

## CHAPTER TWO

### CHILD CARE LAWS AND REGULATIONS IN MALAYSIA: ARE THEY ADEQUATE OR BELOW THE ACCEPTABLE STANDARD?

#### 2.1 Introduction

This chapter explores the laws and regulations in Malaysia which govern child care centres. The legislations on child care centres in Malaysia are scrutinised in examining how laws and regulations govern child care settings in Malaysia. The terms and conditions of the registration of child care centres are examined one by one in order to detect the *lacunas* in the legislative framework. The weaknesses of these laws and regulations are analysed in order to examine the loopholes of the laws and regulations that need to be improvised. The main legislation concerned is the Child Care Centre Act 1984 and Child Care Centre Regulations 2012.

The second part of the chapter analyses the international experiences of other jurisdictions that may be taken as lessons for Malaysia. The section discusses on the feasibility of making international comparisons in child care settings, in order to enhance the quality of child care settings in terms of laws and regulations.

Thus, the chapter's aim is to evaluate whether Malaysian laws and regulations are adequate or is there a need for further enhancement? Evaluations are made to ascertain if the Malaysian laws and regulations meet the basic level of acceptable care or is there a need for further improvements. The second part of this chapter is aimed to present experiences from other countries, which can be a valuable reference for Malaysia to work on improving the Malaysian child care legislative framework.

## 2.2 Introductory Features of Malaysian Laws and Regulations on Child Care

History of early child care in Malaysia started with the introduction of pre-schools since before the 1960's. Most of the operators at that time were religious bodies or non-governmental organizations. The Ministry of Education drafted the *Kaedah-Kaedah Guru/ Kaedah-Kaedah Kindergarten dan Sekolah Asuhan (Pendaftaran) 1972 Warta Kerajaan P.U (A) 414* which acted as the earliest legal document, outlining the procedures for registration of kindergartens, teachers and management bodies (Lydia et al., 2014).

An overall examination of child care in Malaysia was done through National Child Care Survey 1982 by University of Malaya with the co-operation of Ministry of Social Welfare and The United Nations Children's Emergency Fund (UNICEF). The overall evaluation was that the child care services in Malaysia were far from satisfactory and many efforts were needed to remedy the situation (Yusof, Wong, Ooi, & Hamid-Don, 1987). This research paved the way for higher attention to be given to the child care industry which led to the birth of CCCA 1984. CCCA 1984 marked a significant development of laws and regulations on child care in Malaysia.

The Act laid down the minimum standard that child care centres should observe. It is specifically mentioned in the preamble of CCCA 1984 that the Act focuses on registration, control and inspection of child care centres. Although there are provisions in it for protecting the interest and safety of the children from abuse and neglect, this is not highlighted in the preamble or purpose of the statute. Nevertheless, there is an assertion made that Malaysian laws on child care centres are not strict enough in maintaining high quality service (Hamdan, 2011).

Section 23 of CCCA 1984 meanwhile, confers the Minister with the power to make regulations as by-law under CCCA 1984. The regulations may cover the operation, management and supervision of child care centres, the obligatory tasks, qualifications of the people managing and working in child care centres, the health and nutrition measures of the children, the administration system of the centres, the measures ensuring adequate equipment, the safety and hygiene issues and anything else which is related to CCCA 1984. This leads to the birth of CCCR 2012 regulating child care centres in Malaysia.

In these Regulations, the word 'care' has been interpreted to include three main points. Firstly is the act of the child care providers of minding, supervising and educating the children. Secondly, care here also indicates that the child care centres should have proper planning in terms of diet, resting and playing sessions for the children. Thirdly, care also refers to the implementation proper safeguards with regards to health and well-being of the children.

The obligation of every child care centre to register is clearly stipulated in Section 4 of CCCA 1984. The duty to register is once again stressed in Section 6 of CCCA 1984 where the Act prohibits the operation of unregistered child care centres. It is further strengthened by invoking the act of managing unregistered child care centre as an offence which can be punishable by a fine not exceeding RM 10,000 or a maximum of two years imprisonment.

It is claimed that one of the reasons of non-registration amongst child care centres is that they are not able to comply with all the legal requirements (Hamdan, 2011). For instance, the child care centre must adhere to the adult to child ratio stipulated in the CCCR 2012. Some of them are not able to hire as many child care

providers as needed to maintain that ratio, and eventually they resort to having illegal child care centres. The ministry has launched a campaign to encourage more child care centres to register with them. This campaign has been held all over the country in order to increase the awareness amongst child care centre operators on the importance of registration with SWD.

There is an issue on exemptions of registration. According to Section 3 of Child Care Centre Act 1984, few institutions are given exemptions from the obligation to register their child care centres. This exemption clause is commonly found in the laws governing child care centres.

Nevertheless, it is suggested that the exemptions provided in Malaysia Child Care Centre Act 1984 should be revised (UNITAR International University, 2017). For instance, when one to three children are looked after in a house, it does not fall under the definition of child care centres to be registered under CCCA 1984. Furthermore, for these child care centres which are exempted from registration, there seem to be no available safeguards for the children especially in terms of their health and safety.

Additionally, the problems of separate legislations for early childhood and education can be found here. One of the exemptions from registration under CCCA 1984 is kindergartens or nursery schools which are under the auspice of Education Act 1996. Therefore, this type of split governance system in Malaysian early childhood care and education needs further examination, as this will cause confusion especially in matters related to license applications and enforcement. Singapore is moving towards integrating governance with the introduction of the Early Childhood Development Act 2017 replacing the repealed Child Care Centre Act 1988.

In defining what constitutes child care centres, a number of varying definitions come to light. The common elements that can be seen in most of these definitions are minimum number of children, the number of hours provided by the service below the 24 hour, the operation of the service to be continuous and not temporary, ages of the children, the services provided for the fee amounts, and the rule that the child care provider and any of the children do not have any family bond or blood related (Lapp Payne, 2011).

As far as Malaysia is concerned, according to Section 2 of CCCA 1984, a child care centre is defined as any premises looking after for four or more children aged from zero until four years old from more than one household and where the service is provided in return for payments or some form of reward. It can be seen that Malaysia does not specify the minimum and maximum number of hours that should be provided by the service, nor does it specify a condition that the service must be on continuous operation basis and not just something temporary. Although it does not specifically mention in the interpretation section anything about the rule that the child care provider and the children should not be blood relatives, it is mentioned in Section 3 of CCCA 1984 that it should not include services provided by relatives. The definition of relatives here includes grandparents, siblings and uncles or aunts, who have blood relations with the children.

Moving on, Section 5 further elaborates on the categories of child care centres, which include home-based, work place based, community based, and institution based. A home based child care centre is one which receives less than ten children and the children are looked after in the home of the person who registers with the SWD. Work place-based child care centre is a centre set up at the work place and receives

ten or more children. The same numbers of children are defined for community-based child care centres, which is a centre that receives ten or more children in a specific area and is funded by the Federal or State Government. Institution-based child care centres are those that receive ten or more children and are normally run by private sectors.

In Section 6, it is clearly indicated that a failure to register the centres shall amount to an offence which is punishable by a fine not exceeding RM 10,000 or two years imprisonment or both. For subsequent offences, the fine is doubled, up to RM 20,000 or five years imprisonment or both. Registration here refers to the registration done with the Social Welfare Department, as stated in Section 7.

The procedure of registration of child care centres can be seen in Section 7 of CCCA 1984. The procedure describes that the application for registration should be made to the Director General of Social Welfare. The procedure usually involves SWD as well as other government departments. If the child care centre is to be set up in residential areas, an application to convert the land to commercial use is needed. The application for this may be made at the relevant land office.

One of the issues concerning registrations is the tedious process that child care centre operators have to go through. As mentioned by Putrajaya Child Daycare and Kindergarten Association President Husna Abdul Rahman, the main reason on the failure of child care operators from registering their centres is the bureaucracy of the registration process (New Straits Time, 2014b). Before getting approval by the SWD, there are prerequisites for the child care centre to fulfil which include an approval from three technical agencies, which are, the Fire and Rescue Department, Ministry of Health and local authorities. Looking at it from a positive point of view, this is

considered a worthy requirement as it ensures that measures have been taken for the proper safety of the children.

Nevertheless, from the perspective of the operators, this condition contributes to the complexity of the process. Complexities like these might be one of the factors which may be causing a reluctance among child care centre operators, to undergo the process of registering their centres (Hamdan, 2011). Therefore, there is an issue here, the solution of which is to achieve a balance between regulating strict laws and easing the burden on child care providers. This is essential in order to maintain quality child care industries which observe the welfare of the children as well as the child care operators.

Nevertheless, the amendment made to CCCA 1984 to extend the life span of the certificate of registration from twelve calendar months to sixty calendar months as highlighted in Section 11 (3) may ease the burden of the child care operators by freeing them from renewing the licenses regularly. Easing the administrative process is one of the ways to encourage more child care centres to register and adhere to the laws and regulations.

The former Minister of MWFC, Datuk Rohani Abd Karim, stated that the complexity of the registration process should not be an excuse to escape from carrying out the necessary registration procedures with the SWD. She also mentioned that the child care centres were given a chance to postpone their license application for two years with the condition that they register themselves first with the SWD. As a result, the SWD would inspect them until the registration process is completed (BERNAMA, 2016c).

Furthermore, Datin Paduka Chew Mei Fun, the former Deputy Minister of MWFC, remarked that other initiatives were taken by the government to encouraging registration. These were made possible by the co-operation of the Real Estate and Housing Developers Association Malaysia and local councils to include child care centres in the township planning (The Star, 2016a). When there is a ready space designated for child care centres in housing areas, it would reduce the burden on the operators as they would not have to undergo the process of converting the residential premise to a commercial one. They could directly open the child care centre without having to go through the hassle of getting the neighbour's consent. This measure can be called a win-win situation, as the developers may also gain benefit by setting a higher price for the stated premises due to their dual usage. Local councils on the other hand, may only spend little cost to examine traffic on safety issues. The fact that child care centres should be treated more like institutions for a social service rather than a commercial purpose is also instilled in the local councils. This is so that they could lessen the burden on the operators of child care centres for non-compliance of all the registration requirements.

In a case of *Perbadanan Pengurusan Palm Spring @ Damansara v Muafakat Kekal Sdn Bhd & Ors (No 2) [2015] 2 AMR*, the main application was striking out the sale and purchase agreement involving the transfer of strata title of a block which had been reserved for common property. Inferring from the facts of the case, the fact that the developer has promised to reserve a block for child care centres is deemed as a good measure in easing the process of operating child care centres in residential areas.

Therefore, there are several issues concerning the introductory elements and registration laws and regulations of child care centres identified here. The problem of

non-registration of child care centres, which ultimately leads to the illegal operation of these centres, is a crucial problem that needs to be tackled diligently. Non-registration of child care centres will prevent them from being adequately monitored by the authorized agencies, thereby increasing the possibility of having unfit and improper child care providers. The issue of exemptions also needs further examination as the definition of child care centres in Malaysia, according to the definition in CCCA 1984 is narrow. The definition stipulates that the number of children should be four children and above, but there are no specifications on minimum and maximum hours and other important details. The tedious process of registration is also an important issue to be examined, as unfriendly legislations and bureaucracies of the process may lead to a reluctance of registration on the part of the child care operators. The increasing costs of the registrations, in order to fulfil certain requirements which, the operators feel should not be prioritized, is an issue as well, and causes a hindrance to the registration process.

### **2.3 Malaysian Terms and Conditions for the Registration of Child Care Centres**

Besides the issues in the introductory elements, there are also issues in the legal requirements or the terms and conditions of registration of child care centres in Malaysia. Section 8 of CCCA 1984 needs further discussion with regards to the terms and conditions that must be fulfilled by child care centres before approval of registration is granted by the SWD. It is interesting to note that, these terms and conditions are amongst the items that have been highlighted in a study by UNITAR for SWD. It is mentioned that these terms and conditions of child care registration

should be reviewed (UNITAR International University, 2017). These terms and conditions will be analysed one by one in this chapter.

### 2.3.1 Numbers of Children

Moving on to the terms of registration stipulated in Section 8, besides of the approval from the three technical agencies, Section 8 of CCCA 1984 underlines certain conditions that an applicant needs to observe. Firstly is the limited number of children that can be placed in the centre.

Section 8 (a) puts a condition that registration may be done if the number of children is limited as required in the regulation. Nevertheless, there is no indication as to the maximum number of children permissible to be in a child care centre at one time. It is asserted that in a single storey terrace corner lot, the maximum number of children that shall be accepted in a child care centre is 20 (Chin, 2016).

It has been reported that, the Ministry of Women, Family and Community (MWFC) Development has identified that there are child care centres operators who refused to register with the Social Welfare Department as they intend to place as many children as they could in their premise. As commented by Datuk Rohani Abdul Karim, the former minister of MWFC, this will violate the floor area requirement and also the adult to child ratio regulations. She even added that this might cause unwanted cases especially for the infants, for instance milk choking (MyMetro, 2016).

One way of counting the numbers is by looking at the adult to child ratio and minimum required floor area per child. This condition is inserted into the legislation to

counter the practice of some child care centres that might not follow the rule and accept unlimited children without considering the adult to child ratio and minimum required floor area per child as stipulated in Regulation 27 of CCCR 2012 which state that

*'The minimum required floor area for each child at a child care centre shall be as follows: (a) for a home based child care centre, at least 2.5 square metres; and (b) for a work place based, community based or institution based child care centre, at least 3.5 square metres.'*

One of the important regulations in CCCR 2012 is on the issue of ratio. It is worth to note that, in calculating the ratio, the operators, managers, supervisors and employees are not included in the count for the number of child care providers, except in the case of home-based child care centres where the operators might be counted as child care providers.

In the light of Regulation 18, the ratio is stated in the third schedule. One child care provider should only take care of three children aged one year or below. For children aged between one to three years old, the ratio is one child care provider to five children, and for children in the age group of three to four years, one child care provider should be allocated to take care not more than ten children.

However, nothing is mentioned in the regulations with regards to group size. This may be a loophole that needs to be remedied as the high impact of ratio may be materialized when proper group size is observed. The child care centre may abide by the adult to child ratio, but having large group sizes will minimize the learning effects of the activities conducted.

The number of children may also be based on the floor area of the premise. It is stated in Regulation 27 that for child care centres other than home-based, each child

should be allocated at least 3.5 square metres, while for home-based child care centres the minimum required floor area is 2.5 square metres per child. It is further stipulated that the 3.5 square metres allocated to a child, should be for rooms that are strictly related to child care activities, and not places like the kitchen, store room, washroom, office, pantry or any other rooms not related to child care activities.

The aim to maximize profits is one of the biggest motivators for centres to accept unlimited number of children (Hamdan, 2011). Striking a balance between the aim to gain profit and the best interests of the child has never been easy. The main aim of child care services should focus more towards social services rather than commercial purpose. In striking a balance between promoting social services and commercial purpose, the involvement of the government is needed in integrating the early childhood into education ministry. The rising cost of having better regulated child care sector need to be aided by strong government investment towards this sector. The split system of children's education in Malaysia should be integrated as integrated system as what can be seen in Nordic countries provides more balanced method to care and education (Bennett, 2011). The services in Nordic countries are highly subsidized and the staffs are perceived as educators which enjoy contracts of employment and their salary are comparable to the remuneration of teachers in primary school.

Thus, looking at Section 8 (a) on the limited numbers of children permissible to be placed in child care centres, there is a need to clarify the ambiguities with regard to the maximum numbers of children to be permitted. Apart from abiding to the stipulated adult to child ratio, the group size provision should be inserted in the legislations as not to allow excessive numbers of children being taken care in a large

group. Besides, the floor area as governed under Regulation 27 of CCCR 2012 needs to be observed too.

### **2.3.2 The Fitness and Propriety of Applicants and Employees**

The second condition in getting approval for registration is that the applicant needs to ensure that the employees are fit and that proper and adequate people are in charge of the management and operations of the child care centre. The issue here is that there are no specific definitions or guidelines in the Act, to deem a person as fit and proper.

Prior to the discussion on the meaning of a fit and proper person, there are several terms related to employees of child care centres that need to be clarified. This needs clarification as they carry different responsibilities.

In supplement to Section 8 of CCCA 1984, Regulation 9 (1) (a) until (e) of CCCR 2012 underlines the duties of an operator. An operator is the person who registers and has his name on the certificate of registration. Basically, the operator has the responsibility of taking care of the children's health issues. He must immediately inform the parents if a child requires medical treatment for instance. The operator is also responsible to bring the child to the medical officer as soon as possible, when there are any signs that the child is suffering an epidemic or infectious disease.

Additionally, the operator must ensure that the workers he employs do not have any criminal records, specifically on moral turpitude, sexual harassment, or child maltreatments. However, there are no specific measures in place to ensure that their records are clean. The use of the Child Registry should be in place in the registration

process. The Deputy Minister of Women, Family and Community Development mentioned that Child Act 2001 is comprehensive in protecting the children by having various improvements such as extending the list of crimes implicating the children (New Straits Times, 2018). The existence of a registry of perpetrators of crimes against children is seen as a good effort as it helps the child care centres to avoid hiring people with criminal records concerning children (Thye, 2016a). In addition, the operators should also employ registered child care providers to look after the children. If an operator employs someone who is not registered or not in the process of registration, he would have committed an offence and shall be eligible to a fine of RM 1,000 maximum, or up to six months imprisonment or both.

The operator must also make sure that the technical requirements such as structure of the premise, fire prevention, health, sanitation and safety are legally fulfilled as stated in the relevant written laws. The operator must also submit the names of the workers under him to the Director General within thirty days of the registration of his child care centre.

Failure to fulfil the duties stipulated in Regulation 9 is an offence and upon conviction, the operator may be fined up to RM 1,000 maximum or imprisoned for not more than six months, or both.

On another note, the duty of a manager is to look after the administration matters of the child care centre. The manager must also go through a medical examination within the first month of service and shall ensure that all requirements under Section 8 of CCCA 1984 are complied with. Failure to do so shall result to an offence and shall result in a maximum fine of RM 1,000 or imprisonment for six months or both.

Furthermore, apart from an operator and a manager, there must also be a supervisor to supervise the child care providers, registered child care providers and other workers. The supervisor is also in charge of the arrangements of the activities at the child care centre. The supervisor must also inform the operator, or in the absence of the operator, the parents immediately, if there are any health issues associated with the children, or if there is an epidemic or infectious disease among the children. In the absence of the operator, the supervisor must himself bring the children to seek treatment from the medical officer.

The meals and feeding methods are also under the duty of the supervisor. The meals must be in line with the diet scale specified under the Fourth Schedule of the Regulation and the feeding methods, with the guidelines specified in the Fifth Schedule. To ensure that the supervisor is fit and healthy, he must undergo a medical examination within the first month of employment. Again, failure to abide by these duties shall amount to an offence.

Interestingly, the regulations make up for two categories of child care providers. One is child care provider and the other is registered child care provider. The distinction between them is made by the fact that registered child care providers are those who have passed the PERMATA Early Child Care Course and have registered under Regulation 16 of CCCR 2012. Meanwhile, child care providers may also be employed with the condition that they attend and pass the PERMATA Early Child Care Course and Education and are registered under Regulation 16, within twelve months of employment.

Twelve months of employment is quite a long period given that anything can happen within this time. It might seem that the procedures are lengthy, seeing that

such a long time is needed to complete the registration. On the other hand, it might also seem that the regulations are very relaxed to an extent that they risk jeopardizing the safety of the children at the hands of the untrained child care providers for a period of about twelve months. It is important to mention that the government has plans to create an online training programme for the child care providers. This will allow them to obtain hands on experience while studying and at the same time will help in reducing the operator's cost (The Star, 2016a). Therefore, the period of twelve months without any registration might need to be reviewed as leaving the children aged zero to four in the hands of unskilled and uncertified child care providers is risky.

One of the duties of a child care provider is to take care of the children based on planning and arrangements made by the operator, manager and supervisor. They spend most of their time feeding, conducting indoor activities, doing recreational activities and at the same time ensuring the safety of the children. In the absence of operator, manager or supervisor, they are also responsible to inform the parents or refer the children to the medical officer when there are any health issues.

It is worth highlighting too that a report on the children's development should be prepared by the child care provider every three months and should be submitted to the supervisor. This report will later be produced to the parents. All these guidelines are stipulated in Regulation 15 (1). Any violation of the regulation is an offence that may lead to the child care provider's conviction and the punishment may amount to a maximum fine of RM 1,000 and a maximum imprisonment of six months.

Regulation 16 sheds some light in defining the meaning of unfit. It is mentioned that the Director General may refuse to register the child care provider if the person is unfit due to several reasons such as age, health or qualification or the

presence of past criminal records on moral turpitude sexual wrongdoings or child abuse.

The registration may also be revoked after being approved if the child care provider were to be convicted of an offence under CCCA 1984 or CCCR 2012 or any offence of moral turpitude, sexual wrongdoings or child abuse as stated in Regulation 17.

On the part of the parents, Part VIII highlights the duties and rights of the parent or guardian of a child. A parent should give prior notice to the child care centre regarding any allergies or injuries the child may be suffering from, before coming to the child care centre. They must also be mindful and avoid sending their children to the child care centre if their children have suffered from an infectious disease. On the other hand, the child care centre has a responsibility to provide a progress report of the children to the parents every six months. This includes matters on the child's growth, their involvement in activities conducted in the child care centre, the behaviour of the child, health status, the feeding of the child, and their safety. However, it is doubtful that child care centres do actually provide this feedback twice a year, i.e. every six months, due to the weak enforcement system.

On the requirement that the operator and employees must be fit and proper, Australia provided details about this in another part of the Act which falls under the category of provider approval. In Australia, the flow is that the operator must obtain provider approval and fulfil the requirements in Part 2 such as the requirement to be fit and proper. Only then the applicant may apply for service approval. Under Section 13, the Act listed down criteria that needed to be taken into consideration in measuring the person's fitness to obtain provider approval. Among them is their

history of compliance with this law. The record should also contain information on whether the person's application has been rejected before, or if the approval has been suspended, refused to be renewed or cancelled. His criminal history, medical fitness and financial records should also be investigated. Nevertheless, it is clearly stated that these lists are not exhaustive in determining one's fitness and suitability.

In Malaysia, discussing on fitness and propriety, for an operator who is the applicant in registering the child care centres, one of his duties is to employ those who have no history of immoral acts or any criminal records. However, there is no provision that requires the operator himself to be free from such records. The conditions mentioned under Section 8 only cover the rule that the applicant must be fit and proper. While it is clear in the regulations that the registration of a child care provider may be refused if he is found convicted of moral turpitude, sexual wrongdoings, or child abuse cases as can be seen in regulation 16 of CCCR 2012, it is not mentioned that applicant or operator too must be free from these convictions as practised by Singapore or Australia.

It is just mentioned in Section 12 of CCCA 1984 that the registration may be cancelled when there is a contravention with any provisions in the Act, or when the person registered is found to be convicted of an offence under this Act or any offence of moral turpitude. Therefore, the provision is reactive to cancelling the registration when the operator has been found of being convicted of offences of any moral turpitude. It is suggested that the condition in the first place should highlight the need for the operator to have a clean record.

Looking at Singapore, Regulation 26 of Singapore Child Care Regulations 2012 lists down the prohibition of employment particularly when the person is

involved in offences under Children & Young Persons Act (Chapter 38), Part XI of Women's Charter, certain sections of Penal Code and fraud, dishonesty and moral turpitude offences. It can act as an example for Malaysia to clearly mention in the regulations, the prohibition of employment of those who have been involved with offences related to child abuse or child neglect as can be seen in Regulation 26(a) (i).

Thus, there are ambiguities in terms of defining fitness and propriety of child care provider in Malaysian legislation. Guidance in terms of indicators should be inserted in the legislations as to ensure that only fit and proper child care providers will take care of the children. In addition, the fitness and propriety of the operators themselves need for further clarification as the legislations focus only to the 'clean record' of the child care providers without conditioning the operators too that he must not have any history of immoral acts or criminal records. This is important as he is the one who will appoint the child care providers.

### **2.3.3 Adequate Staffs**

The centre must be adequately staffed. The definition of adequately staffed here includes the number as well as the qualifications and experiences of the employees especially the child care providers. The number of child care providers may refer to the adult to child ratio as prescribed by CCCR 2012. It is asserted in a literature that apart from the basic child care course which is now replaced by PERMATA early child care course, the minimum qualification of a child care provider is Sijil Pelajaran Malaysia (SPM), a further accredited training in Early Childhood Care and Development, and a degree or diploma in early childhood education (Mohd & Kadir, 2012). It is claimed that many of the child care providers

are those who just finished their high school or those who are unable to find other jobs (Hamdan, 2011).

Besides that, under Regulation 14 of CCCR 2012, a registered child care provider is defined as one who has passed the PERMATA Early Child Care and Education Course. CCCA 1984 and CCCR 2012 are silent as to the academic qualification of the child care providers.

As for Malaysia, as noted in Child Care Regulations 2012, operators, managers, supervisors and child care providers are required to undergo a PERMATA Early Child Care Education Course. Formal qualifications such as a diploma or bachelors in early childhood and education are not a requirement under the law. Nevertheless, there have been positive movements to increase the number of staff who are certified or possess a diploma or a bachelor's degree in early childhood development programmes. There are several public and private higher education institutions in Malaysia which currently offer early childhood development courses (Schools of Malaysia, 2009). The introduction of Bachelor in Early Childhood Education was pioneered by University of Malaya in the year of 1997 while other universities such as Universiti Pendidikan Sultan Idris (UPSI) and Universiti Sains Malaysia (USM) offered Bachelor of Education in 2002 and 2003 (Malaysian Qualifications Agency, 2014).

The diverse standards used in different countries or even in states in a country may result in inconsistencies in evaluating child care provider's qualification. Malaysia can be seen to be similar to United Kingdom, where there is no concrete requirement for child care providers to have formal qualifications, except for the

required training or courses. This is always the case for countries which practise maximum private responsibility.

United States of America too does not oblige child minders to be formally educated, but encourages child minders to have qualifications. It is argued however, that it cannot be simply concluded that child minders with low qualifications shall produce low quality child care (Whiteford, 2015). This is because it appears that countries with maximum private responsibility have been rated to have high quality child care too, despite the absence of any mandatory requirements for child minders to have high qualifications.

In October 2016, it was reported that the former Minister of Women, Family and Community Development Datuk Seri Rohani Abdul Karim made a statement that a child care provider should at least have a diploma in early childcare education (BERNAMA, 2016e). She referred to the practice by the developed countries where there is a requirement for the child care providers who look after children below three years old to have a minimum qualification of diploma.

This suggestion need for further scrutiny as the problem of having child care providers equipped with PERMATA child care course need to be resolved first before the requirement on diploma qualification of child care providers can be implemented. It is proposed that the professional development programme through the enhancement of legal requirements of education and training of staff need to be given attention. The professionalism of child care providers need for systematic approach of professional development through series of pre-service and in-service trainings before raising the qualification of formal education can be implemented.

### 2.3.4 A Conducive Environment for Children

Regulation 4(2) (ii) of CCCR 2012 also states that the child care centre must be sufficiently and suitably equipped and maintained. The words ‘sufficiently’ and ‘suitably’ are used in a generic form, and do not provide an exact interpretation. More details are needed so as to measure how the childcare might be considered to be sufficiently and suitably equipped and maintained.

The laws on the physical environment in Malaysia are provided in the Child Care Centre Regulations 2012 under Part IX Premises and Equipment and Part X on the issue of Safety and Prevention on Fire.

The regulation firstly highlights that a home-based child centre care may only be operated at the home of the child care operator. Regulation 26 mentions on the responsibility of the child care operators to inform the Director General in writing of any alteration or renovation of the premises in terms of the structure, washroom facilities, ventilation or lighting system, and partitioning spaces for non- child care activities purposes. Failure to inform on any renovations made shall amount to an offence which is punishable by a fine not exceeding RM 1,000 or imprisonment not exceeding six months. This is an innovation for Malaysia since this kind of provision is neither found in Australia nor Singapore.

Next, the regulation also emphasizes on floor area which is one of the important elements in physical environment regulations as governed under Regulation 47 of CCCR 2012. For home care centres, the allocation is 2.5 square metres while for other child care centres including work place based, community based and institution based, the requirement is higher, with 3.5 square metres per child. There are also

requirements for the operator to prepare a kitchen or pantry, washroom, and laundry facilities. It is required for the child care operator to provide at least one washroom for 10 children as stated in Regulation 29. Regulations on electrical wiring can be found in Regulation 30 where it is required for the operator to make sure all the electrical appliances are safe. Failure to comply with regulations on electrical wiring shall amount to an offence punishable with fine not exceeding RM 1,000 or six months or less imprisonment or both. Besides that, on the requirement of maintenance, the regulations highlight on the use of safe paint, suitable partitioning, and good ventilation and lighting systems. Regulation 32 lists down the equipment that should be provided by the operator such as bedding equipment, furniture and toys; and a general clause on any other suitable equipment for children use is also mentioned. The toys should provide the children opportunities to exercise multiple types of senses such as encouraging them to be more adventurous, imaginative, and should be able to inculcate invention and coordination. The Regulation also highlights the issue of cleanliness and safety of the equipment mentioned in the Regulation 33. Regulation 34 meanwhile specifies on the safety of usage of cradle and baby cot. Although it is permissible for the operator to provide cradles or cots at a child care centre, the equipment must not be operated by swinging or shaking. Using this kind of cradle or baby cot is considered an offence which may amount to a fine not exceeding RM 1,000 or imprisonment not exceeding six months or both.

In order for a child care centre to get approval for registration, the approval from Fire and Rescue Department must be obtained at first. This rule is mentioned specifically in Part X of CCCR 2012 on safety and fire prevention. Part X of the regulations focuses on fire prevention where it is recommended that advice from Fire Department should be taken from time to time. Regulation 35 highlights on the duty

of operator to provide fire extinguishers, an evacuation plan in case of a fire emergency, ensuring that the room exits are clear and fire drill requirements. Failure to comply with this requirement shall also amount to an offence punishable with RM 1,000 fine or imprisonment for six months or less or both. In addition to this, Regulation 36 specifically mentions on grilles to be installed by the child care centres and failure to comply with this shall also amount to an offence.

As far as physical environment regulations in Malaysia are concerned, there are several issues that need to be pointed out. It appears that, only certain regulations are regarded as an offence when the child care operators fail to follow them, such as regulations with regards to renovation, wiring and cradle. Therefore, these three matters are seen as serious matters as compared to floor area requirements or washroom requirements etc.

Datuk Seri Rohani Abdul Karim, the former Minister of Women, Family and Community Development highlighted that the child care centres are reluctant to register their centres as they feel it is a burden to follow the procedures and regulations, especially those related to safety, such as adult to child ratio and floor area (Badruddin, 2016). From this we can infer that one of the regulations that need to be analysed carefully, is the regulation on the physical environment, more specifically, the floor area.

A development can be seen in the efforts by the taskforce on early childhood and education led by Datin Paduka Chew Mei Fun, the former Deputy Ministry of Women, Family and Community. She mentioned that there is plan to amend the existing regulation of child care centres. One of the issues concerned is to permit child care centres to operate on third to fifth floors compared to the current rule where only

first and second floors are permissible. This is a measure aimed to lessen the cost on the operators as the first and second floor premises have high rentals (The Star, 2016a).

Apart from regulating indoor space, outdoor space must also be regulated. Nevertheless, with regard to outdoor space, Malaysia does not provide regulations although rules for the physical environment should cover both, indoor as well as outdoor spaces.

On top of that, apart from CCCA 1984 and CCCR 2012, there are certain legislative requirements that need to be fulfilled under other legislations. They are National Land Code, Town and Country Planning Act 1976, Local Government Act 1976 and Uniform Building by-Laws 1984. One example can be seen in a case involving the Town and Country Planning Act 1976. If the child care centre is to be setup in residential areas; an application to convert the land to commercial use is needed. This application may be made at land office.

It may be an issue when child care centres are operated in the residential areas. In the case of *D' Monte Child Care & Development Centre v Majlis Perbandaran Pulau Pinang [2010] MLJU 2168*, this issue was highlighted. This case was brought to the Appeal Board of Pulau Pinang on 20 September 2010. The application made by the Appellant to set up a child care centre in a residential house was objected by the neighbouring houses. Therefore, the Appellant's application to convert the use of the premise from residential house to child care centre was rejected. Hence, the Appellant made this appeal. It is interesting to note that, the Board stressed on the need to have concrete reasons for the objections to be accepted in declining the application. The decision-makers are the planning authorities and so, the decision was not solely based

on the objections by the neighbours. Although legally speaking, neighbours have the right to make objections, but the application will not be simply rejected when there is an objection as this is not in line with the statutory intention. Section 22 (2) (c) of Town & Country Planning Act 1976 was intended for the authorities to take into consideration the objections raised and to evaluate whether the objections are reasonable.

The objectors' complaints were on two things, which were, the noise and the issue of traffic. However, since the objections were merely assertions without any evidence, the Board was not convinced that the objections were acceptable. Furthermore, the Appellant had made an effort by making arrangements where the parents were required to use the back lane to avoid traffic obstructions. This was considered a sufficient measure to solve the problem of traffic. On the issue of noise, the Appellant had minimized the noise by keeping the premises air-conditioned and ensuring that the children would be indoors most of the time. The Board concluded that the volume of noise from the premise was at normal volume levels compared to other premises of the same nature.

In discussing the issue of whether child care centres should be allowed to be placed in residential areas, it is noted to be permissible in town-planning guidelines. Therefore, in ordinary circumstances, the application to convert a residential area to a commercial area when there is compliance on the planning guidelines should be granted.

One of the objectors in this case argued that his wife who was suffering Hepatitis C needed a lot of rest. Meanwhile, his daughter who worked on night shifts needed to sleep during the day. Hence, they needed a peaceful environment. However,

the Board did not consider this as special circumstances. Special circumstances according to the Board should not include personal circumstances. Looking at the unreasonable reasons forwarded by the Objectors coupled with the measures taken by the Appellant in reducing the noise and traffic obstructions, the appeal was allowed.

Thus, the application to convert residential area to commercial area should not be a burden to the child care operators. The authorities need to be more careful in examining the objections raised by the objectors by carefully balancing both parties' interests.

Thus, for child care operators, they need to observe and fulfil the requirements of not just the laws and regulations stipulated in CCCA 1984, but also other related legislations, in the process of setting up of their centres.

Although there isn't large amount of research done in Malaysia examining the child care centres, especially on the part of physical environment, there is a study worth noting. A study was made in 2015 involving 10 work place based child care centres in Selangor (Azhari, Qamaruzaman, Bajunid, & Hassan, 2015). Two main features of physical environment were analysed, which were, planning and building design. There were weaknesses identified in terms of planning and building design in these child care centres.

Among the highlighted weaknesses were the lacks of modular i.e. separate spaces for separate activities such as spaces for different age of children, laundry, kitchen, staff lounge and pantry. Since most of the child care centres provide services for transit children for morning or afternoon sessions, for school children before they go or come back from school, there should be designated areas specified according to the age of the children, and areas according to other activities such as napping, nappy

changing areas, personal belonging storage areas and so on. The design of the centres depends on the group size planned to be received by the centres. This is to avoid the centres to accept more children than they can afford which will overcrowd the premise. Besides that, in terms of building design there are security issues related to the entrance to prevent intruders from easily accessing the centres. It was concluded in the study that the child care centre regulations on physical environment in Malaysia need improvements and improvisation.

Many examples can be looked into which highlight incidents involving lack of quality of physical environments in child care centres in Malaysia; one of which was the incident that happened on 26 January 2017. A three-year-old child died after the gate of the child care centre fell on her. This incident was reported in Pontian, Johor (Zikri, 2017). This gives an idea of the serious harms and hazards that can endanger the children when physical environment is not well maintained by child care operators.

Therefore, from the research areas explored and from looking into incidents involving children in child care centres, it can be inferred that there is a definite need to ramp up the legislative framework on the part of physical environment in child care centres. This includes carefully examining the legislations concerning indoor as well as outdoor spaces of the centres.

### **2.3.5 Scheduled Activities**

It is stated in Section 8 (e) of CCCA 1984 that if children stay in a centre for more than four hours, the centre must make adequate arrangements and plan a suitable

schedule for activities like feedings, resting and recreation for the children. The centres should also ensure that the children obtain an adequate and balanced diet.

In addition to this, Regulation 38 of CCCR 2012 highlights that the operator and supervisor also have a duty to plan for scheduled activities. This plan should include indoor and outdoor activities suitable to the categories of children according to their age. The schedule should also include the routine activities such as feeding, bathing, sleeping and other activities that influence their developmental progress. This schedule cannot be simply planned and used; it must be approved by the Director General. The parents may also have access to the schedule as it must be displayed at a conspicuous place at the child care centre.

Thus, from this term and condition of registration, it appears that the provision in Malaysia underlines the importance of having scheduled activities. Nevertheless, in this 21<sup>st</sup> century, the legal requirement should be enhanced to include educational programme as requirement besides of inserting merely routine activities in the schedule. This is to ensure that child care centres can play the role in educating the children since the age of infancy through suitable curriculum besides of custodian job.

### **2.3.6 Child Care Centres as a ‘Safe Haven’**

The next condition is with regards to the necessity to ensure safety of the premise as can be found under Section 8 (f) of CCCA 984. The structure of the centre, fire precautions, health, sanitation and safety are amongst the few items mentioned in this subsection.

In Child Care Centre Regulations 2012, the word care has been interpreted into three main points. Two of them are related to health and safety. Apart from interpreting care as the act of the child care providers of minding, supervising and educating the children, care also means the child care centre should have proper planning in terms of diet, resting and playing session for the children. Care also refers to proper safeguards with regards to health and well-being of the children.

Malaysian regulations on health and safety can be seen in Part XIII under Food, Nutrition and Water in CCCR 2012. This part highlights the requirement to have a schedule of meals consisting of diet scales and feeding methods. This schedule must be available for inspection. On the food requirement side, the food must be prepared hygienically and properly. Water too must be clean drinking water. Failure to prepare proper food and clean water shall amount to an offence punishable with a fine not exceeding RM 1,000 or an imprisonment not exceeding 6 months.

Next, under Part XIV on Health, Regulation 46 highlights on the responsibility of child care providers to monitor the health of the child at the time when the child arrives. There is also a regulation on medical examination as found under Regulation 47 of CCCR 2012 which highlights that the children or the staffs need to undergo medical examination if required by Director General. Furthermore, under Regulation 48, it is stated that if there are infectious diseases, the infected child, or child care provider, or staff shall be prohibited from entering the child care centres. Regulation 49 meanwhile underlines the requirement to have at least one first aid kit in the centre, and Regulation 50 describes the requirement to isolate a sick child temporarily in a special room.

A provision which speaks about the prohibited acts in premises is of special interest. This regulation specifically under Regulation 52, instead of using the words child care provider, operator, staffs and so on, uses the word 'any person'. The prohibited acts mentioned in the regulation are smoking, displaying or using any tobacco, bringing in alcohol or drugs, or even bringing or rearing animals except for educational purposes. The prohibition also includes bringing in any dangerous materials. Non-compliance with this regulation shall amount to an offence.

In addition, there is an effort from SWD for all registered child care centres to be equipped with video surveillance or closed-circuit television (CCTV) to ensure safety of children. The data from these will be centralized in a cloud storage known as MYMATA (Malaysia1News, 2016). It is expected that 4000 registered child care centres will be fitted with CCTV. As a start, focus will be given to child care centres around Putrajaya. MYMATA is seen as a new innovation in safeguarding the children in child care centres. Through MYMATA, because of its centralized nature, parents will have anytime access to the videos through their internet devices like tablets, hand phones or personal computers (BERNAMA, 2016f).

With regards to child protection in CCCA, in the preamble of CCCA 1984, it is stated that the Act is mainly for registration, control and inspection of child care centres. The word protection is not included in the preamble of the Act. Currently, the authority may only take actions by shutting down the child care centres. They do not have any power to blacklist the child care centre operator, thereby leaving the door open for the operator to open other centres in future (Hamdan, 2011).

The increasing cases of abuse and negligence involving child care providers were one of the concrete reasons for CCCA 1984 to be amended in 2007. Nonetheless,

the amendment sadly did not touch on the issue on child protection in CCCA 1984. The increasing cases of child maltreatments, abuses and negligence are worrying. The Deputy Minister of MWFC, Hannah Yeoh revealed that there are 199 abuse cases in child care centres reported in five months period from January to May 2018 (BERNAMA, 2018a). Thus, she has expressed her concern that the existing laws need for further review in curbing these incidents from happening again in future.

In Australia, the Children's Services Regulation in New South Wales (NSW) Australia highlights the objective to *'ensure the safety, welfare and wellbeing of children in children's services'*. This shows that the issue of child protection is given priority in Australian child care laws and regulations. This is different as compared to our CCCA 1984 where its preamble highlights on the registration, control and inspection. While our CCCA 1984 is seen as focusing more on administrative issues, NSW regulations are seen underlining the safety, welfare and wellbeing of children as the prime aim (Fenech & Sumsion, 2007). This could be a valuable example for us to follow.

In evaluating the existing laws of Malaysian child care, Section 8 of CCCA 1984 which laid down the terms and conditions for child care centres should be given attention. These terms and conditions can be considered as legal requirements or regulatory standards which are vital in structuring the legislative framework for child care centre services in Malaysia. Therefore, the question is, whether these legal requirements are adequate or is there a need for enhancement by raising the minimum standards, which eventually may be one of the efforts to raise the quality of child care centres in Malaysia, specifically on the legislative framework. From the evaluations

made, it can be inferred that there are certain parts of the legislation that need to be improvised especially in terms of the regulatory standards.

With regard to the first condition on the limited numbers of children allowed to be in child care centres at one time, the laws and regulations on ratio and group size should be given attention. Although Malaysia has already legislated adult to child ratio provision in CCCR 2012, the impact of lowering the adult to child ratio need to be further scrutinised. Furthermore, the group size legal requirement should be inserted in the provision as not to allow large groups of children are being taken care simultaneously although the requirement on adult to ratio is successfully complied with. In addition, on the term of adequacy of staff, the focus should be given in raising the bar of standards of professional developments of child care providers in creating more competent professional care providers. The legal requirement on education and training of staff need further enhancement. Taking examples of practices of other jurisdictions in foreign and neighbouring countries might be helpful for Malaysia.

In addition, physical environment requirement also need to be focussed on as according to researchers there are weaknesses need to be remedied such as in terms of building design and availability of outdoor spaces. The requirement to have scheduled activities for children in CCCA 1984 and CCCR 2012 meanwhile should be improved by having educational element in the schedule apart from just listing the routine activities. The final term and condition under Section 8 of CCCA 1984 pertaining to safety of the children need the utmost concern. More preventive measures are needed in safeguarding the children. The increasing cases of maltreatments and abuses should trigger for improvement in Malaysian child care legislative framework. Besides that, there are also some ambiguities with the terms used such as 'fit and proper',

‘adequately and suitably maintained’, which need for further clarification. Thus, there are still room for improvements in Malaysian laws and regulations on child care with regard to the legal requirements stipulated in the Act and Regulations.

#### **2.4 Malaysian Enforcement of Laws and Regulations in Child Care Centres**

Provision on enforcement can be found in Section 6 (1) of CCCA 1984 which states that any person who operates child care centres without licence shall commit an offence and may be fined up to RM 10,000 or punishment of maximum two years imprisonment or both.

Another important section on enforcement is on the cancellation of registrations under Section 12. This is one of the most important powers can be used in Malaysia in enforcing the laws and regulations upon the operators of child care centres. This Section gives power to the Director General to cancel the registration if there are found to be any violations of registration conditions as stipulated under CCCA1984, such as not following the adult to child ratio requirement. In addition to this, registration may also be cancelled when the operators fail to inform of the changes made. Furthermore, if the person with the name registered has been convicted of any offence under CCCA 1984 or offence relating to moral turpitude, the registration of the centre may also be cancelled. Other issues are more to technical problems such as, the registration should be cancelled when the child care centre has shut down or the person responsible for the operation discontinues operating the centre.

Part IV of CCCA covers the provisions on authorized officers. Under Section 14, the Director General and the authorized officer of SWD may do an inspection on

the child care centres. This is to ensure that the certain conditions are well observed such as the health of the children and the workers, and the organization of the administration and managements tools. The inspection may also be done to ensure that the equipment available is adequate and suitable, the cleanness is well-preserved, and adequate fire safety precautions are taken. This Section stipulates that the inspection may be done to *'any premises used for the purposes of a child care centre'*. Therefore, the question is, are unregistered child care centres are within the ambit of this Section?

Specifically for illegal child care centres, Section 20 gives power to the Director General or officers to enter the premise upon reasonable suspicion that the premise operates a child care centre without registration. The inspection may also be done if there are reasonable grounds that there are violations of provisions under CCCA 1984 taking place. During the inspection, necessary inquiry may be made, and questions posed regarding the management of the centre must be answered truthfully and if required, any records should be produced to the officers. These records may also be seized if necessary. However, any person may refuse to cooperate with the demands of the officer if the officer fails to produce any letter of authorization. This Section therefore underlines what can be done at the time of inspection from questioning, to demanding records, to the extent of seizing the necessary records. Thus, it is clear that this Section gives power to the authority to inspect the unregistered child care centres. However, it is unclear to what extent the inspection can be done and the positive outcomes from the inspection. Besides that, it also cannot be known with certainty, if this will encourage the child care operators to register the centre. It appears that the inspection of unregistered child care centres may not be regularly done, except in cases where there is complaint (Hamdan, 2011).

The difference between Section 14 and 20 is that Section 20 focuses on the premises which do not have a licence and also focuses on whether there has been any infringement of the Act. On the other hand, Section 14 confers power to the authorities to inspect and to ensure that safety and health measures are carefully observed by the child care centres.

Another enforcement power often used by the authority in Malaysia is the issuance of written directions as can be seen in Section 15. These written directions are aimed to ensure that the centre is well managed, the welfare of the children is well taken care of and that fire precaution settings are maintained. Section 15 (1) (d) makes a blanket provision to allow written directions to be issued in ensuring the operators comply with the provisions of CCCA 1984. It is worth to note that there is specific period of time determined in the written directions for the directions to be followed. Therefore, it is not merely directions without any follow up enforcement. Nevertheless, the enforcement of the written directions after their issuance need commitment from the enforcement unit or authorized officers. They can do this by doing follow ups, and ensure that the directions have been successfully fulfilled. Failure to comply with the directions in the specified time may result in temporary closures as can be seen in Section 16 (1) (b).

When incidents such as maltreatment or negligence involving children in child care centres are reported, one of the quick responsive measures that can be taken is to temporarily close the centre as empowered by the Act in Section 16. This is in line with Section 16 (1) (a) which states that the Director General may temporary close the centre when there is a danger or risk of danger in the centre concerned.

There are a few selected offences mentioned specifically in the Act as stipulated under Section 17. The Act stipulates that it is an offence to operate a child care centre in a premise that is not specified in the certificate of registration. It is also an offence to make false statements, hinder the authorities from implementing their powers, and refuse to furnish records requested by authorities. It is also an offence to operate a centre in a name other than the name registered. Failure to comply with the order to close the centre temporarily is also an offence. Other than that, are failures to notify any changes, failures to display the certificate accordingly and failure to surrender the certificate of registration after the service of a child care centre has come to an end, are also considered as offences. These acts shall amount to an offence which is punishable with a fine not more than RM 10,000 or imprisonment not exceeding two years or both.

The other important power granted to the authorities is the power to seal as can be seen in Section 20A. While Section 20 confers the authority with the power to enter and inspect any premise which is reasonably believed to operate a child care centre without registration, Section 20A confers additional power to the authority to seal the premise when there is reasonable suspicion that the premise is used to operate a child care centre illegally. In order to remove the seal, the person in charge should produce the certificate of registration within 21 days. In the scenario where the person in charge is not able to produce the certificate, he will be given a court's order directing him to stop using the premise as a child care centre. It is interesting to note that there is a provision for the authorities where they are protected against any burdens from costs arising from the action of sealing the premises, unless any damage was done intentionally. Furthermore, the action of sealing does not act as a barrier from any prosecution to be initiated in future if necessary. However, it is argued that, although

the child care centre can be sealed, the authority cannot blacklist the same person from operating a new child care centre in future, as the license is issued by the local council (Hamdan, 2011). This may hamper the function of the legislation in deterring the same culprit from repeating the same offences in future.

This brings the discussion to the next power of enforcement which is the institution of prosecution. By or with the written consent of Public Prosecutor, a prosecution for an offence under CCCA 1984 can be initiated as stipulated under Section 21. It is clearly stated in Section 21 of CCCA 1984 that any institution of prosecution for an offence under CCCA 1984 should obtain consent from the Public Prosecutor. Therefore, it can be inferred that the cases can be criminal in nature, as the matters need approval from the Public Prosecutor.

Most of the abuse and negligence cases happening in child care centres are dealt under Section 31 (1) (a) of Child Act 2001. This Section stipulates that anyone who abuses, neglects, abandons or exposes or acts negligently causing an injury to the child physically or emotionally, may be fined for up to RM 50,000 or up to twenty years imprisonment or to both.

In a recent case in November 2016 there was an appeal from the child care operator to set aside the Sessions' Court order to pay RM 40, 3018.74 to the victim as compensation (Wahid, 2016). Nevertheless, the appeal was not allowed. The victim who was at that time three years old was severely burnt due to the negligence on the part of the Appellant. The victim needed to undergo surgeries and the parents had to bear the high treatment cost.

Another example is the case involving an infant who was badly injured to the extent that it caused causing bleeding in his brain and eyes (BERNAMA, 2015a). This

incident was reported on 24 February 2012, and the case was solved only in 2015. The child care operator was found guilty of violently shaking the baby. Nurul Shahidatul Afzan Zainal, 32, was sentenced to five years imprisonment by the Magistrate. On top of that, she was also ordered to pay compensation to the family of the child which amounted to RM40 000. Failure to pay the compensation shall result her being sentenced to another 12 months imprisonment. The deputy public prosecutor argued that heavier punishments should have been enforced on the accused, due to the severe injuries the victim suffered. The fact that the infant was just three months at the time of the incident should also carry weight as this involved a very vulnerable victim.

Before the amendment made, under Section 31 (1) (a) of CA 2001, a person who neglects, abandons, or exposes the child to abuse shall be liable to a fine not exceeding RM 20,000 or imprisonment up to ten years or both. The Deputy Minister of Women, Family and Community Development made a remark in the Parliament about there being a possibility for an amendment to be done on this provision, so as to put heavier punishments on to the abusers (Parliament, 2015). In July 2016, Child Act (Amendment) Bill 2015 has been gazetted, involving the amendment to Section 31 (1). The punishment has been increased to RM50,000 and maximum imprisonment has been increased from 10 to 20 years (Mahmood, 2016). The child registry containing criminal records of convicts of crimes against children has also been expanded. This allows the employers to screen the potential employees' criminal records before hiring them (BERNAMA, 2016b).

Moving on to other enforcement powers conferred to the authority, compounding offenders is also one of the powers often exercised. Compound may be made by the Director General with the consent of the Public Prosecutor and it should

not be exceeding 50 per cent of the maximum fine. Failure to pay the amount of the compound shall result in prosecution.

Section 21A highlights that, the Director General may offer payment of a compound for the person who is reasonably suspected to commit offences contravening CCCA 1984 and any regulations made under this Act. An offer to pay the compound is limited to not exceeding 50 per cent of the maximum amount of fine. This is a way to reduce cases being brought to the court. Therefore, this can avoid lengthy processes of prosecution and court procedures.

From here, it can be seen that there are several enforcement powers conferred to the authorities, such as the power to enter and inspect the premise, power to temporarily close the premise, power to seal, power to prosecute and power to compound offenders. Although powers are conferred to the Director General, there is still room for appeal to be made within thirty days from the day the person is notified as stipulated in Section 22. The appeal may be made to the Minister in writing and the Minister's decision shall be final and not to be brought up again in any court of law.

One of the significant improvements in the amendment done in 2007 was the increment of fine from RM 1,000 to RM 10,000 and the inclusion of imprisonment sanctions. Nevertheless, the rising cases of maltreatments happening in the country despite the heavier punishments imposed makes one wonder whether the sanction is not harsh enough to deter the act of abuse. This is an issue to be addressed by analysing whether there are alternative ways instead of increasing the sanction in order to handle abuse case. Additionally, perhaps the current sanctions need to be made stricter by increasing the monetary fine or imprisonment term. Other

punishments such as community service as adapted by Child Act 2001 may shed a new light.

The introduction of Child Act 2001 was one of the positive responses in the effort to promote the children's best interests in accordance with United Nations Convention on The Right of The Child (UNCRC) (Kahar & Mohd Zin, 2011). The act includes ill-treatment offences, neglect, abandonment or exposure of children to moral danger, usage of children as prostitutes or beggars, leaving children without reasonable supervision and unlawful transfer of possession, custody or control of children.

Although various efforts and measures were taken by the government to curb child abuse cases, children are still exposed to the danger of abuse, as can be seen from the increasing number of abuse cases through the years. According to statistics from SWD, from 2011-2013, 11, 378 abuse cases are reported (Parliament, 2014). From January to April 2014, 1430 abuse cases were reported (Mohd Zain, 2015). It is predicted that the number does not reflect the whole situation as presumably there are cases that are not reported to SWD.

It has been reported that from 2015 to June 2017, there have been 581 abuse cases involving children in child care centres (BERNAMA, 2017a). Out of these 581, 146 cases were reported in the period between early 2017 to June 2017. As commented by the former MWFCDC Minister, among the actions taken in 2017 were issuing written directives to 32 child care centres, sealing off seven child care centres, issuing compounds to 14 centres, ordering four premises to close temporarily, terminating registration of 52 child care centres and prosecuting two child care centres. She added that most of the cases involved unregistered child care centres and

child care providers who did not attend the pre-service course, the PERMATA Early Childhood Course.

It is claimed that the country's existing development plans and policies are not comprehensive to protect all children in Malaysia. Children who are at a high risk from family violence and heinous crimes within society are not well protected under the existing legal mechanism (Kahar & Mohd Zin, 2011).

Indeed, the birth of CA 2001 is a vital response in upholding child's best interests to be in conformity with the principles of UNCRC. However, it is asserted that there is still room for improvements for the Act to provide a better protection to the children (Mohd, 2007).

Moreover, the Act is claimed to be more victim-centred and does not have enough emphasis on family. It appears that, in Malaysia, the government interventions with regards to child protection are mainly through statutory provisions to protect children who have already been abused, maltreated, rather than adopting a more preventive approach (Ministry of Women Family and Community Development & UNICEF, 2013). The same goes to the protection provisions involving abuse cases in child care centres. Instead of being reactive to respond after the incidents have happened, it would be much better if a preventive approach is taken by strengthening the structural quality features of child care centres. This may be done by re-evaluating the structural features and regulatory standards contained in the laws and regulations regarding child care centres. The positive strategy of enforcement through consultation and technical guidance may also be an alternative in preventing more abuse and negligence cases.

Datin Paduka Chew Mei Fun in her speech in the launching of 'Jom Daftar' Campaign mentioned that before taking action against the unregistered child care centres, SWD will give advice and guidance on how to register the centres (Fun, 2016). The centres will also be given two weeks to prepare the documents for registration. However, if they still fail to register, a warning letter will be issued for up to three times before actions like sealing premises; compounds and charging them at the court are implemented. She added that in the legalization operation, until July 2016, it was found that there are 938 child care centres which failed to register their centres. Meanwhile, as far as registered child care centres are concerned, action has been taken against the non-adherence of the laws and regulations. Two centres had been sealed, two centres had been prosecuted in the court, three had been ordered to be temporarily closed and 39 centres' registration had been cancelled.

Internationally, looking at the practice of other countries such as United Kingdom, New Zealand, United States, Canada and Australia, child protection legislation gives more emphasis on preventive measures rather than reactive mechanisms once the child has experienced maltreatment or abuse. This is done through voluntary cooperation with parents and by adopting a more family-based approach (Ministry of Women Family and Community Development & UNICEF, 2013).

Looking at the data from the record of SWD in 11 states in Malaysia (Social Welfare Department, 2016) , most of the cases dealt by the enforcement unit of SWD are with regards to Section 6 and Section 12. Section 6 is on the prohibition of operating child care centres without registration. Section 12 is on the issue of cancellation of registration, though most of the cases involved were in Section 12 (d),

where the cancellation had to be done because the centres had ceased from operating anymore.

With regards to CCCR 2012, Regulations 14, 18 and 33 are often dealt by enforcement units. Regulation 14 is on qualifications of child care providers and registered child care providers, while Regulation 18 is on adult to child ratios and Regulation 33 is on cleanliness and safety equipment.

Therefore, it can be concluded that most of the problems are associated with both registration and terms of registration or regulatory standards like qualification of child care providers, ratio, health and safety, and physical environment features. Thus, there is a need to focus on these areas. These areas need to be improved, firstly to encourage compliance and progressively to move on to raising the standards so as to achieve high quality child care.

Furthermore, the enforcement units should focus on the features or legal requirements which are according to research and practices of developed countries are important in raising the quality of child care. They are adult to child ratio, qualification of child care providers including the training undergone by them, health and safety, physical environments, curriculum and group size and so on. From the observation of the data from SWD (Social Welfare Department, 2016), the enforcement unit of a state often focus on certain features to be inspected; for instance for Kelantan, most of the cases involved Regulation 18 and Regulation 14 with eight cases for each regulation, though other states have just one or two cases on this matter. Therefore, it is suggested for the enforcement unit to have more comprehensive inspections so as to cover other crucial aspects such as the minimum space of

premises which will determine the maximum number of children, the age entry of children to be from four years and below, the safety of outdoor play and so on.

Meanwhile, as to the legal action taken by the enforcement units, most of the actions taken fall under the type of issuance of written directions. Therefore, the effectiveness of the written directions may be examined as to find the most effective procedures before and after the issuance of written directions. Positive strategies such as technical assistance and educative materials may be of assistance to the child care operators in correcting any mistakes or in helping operators of child care centres to fulfil the essential requirements.

Other enforcement actions taken from the data prepared by SWD on states' enforcement action on child care centres include cancellation of the registration, orders for temporary closure, compounding and prosecuting in the court. Most of the cases involving prosecution in the court end up with sanctions of fine to the operators or imprisonment if they fail to pay the fines. Nevertheless, it is important to note that, there are not many states which have records on prosecution cases and there are only few cases recorded in some states. The highest numbers of cases are in Kuala Lumpur and Perak with six prosecuting cases each. Other states only recorded one or two cases. There is no prosecuted case reported in Johor and Kedah for the year 2016.

Therefore, from this enforcement record for the year 2016 by SWD, it can be inferred that there is a need to strengthen the enforcement part of the legislations. Apart from the examination on the punishments stipulated, the management of the licensing agency or SWD needs to be scrutinised. Perhaps it is high time for Malaysia to have a specific authority to manage the children, especially on improving the ECCE

sector. Having a specific, unified authority for the nation may resolve the issue of inconsistencies in the law enforcement between the state SWD and technical agencies.

## **2.5 Country Experiences on Child Care**

After examining the position in Malaysia, it is worth to trace the scenario of ECCE or child care centres internationally. This is for Malaysia to learn and realize the standard that Malaysia has right now, to find out whether it is up to the international standards or just touching the minimum standards.

Early child care and education may be defined differently according to many countries. Looking at the reports and work done by many organisations including the Organisation for Economic Co-operation and Development (OECD), the European Commission and others, ECCE can be defined as provisions prepared for children with regards to their education and care from zero years old to compulsory schooling. This is regardless of the types of services offered, curriculum prepared, funding system and other factors. This is the definition adopted in the report by Scottish Government on their report on Early Childhood Education and Care Provision: International Review of Policy, Delivery and Funding Final Report (Scottish Government, 2013).

There are many categories of child care services available across the world. There are formal and informal non-parental ECCE. Formal ECCE according to OECD are the services organised by the government and are regulated by the laws. Meanwhile, informal ECCE services are often unregulated settings arranged independently by the parents such as services by relatives, friends, nannies and babysitters (Scottish Government, 2013).

Experiences from other countries are scrutinised here in order to take lessons from the policies adopted by these countries. Looking into ECCE in the prisms of international perspectives will assist Malaysia in improving and developing the Malaysian ECCE, specifically on laws and regulations.

### **2.5.1 International Comparisons: Is It Workable?**

Comparisons and examples or studies conducted in other countries may be taken as guidance. However, direct comparisons may not be suitable in ascertaining the level of quality between countries. This is because the philosophies of childcare in different countries are differently laid out. Therefore factors such as localities should be first scrutinised in order to make any comparisons. For instance, although United Kingdom and Denmark stipulate similar ratio for children below three years old, direct comparisons cannot be made as UK perceives quality, training and payment of workers differently than Denmark (Munton et al., 2002).

Most of the research on childcare has been done in the United States of America (USA). Therefore, can adequate comparisons to USA be made? Munton et al. (2002) were of the opinion that, as far as UK is concerned, UK and USA have a similar philosophy regarding childcare which is attachment theory. What is meant by attachment theory is that, children should be provided with maternal care. Therefore, in non-parental care, the care should be comparable to that of a mother caring for her child.

Furthermore, the markets of childcare in both countries are dominated by the private sector, and staffing systems are segregated according to childcare and pre-school, unlike most of the countries in mainland Europe, where the early year settings

are mostly integrated and the dominant players are the public sector. Therefore, ratios in private driven markets are meant to regulate the services while in countries dominated by the public sector, ratios are mainly to see whether the child care settings comply with the requirements of public funding (Munton et al., 2002).

It is concluded therefore, that the USA led research shall be relevant to UK childcare for three main similarities which are similar attachment philosophy for child care settings to replace maternal care, private market driven systems and non-integrated system of governance of segregation between child care and pre-school settings.

The situation in Malaysia could also share some similarities with UK and the USA. Malaysia too has similar underlying philosophy that childcare is more to child rearing and custody replacing maternal care when parents are out for work. Besides that, although we have public child care settings, the child care settings in Malaysia are driven by private sector too, like UK and the USA. Malaysia too has a split system differentiating child care under the auspice of MWFCDC and kindergarten under Ministry of Education. Therefore, the studies led by international researchers are helpful for Malaysia to improve the quality of child care through legislative efforts.

In addition, in making comparisons between countries, it is advisable to choose countries which have recently reviewed their legislations (Early Childhood National Centers, 2017). Thus, international references are made in this study benchmarking the practices of other countries such as Australia and Singapore which have just introduced their new legislations pertaining to child care.

Internationally, there are multiple types of regulatory regimes on child care regulations. In a comparative study evaluating four industrialized countries (Gormley,

2000); it was found that France and Germany regulatory regimes are provider focused. This means that the regulations in these countries give more attention to ensure that the child care providers are fit and proper for the job and have good qualifications. In other words, the regulations highly stress on the education and training of child care providers.

Meanwhile, Sweden is more child-focused where the welfare of the children is always the priority. Sweden also has strict regulations on ratio and high requirements for qualification of child care providers in order for the child to get adequate care and attention from the child care providers. United States on the other hand, is described as having a regulatory regime which is more facility focused, stressing more on regulations pertaining to health and safety and physical environments (Gormley, 2000).

This practise of the regime can be seen in the list of one of the wide-used standards in USA which are the 13 main indicators of child care regulations developed by Fiene (2002). Eight of the indicators focus on the health, safety and physical environments of the child care centres. They are, child abuse reporting and clearances, proper immunizations, fire drills, administration of medication, emergency plan and contact, outdoor playground safety, inaccessibility of toxic substances, and hand washing and diapering.

These 13 indicators were developed initially from the shortened assistance tool, 'Stepping Stones to Using Caring for Our Children', which reduced the number of the complete version of the comprehensive documents containing 900 standards, which is Caring for our Children; National Health and Safety Performance Standards for Out-of-Home Child Care. It is claimed that, these standards though focusing on

health and safety, are not just meant to protect the children from harm and hazards, but also to assist in providing positive outcomes to them. It is also interesting to note that these standards are proven statistically to indicate overall compliance with the child care regulations.

Fiene (2002), in highlighting these standards, made a remark that it is not more or less regulations that matter, but indicators that may give the most impact and indicate overall compliance, that are more vital. Therefore, there is a need to determine the standards that Malaysia should be focusing on, in setting up a balance between raising up the bar of minimum standards and encouraging registration and compliance by the child care operators.

In the effort to determine the standards, lessons from international experiences should be guidance for Malaysia. Discussion on the overview of child care settings in selected countries are done in next part of this chapter.

### **2.5.2 The United States of America (USA)**

Child Care in United States of America is an example of a maximum private responsibility model of child care where child care settings are dominated by private sectors. This is also the case for United Kingdom. The goals of child care in the countries which practice this model are inter alia to assist the low income families and children at risk of physical abuse or neglect with the proper child care settings. Besides that, it is to encourage more participation of private sectors and voluntary services. These countries therefore often set minimum standards in ensuring quality child care (Goulet, 1986).

The government's role in the USA child care system is to provide funding to the states for the needs of low-income families and child care services which need special treatments. Besides that, the government took the initiative to initiate tax relief to individuals who use child care services in private sectors to lessen the burden for child care cost (Goulet, 1986).

In addition, it is asserted that the cost of child care in United States is high. Findings indicate that the average amount spent on child care may be more than the average amount spent on food. The cost may also exceed the cost for tuition and public university annual fees (Whiteford, 2015). Furthermore, it is reported that the cost of child care in United States is the third highest amongst the OECD countries (Hamm & Martin, 2015). There are initiatives taken in providing affordable child care especially towards low income families such as Child Care Development Block Grant and Child and Dependent Care Tax Credit. However, these financial aids only benefit a small percentage of the families. Additionally, United States spends low on public funds according to international standards, where only 1per cent of the national budget is allocated for child care while other OECD countries mostly spend from 2per cent to 7per cent (Hamm & Martin, 2015).

One of the significant studies on child care in the United States, especially for children below 3 years old, is the National Institute of Child Health and Human Development (NICHD) Early Child Care Study of Early Child Care. This study involved nine states namely Arkansas, California, Kansas, Massachusetts North Carolina, Pennsylvania, Virginia, Washington, and Wisconsin. As the regulations in the United States vary between states, this study portrays the variations of child care regulations in United States (Vandell & Wolfe, 2000). From the data compiled by the

Centre for Career Development in Early Care and Education, it appears that many states have very loose regulations which are not up to the standard as recommended by professional organizations. For instance, for the recommended adult child ratio, only 3 states regulate 3:1 ratio for infants. Meanwhile, for 18 month olds, only one state has the suggested 3:1 ratio and for 3 year olds, only two states practise 5:1 ratio (Vandell & Wolfe, 2000).

Other proofs showing that United States has low standards of structural quality can be observed through the national representative surveys. The results from the survey conducted by The Profile of Child Care Settings indicate that on average, child care centres and home child care did not practise the recommended adult to child ratio. Meanwhile, in terms of educational background and training of child minders, in 1990 it was a positive trend. Almost 50 per cent of them had a college qualification and 90 per cent had been trained for at least 10 hours. Nevertheless, NICHD study reports that the percentage of educated and trained child minders has been decreasing recently. From 90 per cent, the recent data shows that slightly over half of the child minders had undergone specialized training and that two thirds had more than high school qualifications. It is claimed that this decreasing trend may be due to poor wages offered to child minders in 1990s (Vandell & Wolfe, 2000). It was reported that a child care worker would only get \$19,430 for the median annual wages which was less than the salary of a parking lot attendant or a janitor (Cohn, 2014)

Looking at the quality of child care services in United States from the prism of maltreatment cases, fatal cases involving children are uncommon, but not as uncommon as they should be. It was reported that there were 45 fatal cases between 2007 and 2010. Furthermore, violations of the regulations may not always result in the

closure of child care centres. In a decided case, the child care centres were only instructed to be shut down after repeated violations for more than two years (Cohn, 2014). Besides that, it is criticised that many cases brought to the court asking for the court to instruct for the closure of the child care centres failed, as the court was not satisfied with the reasons unless it involved death.

An overall evaluation of the United States child care quality portrays that efforts must be made in improving the areas of concern. On average, the process aspect of quality child care in United States is only at a fair level, or only meets minimum standards (Vandell & Wolfe, 2000), and even that is claimed to be mostly mediocre to poor (Hamm & Martin, 2015). Meanwhile, for structural quality, some states still fail to practise the recommended group size and adult to child ratio. In terms of child minders' education and background, as mentioned above, there was a declining trend compared to that in the 1990s. Therefore, some improvements are needed. For instance a higher standard can be defined and implemented federally or through state legislation (Vandell & Wolfe, 2000).

The recent development in child care in the United States is the introduction of new child care legislation, the "Child Care Access to Resources for Early Learning Act of 2016" (The Child C.A.R.E. Act) in the US Congress. This act mainly legislates measures mainly on funding, in assisting families to obtain high quality child care (Nichols, 2016). This bill is meant to amend the Social Security Act with regards to mandatory funding. This Bill aims to assist low income families with infants and toddlers who have not more than 200 per cent of the applicable Federal poverty guideline.

Looking at the performance of child care settings in the USA, it may not be the best example of country experience for Malaysia to follow. Nevertheless, ample research and studies done by the USA researchers should be valuable guidance for Malaysia.

### **2.5.3 The United Kingdom (UK)**

The UK child care did not portray a praiseworthy performance prior to 1998, when it was recorded to have obtained a low ranking in the European Union child care services league tables. Nevertheless, after a small revolution with £21 billion of investment in 1996-2007, the provision of child care in UK showed significant improvement. The child care services grew almost double in impact from 1997 to 2007, from the first National Childcare Strategy (Taylor, 2012). Subsidy assistance to parents is available to families through the Childcare Tax Credit Systems. The launch of Sure Start Programme was also significant in the landscape of UK child care involving low-income families with children aged three and below. However, the coverage was not wide enough, and it covered only about 30 per cent of the low-income families. The Employment Act 2012 moreover, regulated paid paternity and adoption, expanded the maternity leave and pay and facilitated the right for parents to request for flexible working hours. In addition, in 2012, a Childcare Commission was established in the effort to reduce the cost of child care and expand its accessibility.

Similar to the United States, United Kingdom practises maximum private responsibility in child care (Goulet, 1986). This means that most of the child care services are run by private sectors or not-for-profit sectors. Child care services available in UK consist of formal settings such as nurseries, playgroups, children or

family centres and child minding. When the children are arranged to be taken care by the relatives, friends or neighbours, these settings are known as informal child care. The UK settings of ECCE are a mixture of public and private provisions where the care of younger children is almost arranged by private sectors. Public services meanwhile are often available to those aged three and above, and compulsory schooling starts at five years (Scottish Government, 2013).

The Childcare Act 2006 highlights the obligation for local authorities to prepare sufficient child care to accommodate children with working parents up until they are 14 years old. However, as mentioned above that UK practises maximum private responsibility, and due to this, local authorities will only provide child care when there is none from the private or not-for-profit sectors available. In fulfilling this obligation, local authorities have to undergo child care sufficiency assessments every year to audit whether there is sufficient place for child care for children from various backgrounds such as disabled children, children with parents working for irregular hours and so on (Rutter, 2016).

With regards to the amount spent on child care and early education, although not as much as Sweden or Denmark, UK spent in 2011, 1.1 per cent of its GDP, which surpasses the average percentage in OECD countries which is 0.8 per cent (Javornik & Ingold, 2014). It was predicted however, that UK would spend more in 2017, up to approximately £7.5 billion (Rutter, 2016). Part time free early education is available to all three and four year old children. In 2017 however, half of this group of children would receive double free hours of free early education up to 1140 hours annually. This was in accordance to the Childcare Bill 2016 (Rutter, 2016).

It has been said that child care in UK is costly. It was recorded that the cost of part-time nursery caring for a child under two was £116.77 per week in Britain, or £6,072 per year which had increased by 1.1per cent compared to 2015. Meanwhile, the fee for a child minder was £104.27 per week increasing from £104.06 the previous year. The fees were expected to decrease for older children where for children aged two years and above, the fees are 4.2per cent lower than those under two years old (Rutter, 2016).

Hence, UK has proven that the efforts made in reforming the sector shall be fruitful. Despite the issues of high cost, the positive developments since the introduction of the Childcare strategy are worth giving attention to. The increasing amount spent by UK for this sector should also be exemplified by Malaysia in materializing the efforts in improving the quality of child care sectors in Malaysia.

#### 2.5.4 Sweden

*“If I were to be a child again, I would like to be raised in Sweden”*. This was the remark made by one of the researchers in OECD investigation group describing the high quality of Early Childhood Education and Care in Sweden. The conclusion made by the researchers in their report in December 1999 was that Sweden had high quality ECCE and scored the best in many areas concerned (Engdahl, 2005). On top of that, although Finland is known for having the best education in the world, Sweden meanwhile leads the world in early childhood education and care with the system they named as EDUCARE. It is suggested that for a country to make a reform in ECCE, a model from Sweden can be adapted (Nilsson, Ferholt, & Alnervik, 2015).

As opposed to United States and United Kingdom, Sweden practises the model of maximum public responsibility where the government and parents share the responsibility to provide children with quality child care. In Sweden, the private sectors only cover 10 per cent to 20 per cent of child care centres which must get approval from the authorities (Goulet, 1986).

With regards to family policy, amongst EU countries, Sweden had the largest percentage of female employment at 73.1 per cent recorded in 2014. Furthermore, Swedish mothers who have children below six score the third highest employment rate in European Union. Besides that, the policy on parental leaves in Sweden is also admirable as Sweden provides up to eight months of paid leave for each child. In addition, Sweden also allocates considerable amount of the country's GDP on children and families which is approximately 3.2 per cent of the GDP. This percentage is one of the highest among EU countries which on average spend 2.4 per cent of GDP (European Union, 2016).

Moreover, all children in Sweden are entitled for a place in public child care. Children aged three to six years old in Sweden are also entitled for free pre-school. The right to child care moreover covers those parents who are unemployed and parents on parental leaves (European Commission, 2009). The fees for child care will depend on the income of the parents and the number of children they have. In short, there is large amount of subsidy prepared to cover fees for child care. Consequently, the rate of enrolment of formal child care in Sweden reaches the targets set by EU Barcelona target which is 55 per cent for children under three and 96 per cent for children from three to six years old. The average score in EU is 27 per cent for

children under three and 82 per cent for children between three to six years old (European Union, 2016).

On top of that, the UNICEF Report Card 8 ranks Sweden the first in the league table of early childhood education and care in economically advanced countries complying all the 10 indicators (United Nations Children's Fund (UNICEF) Innocenti Research Center, 2008). Nevertheless, NGOs in Sweden criticized Sweden's child care system so as to discourage home schooling. It was claimed that the system leads to emotional poverty where children are detached from their parents for large amounts of time at a very young age. They advocated for parents to stay with children until they are 4 to 6 years old (Ruxton, 2011).

The performance of ECCE in Sweden therefore, is the best compared to other countries. Nevertheless, as Sweden practises the maximum public responsibility model of child care, this model of ECCE may not be followed by Malaysia. Malaysia has not yet achieved the status where education is provided by the government without the hustle for the parents to find private sectors especially for child care centres. Nevertheless, the practise of high attention given to this sector by Sweden government may be a lesson for Malaysia to realize that investing in children is a sound investment in building a better nation for the future.

#### **2.5.5 Australia**

It is estimated by the Australian Bureau of Statistics that approximately 919,400 children aged 0-12 years in Australia attended formal child care (Sheppard, 2015). There are a few types of child care services available in Australia. Amongst them are long day care which caters children of 0-6 years, family day care where the children are placed in the providers' house, in-home care provided by educator in the

children's home, outside school hours care which cater school children before or after school and during school holidays, and lastly occasional care, a centre-based service where parents sought to look after their children when there is a need due to unexpected events such as the parents having to work for extra hours and so on. It is reported that most of the children aged 0-6 years old attended Long Day Care. Up until 31 March 2015, there are 14,827 licensed Early Childhood Education and Care (ECCE) services as stated in The National Quality Framework Quarterly Snapshot 2015 and all these services are qualified to receive Australian Government's Child Care Benefit payment.

As far as the legislative framework of Australia is concerned, there are three main issues for Australian ECCE which are, the existing policies and regulations are fragmented and thus resulting in bias, low amount spent by the government for child care compared to other countries, and the heavy dependency on markets and market mechanisms for child care services (Logan, Sumsion, & Press, 2015).

Thus, starting from 1 January 2012, Australia experienced a reform of national quality standards for Early Childhood Care and Education. The reform was done through National Partnership Agreement on National Quality Agenda for ECCE. Amongst the aspects touched in the reform was the staff child ratio and training for child minders (Australian Children's Education and Care Quality Authority, 2016). In the process of reform, Australia utilised international research which prove the constructive effects of ECCE towards children growth and development ECCE (OECD, 2012b). Experiences from other countries were scrutinised in improving the regulations and standards of Australia's.

Australia enacted the Child Care Act 1972 as the root legislation on child care, especially on the government support provision. The quality of child care standards in Australia shows a good trend especially after the implementation of Quality Improvement Accreditation System (QIAS). It is asserted that Australia was the first country in the world pioneering the compulsory QIAS through legislation and regulation (Whiteford, 2015). Although the impact has not yet reached those child care centres which have not been accredited, the increasing quality of Australia child care standards are worth to be noted. As mentioned above, the reform which was launched on January 2012 marked a significant progress on Australia's ECCE. The new National Quality Framework was set up replacing the existing legislations, and it set new benchmarks on child care standards in Australia. This National Quality Framework regulates all formal child care arrangements in Australia. A new legislative framework, a new national quality standard, new national quality rating system and assessment as well as a new national body and The Australian Children's Education and Care Quality Authority (ACECQA) were amongst the products of the reform. Overall, it can be regarded as a model of child care quality which was first to be created not just in Australia but also internationally. However, this reform process is on-going where some of the requirements concerned, such as staff child ratio shall be implemented gradually until 2020. Therefore, overall assessment cannot be made in certain aspects which involve a longer time frame.

National Quality Framework encompasses wide scope of children services to include long day care, family day care, preschool/kindergarten, and outside school hour's care. Amongst the important components of National Quality Framework are the National Law consisting of Education and Care Services and National Regulations. The legislation is to enforce the National Quality Standard under the

administration of territory regulatory authorities. Besides that, ACECQA will also guide the enforcement process of the legislations.

This framework is created to allow the whole country to have a standardized and consistent national approach on laws and regulations of education and care services. In fact, it incorporates the element of improving quality through this approach. The focus of the law is mainly to improve the quality of education and care services in Australia. Besides that, this is an attempt to make the services friendlier, not to be burdened by procedural regulatory requirements.

The National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care was launched in December 2009. Through this, National Quality Framework was established. One of the features in the framework is the development of Acts and Regulations comprising the National Quality Standard. There are seven quality areas highlighted in the National Quality Standard which are, educational programme and practice, children's health and safety, physical environment, staffing arrangements, relationships with children, collaborative partnerships with families and communities and leadership and service management.

Besides having regulatory authorities in each jurisdiction, ACECQA were established in order to manage the application of the national quality standards. The national law which was first passed by Victoria and later adopted by other states and territories is the mechanism to have national approach in legislating and quality assessment of education and care services. The national regulations lay down the operational requirements including the assessment and rating process (Early Childhood Resource Hub, 2013).

One important lesson that can be learnt is that although NQF has been launched since the year 2013, consultations are still carried out in order to repair loopholes if any, when the framework has been implemented. Another lesson to be observed is that, there is willingness to remove the red tape in the implementation of the framework, in order to ensure that the desired outcome of having quality educational and care services will not be hindered by excessive bureaucracies in adhering to the laws and regulations.

Thus, the child care legislative development in Australia is worth to be scrutinised in order for Malaysia to learn lessons from their efforts in enhancing quality of Australian child care settings.

#### **2.5.6 Singapore**

Singapore, although small in size with only 5.54 million residents as of 2015, performs well as a developed country in South East Asia. Singapore gives much attention to human building especially on the education sector as people are the only natural resource Singapore has (Tan, 2007).

Pre-school in Singapore comprises of two sectors which are child care sector and kindergarten sector. Child care sector is governed previously under the Ministry of Community Development, Youth and Sports (MCYS) focusing on the services for infants as early as two months to two years old. Meanwhile kindergartens are under the auspices of Ministry of Education, which is in charge of care and education for children aged four to six years old (Tan, 2007). Therefore, it can be seen here that there is an overlapping or split and parallel system practised in Singapore as both sectors are providing care and education for children (Choo, 2010).

Singapore today has shown tremendous performance in education. For instance, it is amongst the few countries in the world which has high literacy percentage with 97per centper cent literacy rate in 2016 for residents above 15 years old (Department of Statistics Singapore, 2017). In addition to that, Singaporean school children perform remarkably well, especially in their secondary mathematics and science (Zhang, 2015).

The Singapore Child Care Centres Act 1988 basically highlights the requirements for licensing including health, nutrition, safety, teachers' qualification, and ratio. To catch up to the rising demand of child care, the child care centres industry has been expanding. Thus, there is a problem with the numbers and availability of trained teachers. In addition, as the teachers are often not being recognized as professional educators, the issue of wage arises. Many of them quit and find other better paid jobs (Choo, 2010).

Early childhood in Singapore is observed by an agency which is The Early Childhood Development Agency (ECDA). It is an agency under the supervision of Ministry of Social and Family Development. Besides that, Ministry of Education also jointly oversees this agency. The interesting point on the authority in Singapore is that ECDA is an autonomous agency and they are the regulatory body in charge of the developmental progress of the early childhood services in Singapore. This agency was just launched few years back in April 2013.

Discussing on the reforms made by Singapore, it is interesting to note that the introduction of Early Childhood Development Act 2017 is a crucial move made in raising the quality of early childhood development in this country. Tan Chuan Jin, the

Singapore Minister for Social and Family Development made an interesting remark on regulatory standards when he stated that

*'Regulatory standards underpin the foundation of a good quality pre-school, much like the stacking ring toy that we played with when we were young, and is commonly found in pre-schools to develop a child's fine motor skills. It is a classic toy, with a cone, and rings in different sizes and colours, and the biggest ring goes in first to form a sturdy base'.*

The shifting from merely child care centres to early childhood development centres is seen as significant in the effort to develop the children's potential and not merely for babysitting or custody. To make it clear, the differences in the purpose of the legislation can be seen, where the previous one merely highlighted on the control, licensing and inspection of child care centres. Meanwhile, the purpose of the Act is further explained in Section 4 to regulate the operation of early childhood development centres in order to fulfil two aims. First among these, is to provide better protection to the children and secondly, to encourage continuous improvement in the quality of the services offered to the children.

Amongst the key points of the new legislation is that firstly, kindergartens will have to renew their licences regularly, similar to child care centres. Before this, kindergartens needed to only register once and there was no requirement to renew licences. In the new legislation, the licences shall be valid for three years. Secondly, previously the authority was just able inspect and collect relevant documents about the centres. The new legislation expands their power to include interviewing people concerned, taking photos, videos or even audio recordings at the centres so as to collect proof.

Thirdly, the punishment for any violation of the legislation has been increased to \$10,000 and imprisonment up to one year. Besides that, regulatory sanctions are introduced. Therefore, the authority has the discretion in determining the penalties imposed to include fines up to \$5,000, shorten the lifespan of the licence and public censures. Additionally, any violations of administration duties will not be counted as criminal offences.

Problems arise when the centres stop their services without giving due notices to the parents. Therefore, new legislation includes the power of the authority to order the centres to provide advanced notice to the parents and to stop receiving new children to the centres.

It is interesting to note that the Minister made a point which stated that in order to avoid the increase of cost in implementing the new law, there were no additional requirements in the legislation with regards to space for the child and adult to child ratio. The lifespan of the licence has also been extended from two to three years in order to ease things for the child care centres, a decision which has performed well in their regulatory track records. Somehow, administrative costs would be reduced.

Before the passing of the Act, a public consultation was made by ECDA. This consultation invites members of the public to give feedback and comments on the proposed early childhood development centres' regulatory framework. The aim, scope and proposals are briefly explained in the public consultation document. The feedback can then be sent to ECDA through email or by mail. From the public consultations, the ECDA expect feedback on the proposals that the public agree on and if further clarifications were needed on any of them. Besides that, the public consultation also

opens the floor for any suggestions on any proposal that should be added or modified out of the proposed regulatory framework.

In the reading of the Bill of the Act in the parliament, there were some debates from the members of the parliament. Amongst them was on the manpower, especially the teachers. There were recommendations made on the issue of qualification. Besides paper qualifications, the staff should be considered as fit and proper, depending on the experiences the person has. This is recognised by ECDA when the teachers or infant educators apply for training courses. In addition, participation of professional bodies is also stressed in the process of registration and accreditation. Tan in responding to this issue highlighted that current experts from early childhood professional representatives are invited to provide their views and opinions in the registration of teachers and course accreditation standards.

On the issue of curriculum, Tan highlighted that the Act allows for the flexibility for centres to innovate and customise their curriculum. A reference can be made to the Ministry of Education's Nurturing Early Learners Curriculum Framework; and for child care centres catering to children of three years and below, ECDA's Early Years Development Framework is available.

Meanwhile, on nutritional diet for the children, ECDA is expected to give detailed requirements in future, such as not allowing unhealthy food like deep-fried snacks. Additionally, recreational or outdoor activities will also be underlined as a requirement, to be increased to one hour for full-day programmes.

Other concerns put forward by the members of Parliament are on the possibility of cost increment and administrative burden. It was highlighted that field-testing has been done by ECDA on various types of centres. In addition to this, the

expansion of license tenures from two to three years is one of the measures to cut the administrative burden as well as to track whether the centre keeps adherence to the regulatory standards underlined by the laws. Centres which do not reach the satisfactory level will be audited in an effort to lend them a hand in improving their quality and standards.

It is interesting to note too that in an effort to avoid increasing costs, non-teaching staff or the operational support staff can supervise the outdoor sessions, and neighbourhood playgrounds are allowed to be used and considered as a suitable outdoor space replacement.

To conclude, the Act cannot stand alone in improving the quality of early childhood development centre. However, the Act forms the sturdy foundation in complementing other efforts taken by the Government to enhance not just the quality, but also accessibility and affordability of early childhood development in Singapore.

The developments made in Singapore are a good example for Malaysia, to look at the positive developments of the sector and to uphold ECCE not just for matters of custody. Furthermore, the introduction of a new Act with the consideration of putting emphasis on the most impacted features of quality in regulating new laws and regulations should be followed. Reforming and improving new improvised laws should avoid increasing the administrative costs, else it will usually result in more cases of unregistered child care centres, and their non-adherences to the laws and regulations.

Singapore is seen as a good country to compare with looking at the similarity of the legal systems of Malaysia and Singapore. The similarity on common law, legal tradition and geographical context makes Singapore a comparable subject as it may

have similar problems, challenges and considerations in constructing their laws on child care centres. Therefore, it would be more relevant and useful for Malaysia to learn lessons from Singapore's experiences and discussions as opposed to those of other countries such as Scandinavian countries where the legal system, the geographical context and legal tradition are very different from Malaysia.

Additionally, as Singapore uses English as its medium in terms of its legislation, parliamentary discussions and academic analysis, this makes it more accessible and suitable than other countries that do not use English as the primary language. On top of that, compared to other legislations, before the introduction of new bills, Singapore used similar naming conventions of legislation as Malaysia i.e. Child Care Centre Act. Therefore, the experience of Singapore reforming their laws especially by repealing the Child Care Centre Act is seen as valuable milestone to be exemplified by Malaysia.

## **2.6 Concluding Remarks**

Although there are existing legislations on child care centres regulating child care centres in Malaysia, there is still room for numerous improvements. CCCA 1984 for instance, which focuses more on procedural matters, should be moulded to put safety and welfare of the children as the primary aim.

The loopholes identified in Malaysian laws and regulations, especially on the part of the aim and purpose of the statutes themselves, should be examined further to expand the functions of laws and regulations especially CCCA 1984 and CCCR 2012, to cater to the protection as well as developmental growth of the children.

Furthermore, the issue of registration also needs further scrutiny. The problem of illegal child care centres hiring unqualified child care providers is one of the issues that needs to be tackled by the laws and regulations. The improved version of the laws is not just meant to be a reactive tool offering remedies, but should also include preventive measures in avoiding undesirable events from occurring again in future. The definition of child care too needs to be broadened in terms of its scope to ensure that more children placed in non-parental care are guaranteed their safety and education. Besides that, the tedious process of registration which acts as a hindrance for the operators from registering their centres should also be lifted by having a more systematic process and a specific agency managing child care centres affairs. The enforcement issue also needs examination, in order to upgrade the enforcing efforts to ensure that the centres adhere to and follow the laws and regulations properly. The weaknesses in inspection and enforcement too should be taken into consideration as a good legislation will not be effective without effective implementation.

Moreover, the absence of certain important features such as group size of the children in one child care centre and the provisions on child care protection from misconducts of child care providers should be carefully analysed to consider whether these features should be inserted into the current legislation.

Things are looking positive and hopeful as it is reported that the Ministry of Women, Family and Community Development is in its final stages in data collection to amend the current regulations so as to propose a holistic solution of the issues in child care centres (Yun, 2016). Task Force Ramping Up The Early Childhood Care and Education Industry which is led by Datin Paduka Chew Mei Fun aims to discuss on measures to upgrade the quality of child care services by providing affordable and

accessible services to all parents (Fun, 2016). It is hoped that a brighter future may be carved for the industry for the sake of the children and the future of the nation.

Besides tracing loopholes of Malaysian laws and regulations, the best practices in the international arena may be guidance for Malaysia to learn lessons from, in reforming and improving Malaysian laws and regulations on child care centres.

From the practises implemented by other countries, it should be evaluated whether international comparison is workable. It is emphasized that in analysing the quality of child care, the locality aspect should always be considered as standards and suitability of quality child care may differ between countries (Whiteford, 2015). Furthermore, as child care settings should be seen contextually, there are varying practices amongst the countries as they practise different values, understandings, and philosophies on child care. However, comparative studies between countries might be helpful when the experiences and perspectives of other countries may open the paradigms of the policy makers and law makers to new things that have not been previously considered in their child care system. Therefore, it is not the issue of questioning whether country A is better than country B, but the question that should be raised is why do differences exist in the child care practices, policies and regulations between the countries (Munton et al., 2002).

According to the ranking on early childhood care and education made by the Economist Intelligence Unit (EIU) in 2012, Report Card 8 by UNICEF in 2008, Nordic countries always lead the league. That is why the Scandinavian system has always been seen as a good model to be learnt by others. Nevertheless, the nature of Scandinavian system which has vast differences to Malaysia especially the practice of

public driven market of child care makes Scandinavian system not the best model for Malaysia to follow.

Meanwhile, United Kingdom specifically was ranked the fourth in the index ranking by EIU and achieved five out of ten benchmarks in the Report Card 8 by UNICEF. United States of America, although not obtaining a good rank in the EIU index ranking and UNICEF Report Card 8, has extensive existing and on-going research and studies in developing their ECCE system especially with the introduction of C.A.R.E 2016 Act. Therefore, there are lessons that can be learnt from these countries despite the overall performance rankings by international bodies.

Moreover, although it is hard to make direct comparisons between countries as their theories and practices are different, there are still vital common features that they share. For example, some reviews and researches in United Kingdom such as Research on Ratios, Group Size, and Staff Qualifications and Trainings in Early Years and Child Care Settings, Munton et al. (2002) took US as comparison due to the relevant research done in US. Besides that, UK and US share the same fundamental philosophy of attachment pedagogy, attachment theory; and both practise maximum private responsibility model of child care. However, comparisons between UK and other mainland Europe countries may not be suitable as the philosophies are different and their characteristic of child care settings are different, which practice maximum public responsibility (Munton et al., 2002).

Looking at United States and Australia, their policy regime is different in terms of legislative and regulatory aspect. The regulation across states in United States are diverse while in Australia, although there are differences between regulations between states in Australia, there are overall standards set under the agreement of

states and Commonwealth government. Therefore, in adapting findings and results from the research done in United States, extra caution should be made considering the national and local context. This is also the case for Malaysia as Malaysia regulates child care sector federally under Child Care Centre Act 1984. Furthermore, experiences from Korea and New Zealand can be scrutinised where these countries preserve and take into account their local values and cultures (Economist Intelligence Unit & Lien Foundation, 2012).

Moreover, the successes of Australia and Singapore for instance, in reforming their ECCE sectors by having examples from the research and practices done in other countries may shed a light for Malaysia in pacing the efforts in improving and reforming the Malaysian ECCE sector, specifically in improving the laws and regulations on child care centres in Malaysia.

Additionally, the practice on how these structural features are legislated should be employed and benchmarked from the developed countries which have just made their reform in their child care centres law. For Australia, the National Quality Framework is a comprehensive framework consisting of the national quality standards and secondly the national legislative framework. This is a good model of improving quality efforts which covers quality aspects as well as legislative aspects. Moreover, the experts in Malaysia for example Datuk Dr. Chiam, the Founding President of ECCE Council, who is known as a leading expert in early childhood care and education, also highlighted Australia Quality Framework as a model that should be given attention to by Malaysia as an example (Chiam, 2012). A recent study made by UNITAR for SWD also made Australia as a benchmark or secondary model replacing Finland for a good model of child care besides those of Singapore and Japan

(UNITAR International University, 2017). Singapore on the other hand, has just taken another step further in improving the early childcare and education sector by introducing Early Childhood Development Centres Act 2017 repealing the previous Child Care Centre Act 1988.

Therefore, from the research done and examples of best practises from other countries explored, it is hoped that Malaysia may be able to have a new, improved legislative framework in ensuring that the children in Malaysia have better protection, better care and better education in future. The loopholes and weaknesses in Malaysian child care laws and regulations need to be improved through legislative efforts as laws and regulations underpin the concrete foundation in achieving high quality child care sector.

