

25 August 2017

NSW Department of Education
35 Bridge Street
SYDNEY NSW 2001

E-mail: amdprocurement@det.nsw.edu.au

Dear Sir/Madam,

**Re: Submission to the Notice of the Proposed Introduction of
Mandatory Eligibility Criteria in future Request for Tender documents
for Out-of-School-Hours-Care (OSHC) services**

The Australia Childcare Alliance (ACA) NSW is grateful for the opportunity to make a submission to the NSW Department of Education in relation to its proposed introduction of Mandatory Eligibility Criteria in future Request for Tender documents for Out-of-School-Hours-Care (OSHC) services.

ACA NSW is the peak association representing the privately-owned childcare sector, including OSHC service approved providers, providing 1,600 childcare services primarily across New South Wales. Our members employ over 25,000 staff and supports over 125,000 families.

Introduction of a Pre-Qualification Scheme

In principle, we are supportive of an introduction of a pre-qualification scheme governing eligible tenderers for OSHC services by the NSW Government for public school sites. That said, we seek assistance and clarification about the proposed scheme by the NSW Department of Education on the following aspects:

- (a) that under which legislation and/or regulation is the NSW Department of Education relying on for this pre-qualification scheme to operate under;
- (b) that due to an apparent low level of awareness by many existing OSHC service providers of the proposed scheme as well as existing approved providers of early childhood education and care (ECEC), there be appropriate sector consultation to ensure proper understanding of the obligations of and consequences for future tenderers;
- (c) that because the proposed scheme is framed as a self-exclusion process, there appears to be an absence of a publicly transparent, external and independent review mechanism so that decisions under this scheme can be challenged by any tenderer, competing tenderer or any interested party;
- (d) that there was no reassessment process articulated because of the self-exclusion process;
- (e) that there was no requirement for tenderers to satisfy eligibility criteria based on minimum standards on their existing operational experiences (if any) on customer satisfaction, complaints, child protection, work health and safety, as well as ECEC and operational capabilities, including financial and insurance coverage;
- (f) that there were no time limits on when the pre-qualification would automatically be required to be reviewed;
- (g) that standing of any pre-qualification from other Australian jurisdictions should be considered favourably; and
- (h) that the NSW pre-qualification scheme should be consistent, compatible to and inter-operable with all other Australian states' equivalents.

Significant Improvement Required Rating

Although we support the underlying intentions of Criterion 1 of the proposed mandatory eligibility criteria, we seek clarification on whether the NSW Department of Education would deem the tenderer in its capacity of approved provider to be operating an OSHC service in Australia that is currently rated as “Significant Improvement Required” upon assuming responsibility over an entity that has such a rating even though the said approved provider did not have any “Significant Improvement Required” rated services.

Similarly, is an approved provider deemed to be operating a service(s) rated “Significant Improvement Required” when such a rating is being challenged and reviewed?

Maintaining a majority of services as “Meeting the National Quality Standard” and above

Again, we support the underlying intentions of Criterion 2 of the proposed mandatory eligibility criteria.

However, we seek clarification on how the NSW Department of Education intends to rate all existing services given over 35% of all NSW-based services are currently rated “Working Towards the NQS” and lower that have not been reassessed since up to August 2012.

Given there continues to be a general lack of awareness of, alongside those with an in-principle objection to, the availability of being re-assessed and re-rated on a fee-for-service basis (which could also be interpreted as “jumping the queue”), this places an inherent unfairness on existing approved providers under the circumstances to be required to have a majority of their services as “Meeting the National Quality Standard” and above. There is also no guarantee of expedited re-assessment and re-rating service if the fee for such a service were paid because the NSW Department of Education would be subject to what resources are available to conduct such a service, and, if the resources were finite, may be delivered at the expense of other services not paying the fee but are deserving of equal treatment.

Moreover, it is our understanding that due to the NSW Department of Education prioritising its re-assessment and re-rating of existing services based on risk, therefore requiring the approved providers to have a majority of services as “Meeting the National Quality Standard” and above is arguably inappropriate because those on “Working Toward the National Quality Standard” for multiple years and since August 2012 would be systematically disadvantaged. Existing approved providers with more than 50% of their existing services under such circumstances would be unfairly ruled ineligible under the proposed mandatory eligibility criteria through no fault of their own.

Furthermore, ACA NSW is concerned about the growing feedback from approved providers and educators on the apparent subjective nature of how services are assessed and rated against the National Quality Standards by the NSW Department of Education. It is suggested that because such assessments are conducted without measurable standards and broadly reliant on the field officer’s judgement based on his/her experiences, it is therefore likely that those rated “Working Towards the National Quality Standard” may in fact be incorrectly assessed. And since the first review of any assessment and rating is conducted internally, there does not exist an external and independent review mechanism that all approved providers can easily and confidently utilise. As such, not achieving a “Meeting of the National Quality Standard” or higher can unfairly disadvantage those approved providers.

Being the subject of Disciplinary Action for a breach of the National Law

It should be noted that Disciplinary Action is not a term used by the National Law or the National Regulations. Nevertheless, we believe the NSW Department of Education is meaning compliance actions. That said, compliance actions under the National Law and National Regulations are designed to be variable in their importance and severity subject to their corresponding non-compliances. For example, a failure to publish certain information in a room would not be at par with a failure to report any serious incidents as defined in the regulations.

Hence, to consider all non-compliances of the National Law and/or National Regulations as being equal would be fundamentally unjust. As such, ACA NSW seeks a list of serious non-compliances of the National Law and/or National Regulations to be published in order for the original intention of Criterion 3 to be fulfilled.

That said, the manner in which Criterion 3(a) and 3(b) are framed, we have a concern that should any approved provider having received one or more notices of alleged non-compliances of the National Law and/or National Regulations, and if such notice(s) are appealed but is/are yet unaddressed and/or unresolved appropriately by either/both parties, would such approved providers be still deemed guilty until proven innocent of those alleged non-compliances?

And regardless of which jurisdiction emanated the alleged non-compliances, would the NSW Department of Education apply natural justice before deeming those affected approved providers as being ineligible for tendering?

Without reasonable amendment to Criterion 3, the proposed eligibility criteria would effectively place NSW Department of Education as being the unilateral authority without fair and adequate safeguards.

Consequently, we ask that Criterion 3 as drafted be removed from the proposed mandatory eligibility criteria.

In conclusion, ACA NSW would appreciate the opportunity to be in dialogue with the NSW Department of Education in developing an appropriate pre-qualification scheme for future tenderers of OSHC services in public schools. We would offer every assistance to provide sector information and feedback, and, equally as important, support to conduct appropriate and comprehensive consultation and engagement with the sector.

Should there be any request for further information and/or clarification of this submission, we would be happy to cooperate with the NSW Department of Education.

Yours sincerely,



Chiang Lim
CEO