

1 September 2022



[REDACTED]
NSW Department of Education
105 Phillip Street
PARRAMATTA NSW 2150

Dear [REDACTED],

Re: Request for increased flexibilities for waivers to alleviate severe labour shortages of early childhood educators and teachers in NSW

Given the severe labour shortages even before the COVID pandemic that has since been further exacerbated, I appreciate the opportunity to provide this submission on behalf of over 1,000 long daycare services across New South Wales.

Always minimising and managing risk can never be understated. That said, ACA NSW believes there are much reasonable yet safe regulatory latitude for NSW-based early childhood education and care services that can benefit children and their families while addressing operational labour shortages.

ACA NSW strongly urges the NSW Minister for Education and Early Learning (the Hon Sarah Mitchell MLC) to increase flexibilities of the NSW Regulatory Authority when considering service-level waiver applications.

Without restriction to only [Regulation 126](#) and [Regulation 271](#), ACA NSW strongly asks that the NSW Department of Education be allowed to grant service-level waivers using sensible, practical and risk-free considerations, including:

1. The NSW Department of Education should offer services to apply for service-level waivers on an opt-in basis. (In other words, these waivers are not mandatory, and the process is available should services need to apply.)
2. Temporary service-level waivers granted must be for a minimum period of 2 years per application.
3. Waivers for the compliance of Regulation 126(1)(a) should be granted for services who have educators with Certificate III qualifications and 2-years' experience as equivalent to those actively working towards at least an approved diploma level notwithstanding not being enrolled in an approved diploma course. (NOTE: The definition of [actively working towards a qualification](#) does not mandate the completion of any units of the approved qualification.)
4. To substantiate a service-level waiver application more easily and consistently, the service should only need to submit a simple table of existing educators and teachers, their corresponding current qualifications and their respective years of employment. Verification can be conducted during compliance visits or Assessment and Rating.
5. Given that these are service waivers, any changes in employees during the waiver period must still be allowed while the service effectively complies within the waiver's requirements.
6. While consideration remains on a risk assessment basis, services that are rated overall as Working Towards the National Quality Standards (NQS) should still be allowed to apply for service-level waivers only if their Quality Area 2 (Children's Health and Safety), Quality Area 3 (Physical Environment) and Quality Area 7 Leadership and Service Management) are at least Meeting the NQS.

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7. Service-level waivers should enable Regulation 271(2) to be read instead as 1 educator to 11 children. NSW is the last remaining Australian state that deviates from the National Standards without any demonstrable advantage. It is worth remembering that South Australia returned to the National Standard of 1:11 in September 2020 following the repeal of their [Regulation 323](#) without any substantive negative consequences to children or sector and public concerns.

We have also attached two sets of analyses comparing quality ratings of NSW-based long daycare services versus long daycare services in all other Australian jurisdictions. You will see that despite NSW-based services having higher ratios, quality ratings for the following do not demonstrate any systemic nor substantive enough advantages to justify the higher staffing and qualification ratios:

- Quality Area 1 (Educational Program and Practice)
- Quality Area 2 (Children's Health and Safety)
- Overall Quality Ratings

And given the already significant percentages of services applying for waivers of [Regulation 272](#), ACA NSW asks that NSW Minister Mitchell permit additional flexibilities for the NSW-based services due to severe and increasing labour shortages of degree-qualified early childhood teachers.

One additional flexibility can be in the consideration of Regulation 272(6)(a) which already recognises a person with an approved diploma level education and care qualification to being effectively equivalent to a degree-qualified early childhood teacher.

As such, ACA NSW asks that the NSW Minister enables the NSW Department of Education to grant service-level waivers of Regulation 272(6)(a):

- (a) for a minimum period of 2 years per application; and
- (b) for educators to be recognised as early childhood teachers if such educators have an approved diploma qualification with at least 2 years of experience.

Consideration for the above request for additional flexibilities should be within the context that NSW-based services have a much higher requirement for more degree-qualified early childhood teachers than any other Australian state (see Attachment 3). And despite this historical requirement, systemic and substantive enough advantage cannot be demonstrated to justify such a requirement, including through the lens of Quality Area 1 and overall Quality Ratings.

We believe the existing labour shortages will eventually be corrected potentially by 2025. Hence, the above additional requested regulatory flexibilities are warranted and should not pose unnecessary risks to children.

We thank you for this opportunity. And we welcome further discussions about the above at your earliest opportunity and convenience.

Yours sincerely,



Chiang Lim
CEO

- encl **Attachment 1:** Comparison of Overall Ratings and Quality Area 1 (Educational Program and Practice) of NSW-based long daycare services vs the rest of Australia
Attachment 2: Comparison of Overall Ratings and Quality Area 2 (Children's Health and Safety) of NSW-based long daycare services vs the rest of Australia
Attachment 3: Differences between NSW regulatory requirement for degree-qualified early childhood teachers compared to other Australian states

ATTACHMENT 1: Comparison of Overall Ratings and Quality Area 1 (Educational Program and Practice) of NSW-based long daycare services vs the rest of Australia

LDCs: QA1 ONLY (11 July 2022)						LDCs: OVERALL (11 JULY 2022)					
30-39 places	Significant Improvement Required	Working Towards	Meeting	Exceeding	Excellent	30-39 places	Significant Improvement Required	Working Towards	Meeting	Exceeding	Excellent
QLD	0	121	1176	355	0	QLD	0	143	1,099	404	6
VIC	0	128	1137	309	0	VIC	0	182	1,048	341	3
SA	0	45	247	127	0	SA	0	63	197	158	1
WA	0	80	45	140	0	WA	0	93	429	143	0
NT	0	17	64	5	0	NT	0	19	55	12	0
ACT	0	45	62	47	0	ACT	1	47	45	60	1
NSW	0	248	2125	802	0	NSW	3	402	2,004	759	7
QLD	0.00%	7.32%	71.19%	21.49%	0.00%	QLD	0.00%	8.66%	66.53%	24.46%	0.36%
VIC	0.00%	8.13%	72.24%	19.63%	0.00%	VIC	0.00%	11.56%	66.58%	21.66%	0.19%
SA	0.00%	10.74%	58.95%	30.31%	0.00%	SA	0.00%	15.04%	47.02%	37.71%	0.24%
WA	0.00%	30.19%	16.98%	52.83%	0.00%	WA	0.00%	13.98%	64.51%	21.50%	0.00%
NT	0.00%	19.77%	74.42%	5.81%	0.00%	NT	0.00%	22.09%	63.95%	13.95%	0.00%
ACT	0.00%	29.22%	40.26%	30.52%	0.00%	ACT	0.65%	30.52%	29.22%	38.96%	0.65%
NSW	0.00%	7.81%	66.93%	25.26%	0.00%	NSW	0.09%	12.66%	63.12%	23.91%	0.22%
40-59 places	Significant Improvement Required	Working Towards	Meeting	Exceeding	Excellent	40-59 places	Significant Improvement Required	Working Towards	Meeting	Exceeding	Excellent
QLD	0	15	148	51	0	QLD	0	19	140	55	0
VIC	0	17	183	53	0	VIC	0	25	169	58	1
SA	0	8	45	29	0	SA	0	12	36	34	0
WA	0	31	114	41	0	WA	0	35	108	43	0
NT	0	4	25	2	0	NT	0	4	20	7	0
ACT	0	7	13	10	0	ACT	0	7	7	15	1
NSW	0	61	637	286	0	NSW	0	100	616	266	2
QLD	0.00%	7.01%	69.16%	23.83%	0.00%	QLD	0.00%	8.88%	65.42%	25.70%	0.00%
VIC	0.00%	6.72%	72.33%	20.95%	0.00%	VIC	0.00%	9.88%	66.80%	22.92%	0.40%
SA	0.00%	9.76%	54.88%	35.37%	0.00%	SA	0.00%	14.63%	43.90%	41.46%	0.00%
WA	0.00%	16.67%	61.29%	22.04%	0.00%	WA	0.00%	18.82%	58.06%	23.12%	0.00%
NT	0.00%	12.90%	80.65%	6.45%	0.00%	NT	0.00%	12.90%	64.52%	22.58%	0.00%
ACT	0.00%	23.33%	43.33%	33.33%	0.00%	ACT	0.00%	23.33%	23.33%	50.00%	3.33%
NSW	0.00%	6.20%	64.74%	29.07%	0.00%	NSW	0.00%	10.16%	62.60%	27.03%	0.20%
60-79 places	Significant Improvement Required	Working Towards	Meeting	Exceeding	Excellent	60-79 places	Significant Improvement Required	Working Towards	Meeting	Exceeding	Excellent
QLD	0	45	514	136	0	QLD	0	53	494	146	2
VIC	0	16	233	85	0	VIC	0	23	223	88	0
SA	0	6	69	43	0	SA	0	12	53	53	0
WA	0	8	107	347	0	WA	0	10	103	39	0
NT	0	2	21	1	0	NT	0	3	19	2	0
ACT	0	10	11	9	0	ACT	0	10	10	10	0
NSW	0	29	324	169	0	NSW	0	45	301	174	2
QLD	0.00%	6.47%	73.96%	19.57%	0.00%	QLD	0.00%	7.63%	71.08%	21.01%	0.29%
VIC	0.00%	4.79%	69.76%	25.45%	0.00%	VIC	0.00%	6.89%	66.77%	26.35%	0.00%
SA	0.00%	5.08%	58.47%	36.44%	0.00%	SA	0.00%	10.17%	44.92%	44.92%	0.00%
WA	0.00%	1.73%	23.16%	75.11%	0.00%	WA	0.00%	6.58%	67.76%	25.66%	0.00%
NT	0.00%	8.33%	87.50%	4.17%	0.00%	NT	0.00%	12.50%	79.17%	8.33%	0.00%
ACT	0.00%	33.33%	36.67%	30.00%	0.00%	ACT	0.00%	33.33%	33.33%	33.33%	0.00%
NSW	0.00%	5.56%	62.07%	32.38%	0.00%	NSW	0.00%	8.62%	57.66%	33.33%	0.38%
80+ places	Significant Improvement Required	Working Towards	Meeting	Exceeding	Excellent	80+ places	Significant Improvement Required	Working Towards	Meeting	Exceeding	Excellent
QLD	0	48	447	149	0	QLD	0	54	402	184	4
VIC	0	75	632	142	0	VIC	0	105	578	164	2
SA	0	25	104	47	0	SA	0	31	85	59	1
WA	0	14	118	40	0	WA	0	18	116	38	0
NT	0	6	11	1	0	NT	0	7	9	2	0
ACT	0	22	32	24	0	ACT	0	24	22	31	0
NSW	0	35	393	157	0	NSW	1	79	360	142	3
QLD	0.00%	7.45%	69.41%	23.14%	0.00%	QLD	0.00%	8.39%	62.42%	28.57%	0.62%
VIC	0.00%	8.83%	74.44%	16.73%	0.00%	VIC	0.00%	12.37%	68.08%	19.32%	0.24%
SA	0.00%	14.20%	59.09%	26.70%	0.00%	SA	0.00%	17.61%	48.30%	33.52%	0.57%
WA	0.00%	8.14%	68.60%	23.26%	0.00%	WA	0.00%	10.47%	67.44%	22.09%	0.00%
NT	0.00%	33.33%	61.11%	5.56%	0.00%	NT	0.00%	38.89%	50.00%	11.11%	0.00%
ACT	0.00%	28.21%	41.03%	30.77%	0.00%	ACT	0.00%	31.17%	28.57%	40.26%	0.00%
NSW	0.00%	5.98%	67.18%	26.84%	0.00%	NSW	0.17%	13.50%	61.54%	24.27%	0.51%

The above attempts to differentiate the quality outcomes based on the differences of the application of Regulations 132-134 versus Regulation 272.

SOURCE: The Australian Children's Education & Care Quality Authority (ACECQA)'s National Registers as of 11 July 2022

ATTACHMENT 2: Comparison of Overall Ratings and Quality Area 2 (Children's Health and Safety) of NSW-based long daycare services vs the rest of Australia

LDCs: QA2 ONLY (11 July 2022)						LDCs: OVERALL (11 JULY 2022)					
	Significant Improvement Required	Working Towards	Meeting	Exceeding	Excellent		Significant Improvement Required	Working Towards	Meeting	Exceeding	Excellent
QLD	0	70	1,274	308	0	QLD	0	143	1,099	404	6
VIC	0	96	1272	206	0	VIC	0	182	1,048	341	3
SA	0	38	267	114	0	SA	0	63	197	158	1
WA	0	45	511	109	0	WA	0	93	429	143	0
NT	0	12	70	4	0	NT	0	19	55	12	0
ACT	1	32	87	34	0	ACT	1	47	45	60	1
NSW*	3	310	2374	488	0	NSW*	3	402	2,004	759	7
QLD	0.00%	4.24%	77.12%	18.64%	0.00%	QLD	0.00%	8.66%	66.53%	24.46%	0.36%
VIC	0.00%	6.10%	80.81%	13.09%	0.00%	VIC	0.00%	11.56%	66.58%	21.66%	0.19%
SA	0.00%	9.07%	63.72%	27.21%	0.00%	SA	0.00%	15.04%	47.02%	37.71%	0.24%
WA	0.00%	6.77%	76.84%	16.39%	0.00%	WA	0.00%	13.98%	64.51%	21.50%	0.00%
NT	0.00%	13.95%	81.40%	4.65%	0.00%	NT	0.00%	22.09%	63.95%	13.95%	0.00%
ACT	0.65%	20.78%	56.49%	22.08%	0.00%	ACT	0.65%	30.52%	29.22%	38.96%	0.65%
NSW*	0.09%	9.76%	74.77%	15.37%	0.00%	NSW*	0.09%	12.66%	63.12%	23.91%	0.22%
Preschools (A): QA2 ONLY (11 July 2022)						Preschools (A): OVERALL (11 JULY 2022)					
	Significant Improvement Required	Working Towards	Meeting	Exceeding	Excellent		Significant Improvement Required	Working Towards	Meeting	Exceeding	Excellent
QLD	0	19	513	293	0	QLD	0	45	401	375	4
VIC	0	24	706	354	0	VIC	0	55	440	587	2
SA	0	3	125	164	0	SA	0	4	55	231	2
WA	0	5	19	0	0	WA	0	7	15	2	0
NT	0	6	43	3	0	NT	0	9	35	7	1
ACT	0	0	0	0	0	ACT	0	0	0	0	0
NSW*	0	36	522	192	0	NSW*	0	48	375	322	5
QLD	0.00%	2.30%	62.18%	35.52%	0.00%	QLD	0.00%	5.45%	48.61%	45.45%	0.48%
VIC	0.00%	2.21%	65.13%	32.66%	0.00%	VIC	0.00%	5.07%	40.59%	54.15%	0.18%
SA	0.00%	1.03%	42.81%	56.16%	0.00%	SA	0.00%	1.37%	18.84%	79.11%	0.68%
WA	0.00%	20.83%	79.17%	0.00%	0.00%	WA	0.00%	29.17%	62.50%	8.33%	0.00%
NT	0.00%	11.54%	82.69%	5.77%	0.00%	NT	0.00%	17.31%	67.31%	13.46%	1.92%
ACT	-	-	-	-	-	ACT	-	-	-	-	-
NSW*	0.00%	4.80%	69.60%	25.60%	0.00%	NSW*	0.00%	6.40%	50.00%	42.93%	0.67%
Preschools (B): QA2 ONLY (11 July 2022)						Preschools (B): OVERALL (11 JULY 2022)					
	Significant Improvement Required	Working Towards	Meeting	Exceeding	Excellent		Significant Improvement Required	Working Towards	Meeting	Exceeding	Excellent
QLD	0	13	56	21	0	QLD	0	14	46	30	0
VIC	0	12	118	76	0	VIC	0	18	81	106	1
SA	0	4	89	58	0	SA	0	9	56	85	1
WA	0	0	6	0	0	WA	0	0	4	2	0
NT	0	0	18	2	0	NT	0	0	18	2	0
ACT	0	2	46	45	0	ACT	0	4	16	73	0
NSW	0	8	103	43	0	NSW	0	10	67	74	3
QLD	0.00%	14.44%	62.22%	23.33%	0.00%	QLD	0.00%	15.56%	51.11%	33.33%	0.00%
VIC	0.00%	5.83%	57.28%	36.89%	0.00%	VIC	0.00%	8.74%	39.32%	51.46%	0.49%
SA	0.00%	2.65%	58.94%	38.41%	0.00%	SA	0.00%	5.96%	37.09%	56.29%	0.66%
WA	0.00%	0.00%	100.00%	0.00%	0.00%	WA	0.00%	0.00%	66.67%	33.33%	0.00%
NT	0.00%	0.00%	90.00%	10.00%	0.00%	NT	0.00%	0.00%	90.00%	10.00%	0.00%
ACT	0.00%	2.15%	49.46%	48.39%	0.00%	ACT	0.00%	4.30%	17.20%	78.49%	0.00%
NSW	0.00%	5.19%	66.88%	27.92%	0.00%	NSW	0.00%	6.49%	43.51%	48.05%	1.95%
Preschools (A) - Standalone Community/Mobile Preschools											
Preschools (B) - Preschools that are part of a school											
SOURCE: The Australian Children's Education & Care Quality Authority (ACECQA)'s National Registers as of 11 July 2022											

ATTACHMENT 3: Differences between NSW regulatory requirement for degree-qualified early childhood teachers compared to other Australian states

Number of preschool age children at centre-based services	Minimum hours of ECTs required in NSW	Minimum hours of ECTs plus equivalent required in other states	Difference
< 25 places (incl preschool children)	2 hours (Reg130)	2 hours (Reg130)	0%
< 25 preschool children	2.5 hours (Reg131)	2.5 hours (Reg131)	0%
25-29 preschool children	6 hours (Reg272)	6 hours (Reg132)	0%
30-39 preschool children	10 hours (Reg272)	6 hours (Reg132)	66% more for NSW
40-59 preschool children	2 x 10 hours (Reg272)	6 hours (Reg132)	233% more for NSW
60-79 preschool children	3 x 10 hours (Reg272)	9 hours (Reg133)	233% more for NSW
60-79 places (incl preschool children)		1.5 FTE (Reg133)	
80 preschool children	4 x 10 hours (Reg272)	9 hours (Reg133)	344% more for NSW
80 places (incl preschool children)		1.5 FTE (Reg 133)	
> 80 preschool children	4 x 10 hours (Reg272)	12 hours (Reg134)	233% more for NSW
> 80 places (incl preschool children)		2 FTE (Reg134)	

PLEASE NOTE: The above hours are based on a centre-based service operating at 10 operational hours per day.

Regulation 130 – <https://legislation.nsw.gov.au/view/whole/html/inforce/current/si-2011-0653#sec.130>

Regulation 131 – <https://legislation.nsw.gov.au/view/whole/html/inforce/current/si-2011-0653#sec.131>

Regulation 132 – <https://legislation.nsw.gov.au/view/whole/html/inforce/current/si-2011-0653#sec.132>

Regulation 133 – <https://legislation.nsw.gov.au/view/whole/html/inforce/current/si-2011-0653#sec.133>

Regulation 134 – <https://legislation.nsw.gov.au/view/whole/html/inforce/current/si-2011-0653#sec.134>

Regulation 272 – <https://legislation.nsw.gov.au/view/whole/html/inforce/current/si-2011-0653#sec.272>