children	Manual Application for Waiver Required	Actively Working Toward allowed

Table 13: Differences in Reg242(3) on persons taken to be degree-qualified early childhod teachers²³

²¹ ACA NSW’s Impact of Regulation 271 analysis - <https://1drv.ms/u/s!Ao98k9p-eGjFgg00iWvUlw24l7S8Ug?e=ITDJzB>

²² NSW Department of Education’s Waiver Policy (August 2020) - <https://education.nsw.gov.au/content/dam/main-education/early-childhood-education/operating-an-early-childhood-education-service/media/documents/policies/waiver-policy.pdf>

²³ Regulation 242(3) - <https://www.legislation.nsw.gov.au/view/html/inforce/current/sl-2011-0653#sec.242>

The realignment of Regulation 242(3) towards national consistency would immediately:

- reduce red tape by removing the operational requirement to apply for a waiver (and therefore time, labour and consistency); and
- instead increase the recruitment or the retention of tertiary students completing 50% or more of the degree qualification (regardless of whether they hold a Certificate III or Diploma qualification).

Both outcomes would contribute towards reducing unnecessary compliance obligation costs without sacrificing the nett number of employees.

Recommendation 3

Amend Regulation 242(3) and replace “272(1A)” with “272” as follows:

In this regulation –

relevant regulation means regulation 130, 131, 132, 133, 134, 266, 267, 272, 279, 293, 294, 303, 304, 330, 331, 332, 333, 348, 349, 362, 363 or 379.

NSW Decision-Making:
NSW Minister can make the unilateral decision and does not need the consent of the Federal Government, state/territory governments or Education Council.

NSW Budget:
No additional funding is needed from the NSW Government.

NSW Employment:
It is anticipated that there will be a nett zero effect on the number of people already employed.

Effect on Costs/Fees:
Although there is administrative cost to manually applying for the waiver, such cost is unlikely to be appreciable relative to the total labour costs or fees.

3. A level-playing field for all NSW-based services

The early childhood education and care sector is already quite diverse in terms of service types, for example long daycare, family daycare, out-of-school-hours-care, vacation care and occasional care.

The sector is also complex due to its different governance structures as well as the number of services each legal entity has responsibility over, for example privately-owned, multinational, publicly listed, corporatised, franchise, not-for-profit and government owned.

Notwithstanding, it should be noted that the Federal Government recognised all early childhood education and care service providers as educational institutions by establishing that fees invoiced to parents do not attract the Goods and Services Tax. This was enacted by way of the Commonwealth’s *GST-free Supply (Child Care) Determination 2017*²⁴.

It is broadly estimated that the cost of employees at early childhood education and care services represent at least 60%-70% of overall costs.

On 17 November 2020, the NSW Government raised the threshold for the NSW Payroll Tax as well as lowered the rate of payroll tax. ACA NSW reported²⁵ that these changes therefore resulted in an estimated 89.5% of those early childhood education and care services previously paying payroll taxes to now cease paying that NSW tax.

Of the remaining services who still pay the NSW Payroll Tax, it would be accurate to say that these services view the NSW Payroll Tax as an on-going disincentive and an additional cost to employment that ultimately is paid for by the NSW parent, notwithstanding the Commonwealth’s Child Care Subsidies subject to eligibility.

From such early childhood education and care services, the NSW Payroll Tax is estimated to conservatively add between \$58,949 to \$82,900 to the overall operational costs per service, and an annual estimate of \$4.5m for the NSW Government in annual tax receipts.

Example Fees/Day	% as Payroll Tax	% as Payroll Tax
\$85	1.25%	2.08%
\$120	0.89%	1.46%
\$140	0.76%	1.26%

Table 14: Percentage of fees per day contribution towards NSW Payroll Taxes²⁶

²⁴ GST-free Supply (Child Care) Determination 2017 - <https://www.legislation.gov.au/Details/F2017L00389>

²⁵ ACA NSW thanks NSW Treasurer Perrottet on his additional payroll tax relief - <https://nsw.childcarealliance.org.au/news-archive/990-aca-nsw-thanks-nsw-treasurer-perrottet-on-his-additional-payroll-tax-relief>

²⁶ ACA NSW’s Impact of NSW Payroll Tax Analysis - <https://1drv.ms/u/s!Ao98k9p-eGjFgq00iWvUIw24l7S8Ug?e=C5CdNF>

Recommendation 4

Re-classify all NSW-based early childhood education and care services to be NSW Payroll Tax exempt by virtue that they are educational institutions.

NSW Decision-Making:
NSW Treasurer can classify all early childhood education and care services, regardless of their governance and legal structures, as educational institutions, and therefore NSW Payroll Tax exempt.

NSW Budget:
No additional funding is needed from the NSW Government. That said, the exemption will mean the NSW Government forgoing such revenue.

NSW Employment:
It is anticipated that the savings from paying the NSW Payroll Tax will instead be redirected to new employment.

Effect on Costs/Fees:
NSW Payroll Taxes can have an upward pressure on fees of between 0.76% to 2.08%. Hence, the exemption of NSW Payroll Taxes can have a positive impact on fees.

4. Fairer funding for all NSW children in their year-before-school

There has always been consensus between governments that increasing the participation of children in their year-before-school (through either preschools or preschool programmes delivered at long daycare services) would undoubtedly improve children's performances at primary school.

There was previously a division of responsibility between the Federal Government and the state/territory governments, ie the Federal Government being responsible for providing the Commonwealth's Child Care Subsidies while the state/territory governments provide their funds for community/mobile preschools.

However, a more collaborative approach toward achieving higher preschool participation was achieved through additional funding by way of the National Partnership Agreements on Universal Access to Early Childhood Education²⁷.

The last formal agreement assigned a total funding of \$427m in 2018, which equates to around \$1,237 per child in their year-before-school regardless of state/territory or circumstance. And the Federal Government has since sought to renew its funding commitment on a year-by-year basis. The then Federal Minister for Education (the Hon Dan Tehan MP) announced another \$452.3m²⁸ for the year 2021.

The Implementation Plans for NSW-based children during their year-before-school has the Federal Government contributing \$138m for 2020/2021 and \$98.6m for 2021/2022²⁹.

4.1 Restore Universal Access funding parity for all NSW children

It should firstly be noted that responsibilities and funding arrangements for all children of preschool ages in Western Australia, Tasmania, Northern Territory and the Australian Capitol Territory tend to be where those state/territory governments invest significantly to the point where there effectively does not exist normal long daycare services for those cohorts of children.

It is therefore fairer to compare the remaining states as they have a more similar divisions of responsibility (not funding) for long daycare and community/mobile preschools.

²⁷ Federal Department of Education, Skills and Employment – National Partnership Agreements - <https://www.education.gov.au/national-partnership-agreements>

²⁸ Federal Minister for Education commits another year of Universal Access funding for 2021 - <https://www.dese.gov.au/universal-access-early-childhood-education/announcements/preschool-funding-extended-2021>

²⁹ Implementation Plan for NSW for 2021/2022 - https://www.federalfinancialrelations.gov.au/content/npa/education/national-partnership/NSW_IP_UAECE_21.pdf

Combined Governments' Funding Per Enrolled Child for 2021	NSW	VIC	QLD	SA
Preschools: \$ per child enrolled	\$2,727 ³⁰	\$2,258 ³¹	< \$3,050 ³²	< \$5,000 ³³
Long Daycare: \$ per child enrolled	\$313-\$885 ³⁴	< \$2,258 ²⁵	< \$1,795 ²⁶	\$1,230-\$2,480 ³⁵

Table 15: Differences in Federal+State governments' funding for the year-before-school

The then Federal Minister for Education (the Hon Dan Tehan MP) implies that the Commonwealth's investment equates to \$1,292 per eligible child for 2021.

Given the noticeable differences in NSW funding arrangements compared to the other three states, this means of the Commonwealth average of \$1,292 allocated to each eligible NSW child, between \$407 and \$979 is effectively redirected away from each of those eligible children receiving their preschool programme at long daycare services.

According to the Productivity Commission's Report on Government Services (RoGS) 2021³⁶ (see Table 3A.17), there were 59,909 children enrolled in a preschool programme in the year-before-school in 2019 at long daycare services. This compares to 25,934 children in the year-before-school at government/community/mobile preschools.

Assuming there are 62,000 children of the same cohort in long daycare services, the NSW Government will need to budget between \$25.3m-\$60.7m in order to achieve parity to the Commonwealth's average allocation of \$1,292 per eligible child.

³⁰ NSW Government commits \$120m for 2021 for community/mobile preschools - <https://education.nsw.gov.au/news/latest-news/-120-million-extra-for-free-preschool-program-to-help-parents>

³¹ Victorian Government's Free Kinder for 2021 - <https://www.education.vic.gov.au/childhood/providers/funding/Pages/freekinder2021.aspx>

³² Queensland Kindergarten Funding Scheme (QKFS) - <https://www.business.qld.gov.au/industries/service-industries-professionals/service-industries/child-care/funding-scheme/subsidies>

³³ South Australian Government's Parents in Education funding for school and preschool communities - <https://www.education.sa.gov.au/parents-and-families/parent-engagement/parents-education-funding-school-and-preschool-communities>

³⁴ NSW Department of Education's Start Strong Funding for Long Daycare - <https://education.nsw.gov.au/early-childhood-education/operating-an-early-childhood-education-service/grants-and-funded-programs/start-strong#Start2>

³⁵ South Australian Government's Preschool Funding - <https://www.education.sa.gov.au/working-us/service-providers/apply-non-government-preschool-providers-funding>

³⁶ Productivity Commission's Report on Government Services 2021 - <https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/child-care-education-and-training/early-childhood-education-and-care>

Recommendation 5
 Recalibrate NSW Start Strong funding for all eligible children in long daycare services to be at least the national average for each child eligible to receive Universal Access funding.

<p><u>NSW Decision-Making:</u> The NSW Government does not need concurrence with any other governments.</p>	<p><u>NSW Budget:</u> Between \$25.3m-\$60.7m is needed to fund the shortfall just to achieve parity with the Commonwealth’s national average allocation.</p>	<p><u>NSW Employment:</u> No impact.</p>	<p><u>Effect on Costs/Fees:</u> Please refer to Section 4.2.</p>
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4.2 Remove the restriction on NSW-based Long Daycare services disallowing them from reducing fees when receiving the NSW Start Strong funding

Assuming the NSW children enrolled in a preschool programme in the year-before-school at long daycare services receive the Commonwealth’s national average allocation per child of \$1,292 for 2021, the NSW Government should therefore remove the long-standing restriction on NSW-based long daycare services that disallow them from reducing fees upon receiving NSW Start Strong funding.

Start Strong Criteria for Long Daycare³⁷

Payments ^

Initial payments will be made from June 2020 and payments for each additional equity enrolment will be made from November 2020.

The Approved Provider must spend the funds allocated to each service to:

- purchase resources
- develop an early childhood education program based on the Early Years Learning Framework, or
- develop staff, including upgrading qualifications from a diploma to a four year degree.

The full quantum of funding should be expended for those purposes, and should primarily aim to benefit children in the year before school.

The funds need to be expended during the 2020-21 financial year.

Figure A: Rules for Long Daycare services when using Start Strong funding

With a higher and fairer funding arrangement for children in their year-before-school at long daycare services, there is an opportunity for long daycare services to reduce fees or avoid increasing fees.

³⁷ Start Strong for Long Daycare - <https://education.nsw.gov.au/early-childhood-education/operating-an-early-childhood-education-service/grants-and-funded-programs/start-strong#Start2>

Recommendation 6

Upon receiving at least the Commonwealth’s national average per child of \$1,292 from Universal Access funding, the NSW Government should allow long daycare services to reduce their fees or avoid increasing fees.

NSW Decision-Making:
The NSW Government does not need concurrence with any other governments.

NSW Budget:
Between \$25.3m-\$60.7m is needed to fund the shortfall just to achieve parity with the Commonwealth’s national average allocation.

NSW Employment:
No impact.

Effect on Costs/Fees:
Fee reduction possible for eligible children at long daycare services upon receiving at least the Commonwealth’s national average allocation of Universal Access funding.

5. NSW to trial QLD-specific educator:children ratio

Prior to the introduction of the National Law and National Regulations in 2012, a staffing arrangement commonly known as the “Crib Break” allowed some educators to take lunch breaks while still on the premises as the remaining educators cared for the children while they slept.

Since 2012, Regulation 122³⁸ required all educators to be working directly with children in the relevant educator:children ratios even while the children were sleeping.

Consequently, in order for educators to be allowed their lunch breaks (for example) while their assigned children were sleeping, additional staff were hired in order to replace them so as to maintain compliance with Regulation 122.

However, in Queensland, early childhood education and care services could apply for an approval to utilise their specific Regulation 299C – Educator to child ratios during rest periods³⁹.

Regulation 299C appears to be in essence the “Crib Break” that continues in Queensland but in no other Australian jurisdiction.

It is worth noting that in NSW’s ECEC, the number of deaths of children have been extremely low. And since 2011, there have been 7 sleep related deaths in education and care services across Australia.

Year	# of Deaths (NSW)	# of Deaths (0-2)	# of LDCs (NSW)	# of FDCs (NSW)
2012	0	0	0	0
2013	0	0	0	0
2014	0	0	0	0
2015	0	0	0	0
2016	0	0	0	0
2017	0	0	0	0
2018	1	1	1	0
2019	1	1	0	1

Table 16: Number of deaths in NSW between 2012-2019

By way of comparison, during 2019, there were 20 confirmed instances across Australia’s 16,403 services where a service did not have sleep and rest policies and procedures for children.

³⁸ Regulation 122 – Educators must be working directly with children to be included in ratios - <https://www.legislation.nsw.gov.au/view/html/inforce/current/sl-2011-0653#sec.122>.

³⁹ Regulation 299C – Educator to child ratios during rest period <https://www.legislation.nsw.gov.au/view/html/inforce/current/sl-2011-0653#sec.299C>

Every death of every child is tragic. Hence, the current Review of the National Quality Framework has just begun consulting⁴⁰ with the ECEC sector about improvements in the sleep and rest practices of children.

It is worth noting that the Review of the National Quality Framework thus far has not recommended the removal of Regulation 299C. In fact, the proposed national options for improvements in sleep and rest practices appear to be supplement Queensland’s Regulation 299C.

As such, the NSW Government should immediately trial for at least 12 months the emulation of Regulation 299C for NSW-based services, and upon subsequent review of the trial, its consideration to render the NSW equivalent of Regulation 299C be made permanent.

Recommendation 7

The NSW Government should immediately trial for at least 12 months the emulation of Regulation 299C for NSW and upon application via a Temporary Waiver for services. And upon subsequent review of the trial, the NSW Government should consider rendering the NSW equivalent of Regulation 299C to be made permanent.

NSW Decision-Making:
The NSW Government does not need concurrence with any other governments.

NSW Budget:
No funding is required.

NSW Employment:
There will most likely be a reduction in the hiring of some casual educators that are employed so that other educators can be relieved for their lunch breaks.

Effect on Costs/Fees:
Fee reduction is possible for enrolled children aged 0-2 years old.

⁴⁰ Consultation Regulation Impact Statement for the Review of the National Quality Framework - <https://www.nqfreview.com.au/cris>

6. Free preschool for all (not some) in NSW in 2021/2022

In response to COVID-19, the NSW Government increased its funding for community and mobile preschools in 2020 and 2021⁴¹.

And although this funding was to be capped for children up to 15 hours of free care per child each week, it has since been formally confirmed by the NSW Department of Education that parents can effectively have week-long (ie more than 15 hours) of free care per child each week across multiple preschools, and do not need to comply with any income test.

While ACA NSW supported the NSW Government's original time-limited COVID-19 response⁴² for community and mobile preschools during 2020, the 2021 outcomes instead have created unfairness especially for children enrolled instead in long daycare services.

6.1 Fairer funding for NSW children enrolled in long daycare services in the year-before-school for 2021/2022

ACA NSW proposes that the NSW Government emulates the 2021 funding arrangement of free care introduced by the Victorian Government⁴³, and apply it for NSW children who are eligible for Child Care Subsidy during their year-before-school for 18 months (ie 1 July 2021 to 31 December 2022).

It is worth remembering that the Commonwealth's Child Care Subsidy:

- is for up to 85% of fees or the relevant hourly rate cap⁴⁴;
- supports any eligible parents who can demonstrate a range of activities (ie in paid work, unpaid work and studying an approved course); and
- supports any eligible parents whose combined household income⁴⁵ is below \$353,680 per year.

⁴¹ \$120m extra for free preschool programs to help parents in 2021 -

<https://education.nsw.gov.au/news/latest-news/-120-million-extra-for-free-preschool-program-to-help-parents>

⁴² NSW Government's COVID-19 free preschool funding for 2020 - <https://education.nsw.gov.au/early-childhood-education/operating-an-early-childhood-education-service/grants-and-funded-programs/covid-19/2020-guidelines>

⁴³ Victorian Government's Free Kinder in 2021 -

<https://www.education.vic.gov.au/childhood/providers/funding/Pages/freekinder2021.aspx>

⁴⁴ Commonwealth's Child Care Subsidy's Hourly Rate Cap -

<https://www.servicesaustralia.gov.au/individuals/services/centrelink/child-care-subsidy/how-much-you-can-get/type-child-care-you-use-affects-it#hourlyrate>

⁴⁵ Commonwealth's Child Care Subsidy's Family Income Test -

<https://www.servicesaustralia.gov.au/individuals/services/centrelink/child-care-subsidy/how-much-you-can-get/your-income-can-affect-it#familyincomeccs>

So, by leveraging the Commonwealth's Child Care Subsidies, the Victorian Government's Free Kinder funding arrangement is effectively paying or helping to pay the gap remaining of the services' fees that are normally paid for by parents/guardians.

This third party contribution has been allowed by the Commonwealth via an amendment⁴⁶ to the Child Care Subsidy Minister's Rules.

ACA NSW is recommending that the NSW Government pay or help pay the gap remaining of the services' fees:

- for eligible parents/guardians of children in the year-before-school for from 1 July 2021 to 31 December 2022; and
- for up to 600 hours per eligible child per year.

Recommendation 8

The NSW Government adopts the Victorian Government's model of helping to pay the gap for eligible parents'/guardians' children during their year-before-school for a period of 18 months beginning 1 July 2021.

NSW Decision-Making:
The NSW Government will need to ensure that the NSW Government's paying the gap fee will be accepted under a Federal Minister's Rule.

NSW Budget:
New funding for 18 months of a minimum of \$293.3m⁴⁷.

NSW Employment:
There will be a greater security of employment of early childhood teachers, but subject to the other recommendations made in this submission.

Effect on Costs/Fees:
This can effectively make it fee free for children in their year-before-school.

6.2 Fairer use of NSW Government's Free Preschool Funding for 2021

Notwithstanding the intentions of the NSW Government³⁸ to support parents' children through community/mobile preschools in 2021, the NSW Department of Education has formally confirmed that there does not exist mechanisms to ensure that parents do not exceed their 600 hours of preschool funding.

And given that there does not exist any income testing of parents who can benefit from this free preschool funding for 2021, the potential for abuse is real.

⁴⁶ Child Care Subsidy Amendment (Coronavirus Response Measures No. 1) Minister's Rules 2021 - <https://www.legislation.gov.au/Details/F2021L00055>

⁴⁷ Calculation of funding for NSW Government to pay the gap fee for children during their year-before-school - <https://1drv.ms/x/s!Ao98k9p-eGjFgq1yDZkhj2fZSSkv-A?e=JmLayj>

Recommendation 9

For the balance of 2021, that the NSW Government immediately establishes an appropriate income test eligibility framework that would apply to all parents intending to receive the free preschool funding for 2021. And for 2022 onwards, that the NSW Government considers permanent establishment of an appropriate incomes test eligibility framework for future parents receiving the benefits of NSW preschool funding.

NSW Decision-Making:

The NSW Government does not need approval from any other governments for concurrence.

NSW Budget:

No new funding is required. In fact, existing funding of \$120m is likely to be more effectively distributed.

NSW Employment:

The employment levels anticipated at services would remain unchanged as a result of this adjustment.

Effect on Costs/Fees:

This will still retain the objective of free preschool for 600 hours per year at community/mobile preschools for 2021.

Moreover, the NSW Department of Education also confirmed that there is no mechanism to ensure that parents do not collect two or more sets of 600 hours of free preschool funding during 2021 across multiple community/mobile preschools. This unintended policy outcome inherently puts at risk children and parents of greater need, and undermines the intentions of the NSW Government’s policy on the application of competitive neutrality⁴⁸ as well as the National Competition Policy⁴⁹.

Recommendation 10

For the balance of 2021, that the NSW Government immediately establishes a mechanism from the NSW Department of Education such that NSW community/mobile preschools and the NSW Department of Education can ensure children receive the intended 600 hours of free preschool funding for 2021.

NSW Decision-Making:

The NSW Government does not need approval from any other governments for concurrence.

NSW Budget:

No new funding is required other than for the NSW Department of Education to develop and establish the abovementioned mechanism of their design.

NSW Employment:

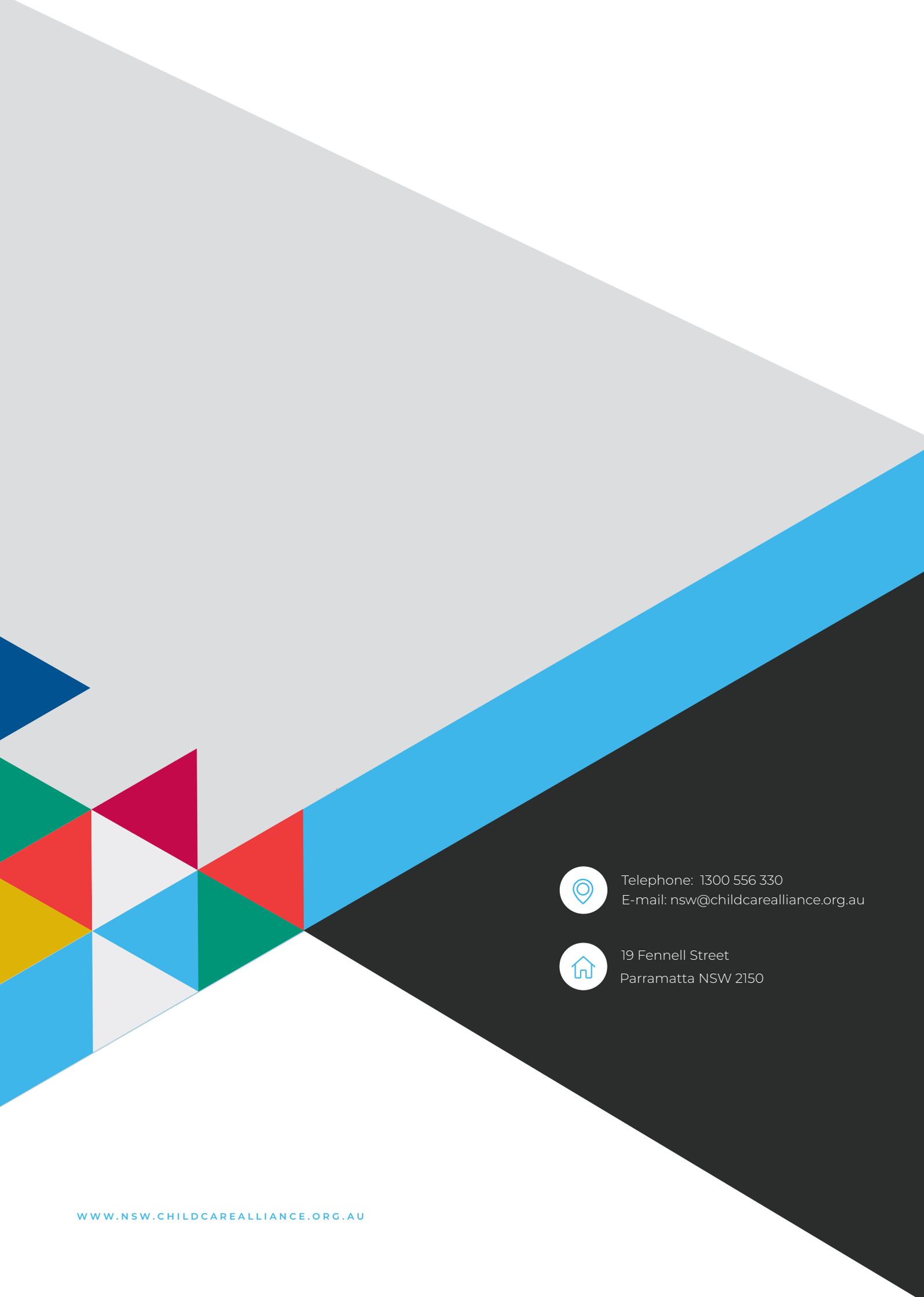
The employment levels anticipated at services would remain unchanged as a result of thi adjustment.

Effect on Costs/Fees:

This will still retain the objective of free preschool for 600 hours per year at community/mobile preschools for 2021.

⁴⁸ NSW Government’s Policy Statement on the Application of Competitive Neutrality - https://www.treasury.nsw.gov.au/sites/default/files/pdf/TPP02-1_Policy_Statement_on_the_Application_of_Competitive_Neutrality_Policy_and_Guidelines_Paper.pdf

⁴⁹ National Competition Policy - <http://ncp.ncc.gov.au/>



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