



NQF REVIEW
2019

CONSULTATION REGULATION IMPACT STATEMENT

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Acronyms

Acronym	Meaning
ACECQA	Australian Children’s Education and Care Quality Authority
AEDC	Australian Early Development Census
BBF	Budget Based Funded
CCS	Child Care Subsidy
COAG	Council of Australian Governments
CRIS	Consultation Regulation Impact Statement
DRIS	Decision Regulation Impact Statement
ECPG	Early Childhood Policy Group
ECT	Early childhood teacher
EYLF	Early Years Learning Framework
FAL	Family Assistance Law
FDC	Family day care
FTE	Full-time equivalent
LDC	Long day care
NP NQA	National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care
NQA	National Quality Agenda
NQA ITS	National Quality Agenda Information Technology System
NQF	National Quality Framework
NQS	National Quality Standard
OSHC	Outside school hours care
PIDTDC	Person in day-to-day charge
PRODA	Provider Digital Access (Australian Government system for claiming Child Care Subsidy)
QIP	Quality Improvement Plan
RA	Regulatory authority
RIS	Regulation Impact Statement
ROGS	Report on Government Services
WWVP	Working with vulnerable people check
WWVC	Working with children check

GUIDE TO THE 2019 NQF REVIEW CRIS

Purpose of this document

This document is a Consultation Regulation Impact Statement (CRIS). It proposes options for changes which could be made to the **Education and Care Services National Law** (National Law), the **Education and Care Services National Regulations** (National Regulations) and guidance material covering the operational application of legislative requirements, which all form part of the National Quality Framework (NQF).

What is a RIS

A Regulation Impact Statement (RIS) assesses the impact of potential changes in regulation. Regulation is any rule endorsed by government where there is an expectation of compliance. Under guidelines agreed to by the Council of Australian Governments (COAG), a RIS must consider certain questions, which include:

1. What is the problem you are trying to solve?
2. Why is government action needed?
3. What policy options are you considering?
4. What is the likely benefit of each option?
5. Who will you consult about these options and how will you consult them?
6. What is the best option from those you have considered?
7. How will you implement and evaluate your chosen option?

Questions 1 to 5 are reflected through this RIS. Questions 6 and 7 will be addressed through a Decision Regulation Impact Statement (DRIS), which will be drafted for consideration by Education Ministers after consultations on the proposed options within the CRIS have been completed.



Guide to the document

This RIS consists of 13 chapters and an appendix. Options for consideration are located in chapters 3 to 10, with the heading indicating the overarching theme of options in that chapter. There may be one or more issues in each chapter. For each of the issues, guidance and resources will be developed to ensure that services, providers, families and communities understand the issues and can effectively comply with their obligations, even where it is not specifically identified as a change option.

Chapter 1 – Background

This chapter provides context on the history, structure and governance of the NQF since its introduction in 2012, as well as a description of the education and care sector in Australia.

Chapter 2 – What are the opportunities for improvement?

This chapter outlines the purpose of the 2019 NQF Review, which is to assess whether the objectives of the NQF are still being met, to consider the ongoing effectiveness and sustainability of the NQF in light of the continuing evolution of the education and care sector, and whether the regulatory framework enables contemporary best practice regulation.

Chapter 3 – Safety, health and wellbeing

Among the objectives of the NQF is to ensure the safety, health and wellbeing of children, and to improve the educational and developmental outcomes for children attending education and care services. This chapter proposes options in relation to transition of children between services, sleep and rest, regular transportation and emergency and evacuation from multistorey buildings.

Chapter 4 – Royal Commission into Institutional Responses to Child Sexual Abuse

The Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), commissioned in 2012, inquired into institutional responses to instances (and allegations) of child sexual abuse and related matters. The Royal Commission's final report, released in December 2017, made a number of recommendations relevant to the education and care sector. This chapter will consider ways to amend the NQF to align more closely with the Royal Commission's recommendations in order to ensure children's safety, health and wellbeing in education and care.

Chapter 5 – Family day care

Family day care (FDC) services provide education and care in a residential environment. This chapter will consider options to strengthen existing requirements to ensure the safety of children attending FDC services, and improve FDC for families and staff.

Chapter 6 – Centre-based care – Outside school hours care

Under the NQF, centre-based services typically comprise of three service types: long day care (LDC), preschool and outside school hours care (OSHC). This chapter will consider specific proposals for OSHC services.

Chapter 7 – Workforce

[Research](#) demonstrates that highly qualified staff are more likely to facilitate better educational and developmental outcomes for children. Staffing, and the recruitment and retention of high quality educators, is critical to quality education and care, but is a significant business cost for education and care services. This chapter will consider options to reduce staffing pressure on services, while retaining the benefits of a highly qualified and professional workforce for children and families.

Chapter 8 – Understanding of quality ratings by families

The assessment and rating scheme is a key element of the NQF and requires that education and care services are assessed and rated against the seven quality areas in the National Quality Standard (NQS). This section considers ways of improving family understanding of the quality rating system.

Chapter 9 – Changes in fees for the NQF system

Regulatory fees reflect the cost to the community of providing regulatory services. Fees also help fund regulation of the NQF and are intended to enable regulators to ensure appropriate oversight of services including monitoring the safety and quality of education and care services. The purpose of this chapter is to seek feedback on proposed changes to fees for regulatory authorities, including the national body, the Australian Children’s Education and Care Quality Authority (ACECQA).

Chapter 10 – Oversight and governance of services and providers

Since the commencement of the NQF in 2012, there has been an emergence of increasingly complex structures in the management of some education and care services. The purpose of this chapter is to seek feedback on proposed reforms to ensure the sustainability and alignment of the NQF with contemporary business practices, especially in regard to oversight and governance of services.

Chapter 11 – Technical amendments

This chapter proposes a number of technical amendments to the National Law and Regulations.

Chapter 12 – Consultations

This chapter describes previous consultation on the 2019 NQF Review Issues Paper, as well as providing details of the upcoming consultation on the CRIS.



Chapter 13 – Implementation and evaluation

This chapter outlines the process for developing the 2019 NQF Review DRIS, which will be informed by consultations on the CRIS. The DRIS will recommend changes to the NQF, which are expected to be implemented from 2022.

Appendix

The appendix provides further information to support and inform consideration of a number of the issues and options in the CRIS.

How to provide feedback

For this phase of the review, organisations and individuals with an interest in the NQF are invited to review the options and provide feedback through a national consultation process. This consultation process includes the following:

Online survey

An online survey will be available on the NQF Review website for the duration of the consultation period for stakeholders to provide their feedback to the proposals identified in the CRIS. The survey is structured to enable stakeholders to provide feedback on all issues in the CRIS, or only the issues of interest.

Written submission

Written submissions are also encouraged and can be uploaded via the NQF Review website.

To assist stakeholders in engaging with issues identified in the CRIS, a series of online videos outlining the problem and proposed options are available on the NQF Review website.

Each state and territory will be hosting a series of information sessions. Stakeholders are invited to attend an information session to develop their knowledge of the consultation process, issues, proposed options and potential impacts of change. Details of these sessions can be found on the NQF Review website.

All feedback received through the online survey and written submission will be used to develop the DRIS and assist governments in making decisions about what changes will be made.

More detail on the consultation that has informed the development of this CRIS is located in Chapter 13.

1 BACKGROUND

In 2012, governments introduced the NQF as a national outcomes focused system of regulation for the education and care sector. This framework aligned regulatory requirements for education and care services across the country and introduced an integrated system of quality ratings and minimum standards.

1.1 Origins of the NQF

Prior to the introduction of the NQF, regulatory responsibility was shared between state and territory governments and the Commonwealth. State and territory regulators assumed responsibility for operational regulation, such as licensing and associated compliance activities. At the national level, the Commonwealth funded the National Childcare Accreditation Council to oversee quality assurance. Standards and processes varied across jurisdictions, as did regulatory coverage.

In July 2009, COAG endorsed the Early Childhood Development Strategy which included a vision that ‘by 2020 all children have the best start in life to create a better future for themselves, and for the nation’. This resulted in the development of the National Quality Agenda (NQA), which comprise of four key elements:

- the [National Quality Standard \(NQS\)](#)
- nationally consistent regulatory arrangements (the National Law and Regulations)
- a quality rating system to drive continuous improvement and provide parents with relevant information about the quality of care and learning
- the approved learning frameworks: the Early Years Learning Framework (EYLF) and My Time Our Place (MTOPI).

The 2009 COAG DRIS for the NQA¹ found that the potential benefits from the NQS fall into two broad categories:

- benefits associated with children’s early childhood education and care experience resulting in improved private benefits (unique to child) and broader social and economic outcomes for children
- benefits associated with parents’ workforce participation, which would be expected to have flow-on economic benefits for families and, more broadly, the national economy.

The enhanced regulatory arrangements implemented as part of the NQF resulted in state based licensing and accreditation requirements being combined into a streamlined, national model of regulation with a uniform standard and assessment and rating system. It was intended that these reforms would result in reduced regulatory burden for service providers, with particular benefits for providers operating across multiple jurisdictions.



A national quality assessment and rating scheme was introduced to enable parents and families to have the information they needed about the quality of a service. The scheme was developed to help them make informed decisions about what standards of service and quality they should expect for their children and provide more information to select a service that provides the best combinations of the features they desire. This was also intended to be an incentive for service providers to offer high quality education and care at a competitive price.

The delivery of the NQF is guided by set objectives and guidelines. The objectives of the NQF, set out in Part 1, Section 3 of the National Law, are to:

- ensure the safety, health and wellbeing of children attending education and care services
- improve the educational and developmental outcomes for children attending education and care services
- promote continuous improvement in the provision of quality education and care services
- establish a system of national integration and shared responsibility between participating jurisdictions and the Commonwealth in the administration of the NQF
- improve public knowledge, and access to information, about the quality of education and care services
- reduce the regulatory and administrative burden for education and care services by enabling information to be shared between participating jurisdictions and the Commonwealth.

1.2 Description of the NQF

The NQF was the result of an agreement between all Australian governments to work together to support better educational and developmental outcomes for children. The NQF aims to raise quality and drive continuous improvement and national consistency in children's education and care services through:

- the Education and Care Services National Law (National Law) and Education and Care Services National Regulations (National Regulations)
- the National Quality Standard (NQS)
- an assessment and quality rating process
- national approved learning frameworks
- a regulatory authority in each state and territory responsible for the approval, monitoring and quality assessment of services in their state or territory
- a national body (ACECQA), which guides the implementation of the NQF and works with regulatory authorities.

The National Quality Framework

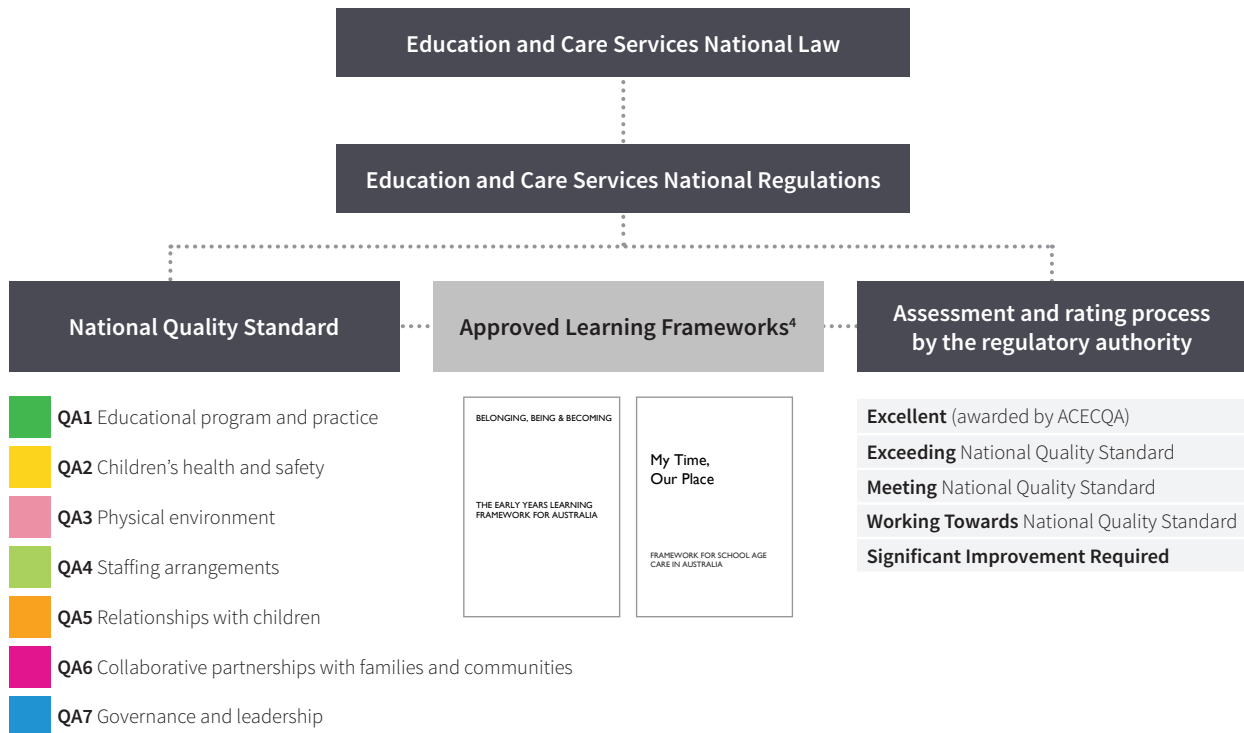


Figure 1: Key components of the NQF²

The National Law and Regulations detail the operational and legal requirements for an education and care service and apply to most long day care, FDC, preschool and OSHC services in Australia.

The NQS, which is part of the National Regulations, sets a national benchmark for the quality of education and care services and includes seven quality areas that are important to outcomes for children:

- Quality Area 1 – Educational program and practice
- Quality Area 2 – Children's health and safety
- Quality Area 3 – Physical environment
- Quality Area 4 – Staffing arrangements
- Quality Area 5 – Relationships with children
- Quality Area 6 – Collaborative partnerships with families and communities
- Quality Area 7 – Governance and leadership



Services are assessed and rated by their state and territory regulatory authority against the NQS, and given a rating for each of the seven quality areas and an overall rating based on these results. The quality ratings are published in national registers on the [ACECQA website](#) and on the [Starting Blocks website](#).

Under the National Law and Regulations, services are required to base their educational program on an approved learning framework. This educational program is required to focus on addressing the unique developmental needs, interests and experiences of each child. The approved learning frameworks are:

- Belonging, Being and Becoming: The Early Years Learning Framework for Australia ('Early Years Learning Framework')
- My Time, Our Place: Framework for School Age Care in Australia ('Framework for School Age Care')

There is also an approved jurisdiction-specific learning framework for Victoria.³

1.3 Governance of the NQF

Under the NQF, the Australian, state and territory governments have different but complementary roles. The Australian Government's main role and responsibility is to fund the national body, ACECQA.

State and territory governments' roles and responsibilities include:

- granting approvals under the National Law and Regulations, including provider and service approvals
- assessing and rating services against the NQS and the National Regulations
- monitoring and enforcing compliance with the National Law and Regulations, including receiving and investigating serious incidents and complaints
- working with ACECQA to promote continuous quality improvement and educate the sector and community about the NQF.

The Australian Government also has the additional responsibility for administration of the Family Assistance Law (FAL), which assists eligible families with the cost of education and care services, through the Child Care Subsidy (CCS) and associated schemes.

Local and state and territory governments may also have a role in planning, funding and delivering education and care services.

The Education Council, which comprises Australian, state and territory government ministers responsible for education, including early childhood education and care, is responsible for:

- approving changes to the National Law and Regulations
- reviewing and approving the NQS, quality rating system, and learning frameworks
- appointing members to the ACECQA Board.

ACECQA is an independent statutory authority which guides and monitors the administration of the NQF to promote consistency across all states and territories.

ACECQA's role includes:

- approving education and care qualifications
- training state and territory regulatory authority staff
- awarding the Excellent rating, and reviewing the quality rating decisions of regulatory authorities
- hosting the national IT system, the National Quality Agenda Information Technology System (NQA ITS)
- publishing guides and other resources
- publishing the national registers of approved providers and services.

1.4 Education and care sector profile

The education and care sector in Australia delivers a diverse range of services for children from birth to 12 years of age. The types of education and care regulated under the NQF include:

- **Long Day Care** – a centre-based form of service, which primarily provides all day or part day care for children predominately aged birth to six years who attend the centre on a regular basis. Some services also provide before and after school care for school age children.
- **OSHC** – a centre-based service that provides care for primary school aged children (typically five to 12 years) before and after school and can also operate during school holidays (vacation care) and on pupil free days.
- **Preschool** – a centre-based service that provides education and care to children generally in the year or two prior to school entry, and aligned with school hours and school terms. Alternative terms used for preschool in some jurisdictions include kindergarten, pre-preparatory and reception.
- **FDC** – an education and care service through the coordination of two or more educators to provide education and care to children and operates from two or more residences or approved FDC venues.

There are a range of other service types that are not regulated under the NQF, but which may be regulated under jurisdiction based legislation. These include occasional care, mobile preschools, playschools and crèches.

1.5 Attendance rates and service types

The number of children attending a CCS-approved education and care service (or services approved under the then Child Care Benefit scheme) has continued to increase year on year.

In 2019, it is estimated that there were 1,304,002 children (around 31.5%) aged 0–12 years in attendance, which is a 17% increase since 2014.⁴ This is the age group that is able to attend most formal education and care services, and is also the age group for which families may be eligible to receive the Australian Government’s CCS.

Of the attendees, over half (58.8%) attended centre-based day care, 36.6% attended OSHC services, and 9.5% attended FDC.⁵ Around 64.7% of all attendees were aged 0–5 years.⁶

In the June quarter 2019, approximately 1.30 million children (of nearly one million families) attended a CCS-approved education and care service.⁷

	Centre-based day care (LDC and preschool)	Outside School Hours Care	Family day care	Total*
NSW	243,920	147,640	41,100	423,280
VIC	183,190	108,960	33,790	318,560
QLD	171,250	109,600	22,120	296,040
SA	43,370	41,240	3,780	86,390
WA	62,410	39,070	9,560	105,180
TAS	12,540	8,230	3,450	22,710
NT	6,250	4,300	280	10,630
ACT	16,740	14,580	1,210	31,720
TOTAL*^	738,410	473,310	115,190	1,292,420

Table 1: Number of children attending a CCS-approved service whose CCS-eligibility was assessed⁸

*As children may use services in more than one state or territory, and due to rounding, the sum of the component parts may not equal the total.

^Excludes In Home Care.

At the same time, there were 15,919 education and care services approved to operate under the NQF, which were operated by 7,294 approved providers (of whom 82% operated a single service).⁹ A total of 94% (14,942) of the approved services had received a quality rating.¹⁰ The distribution of these services was as follows:

	Centre-based day care				Total
	Long day care	Outside school hours care	Preschool	Family day care	
NSW	3,130	1,378	796	180	5,484
VIC	1,573	1,249	1,197	220	4,239
QLD*	1,598	756	518	111	2,983
WA*	680	469	23	36	1,208
SA	395	379	407	12	1,193
ACT	156	101	92	9	358
TAS	124	97	0	10	231
NT*	88	54	73	4	219
Total*	7,744	4,483	3,106	582	15,915
Total Approved Services					15,919

Table 2: Number of approved services by service type and jurisdiction¹¹

*Excludes services categorised as 'other'.

1.6 Education and care market structure

As at 30 June 2019, the majority (82%) of the 7,294 education and care providers were small single service operators, while approximately 18% were classified as medium-sized providers (2 to 24 services) and 1% large providers (25 or more services).¹²¹³ The operation of these 15,919 services was mostly evenly split amongst small (37%), medium (30%) and large (33%) providers.¹⁴

Number of services by provider management type

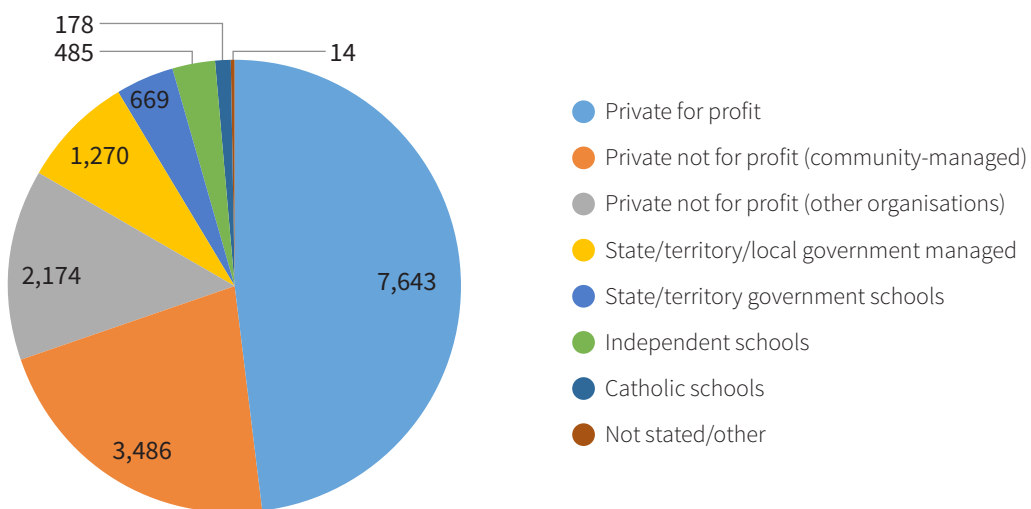


Figure 2: Number and distribution of services by provider management type¹⁵

Since 2011, market analysis shows a shift in classification of ‘childcare’ from a barely profitable, mature, low-growth sector with significant regulatory burden to a ‘blue chip’ investment in 2017, with projected revenue growth of 4.2%.¹⁶ The distribution of provider management types is trending towards large providers holding responsibility for a larger proportion of services across the sector, potentially having more complex ownership and management structures, as well as continued growth of for profit providers.¹⁷

The professionalisation of the sector has seen an evolution of third party management companies that some approved providers engage to manage the delivery and day-to-day operation of education and care services. It can be more difficult for regulatory authorities to regulate providers who engage these management companies because of questions of whom exactly they should assess with respect to their suitability and whom to hold to account for any non-compliance. These issues are considered in Chapter 10.

1.7 The cost of education and care

Since at least 2007, the real cost of education and care for families has continued to increase for reasons not solely attributable to shifts in regulatory standards such as those introduced by the NQF.¹⁸ Additionally, as service fees are heavily subsidised by the childcare subsidy (CCS) and state-based funding programs, the out-of-pocket expenses paid by families are not always indicative of costs of education and care provision. Overall, costs are highly variable based on a range of factors, including but not limited to location, service type and the age of the child in care.¹⁹

The 2009 COAG DRIS estimated that the increased costs attributable to implementing the NQA would vary significantly depending on jurisdiction and service type, averaging \$4.43 for long day care and \$3.19 for preschool per child per day by the end of 2019.²⁰ This analysis took into account the impacts of the NQF on service costs, but excluded the costs which were assumed to be borne by individuals or governments, such as the cost of training for early childhood educators.

The 2019 Household, Income and Labour Dynamics in Australia Survey (HILDA) reports that the median weekly expenditure²¹ on formal care²² for children not yet at school in 2016 and 2017 was \$152.60, an increase of 145% since 2002 (on commencement of HILDA surveys).²³ However, there has also been an increase in the median weekly expenditure towards nannies (informal care) for children not yet of school age, which has reached parity with formal care at \$152.60 (an increase of 136% since 2002). This indicates that the introduction of the NQF has had a minimal effect on the increasing cost of education and care as there is no longer a significant difference in the cost between regulated and unregulated care types.

For school-aged children, the median weekly expenditure on formal care (OSHC) was \$51.80 (a 64% increase from 2002), while the median weekly expenditure for nannies (informal care) for school aged children was \$100.70 (a 172 percent increase). The difference in expenditure between children not yet at school, and children attending school, is attributable to a reduction in the number of hours of care required by school aged children.

On 2 July 2018, the Australian Government introduced a new child care package, which includes the CCS, Additional Child Care Subsidy and Child Care Safety Net (which provides targeted fee assistance for the most vulnerable and disadvantaged children access to quality education and care services). The child care package is designed to assist families with the cost of education and care.

1.8 Return on investment in early childhood education and care

Since the commencement of the NQF in 2012, there has been significant investment from the Australian and state and territory governments, in the form of subsidies and other financial support, to the education and care sector. Total Australian, state and territory government expenditure on early childhood education and care services was at \$9.8 billion in the 2018/19 financial year. Of this, Australian government expenditure accounted for \$7.9 billion (80%) and state and territory government expenditure \$2.0 billion, with preschool services accounting for 85.8% of the state and territory government expenditure.²⁴

Evidence shows that the best outcomes for children from education and care come from high quality service settings and while the increased participation in early childhood education programs is beneficial, the highest long term benefits are realised from engagement in high quality programs.²⁵ There is a significant body of evidence that shows that high quality early childhood education and care can:

- improve children’s cognitive and socio-emotional development. The time spent in early childhood education and care is a strong predictor for the level of performance later in life²⁶
- create positive outcomes in areas of health and well-being; and support children’s outcomes later in life, including market participation, reduction in poverty, increased social mobility and social integration²⁷
- have a positive effect for children experiencing higher levels of education and social disadvantage, and can help them catch up to their more advantaged peers²⁸

There is a growing body of evidence that investment in human capital during the prior to school years yields a strong rate of return. For every dollar spent on quality early childhood education and care in Australia there is a minimum return of \$2.62 and up to \$17.07 for the most vulnerable and disadvantaged children.²⁹

1.9 Outcomes for children

Overall, outcomes for Australian children against a range of objective measures have improved since 2009. According to the Australian Early Development Census (AEDC), which collects data on five key domains that predict later health, wellbeing and academic success, the percentage of Australian children developmentally vulnerable on one or more domains has decreased nationally from 23.6% in 2009 to 21.7% in 2018.³⁰

There has also been a steady improvement in the language and cognitive skills of children starting school across Australia. The percentage of children developmentally on track in the language and cognitive skills (schools based) domain has increased significantly from 77.1% in 2009 to 84.4% in 2018.³¹

Improvements have also been documented in the domain of communication skills and general knowledge, with the proportion of developmentally vulnerable children moving from 9.2% since 2009 down to 8.2% in 2018.³²

1.10 Sector performance

Since its introduction, the NQF has been an effective framework to guide high quality service delivery and promote continuous improvement. The percentage of education and care services rated as Meeting National Quality Standard or above continues to increase, from 62% in 2014 to 79% in 2019.³³

As of June 2019, around 94% of services have a quality rating, compared to 40% in June 2014.

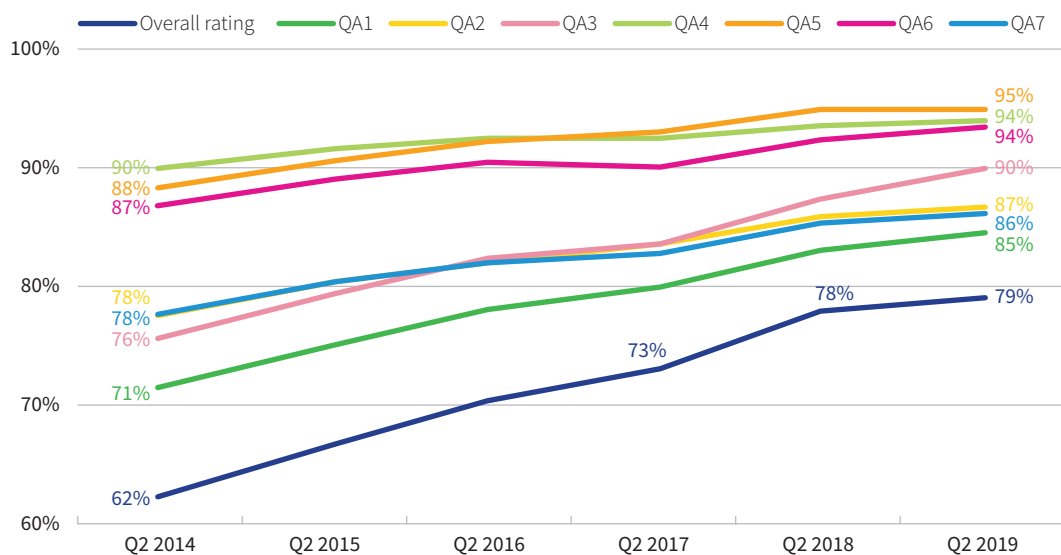


Figure 3: Proportion of services rated Meeting NQF or above, by overall rating and quality area³⁵

1.11 Regulatory burden

ACECQA's regulatory burden surveys reveal that support for the NQF has consistently remained very positive. Between 2013 and 2015, over 80% of providers were either very supportive or supportive of the NQF.³⁶ In the 2019 ACECQA Annual Report, the vast majority of providers were supportive of the NQF.³⁷

Following the changes made to the National Law and Regulations in October 2017 and February 2018, two thirds of respondents to ACECQA's 2018 survey on regulatory burden indicated that the benefits of the changes to the NQF outweighed the burden they placed on them.³⁸



The overall perception of burden has largely remained constant across the five surveys completed between 2013 and 2018.³⁹ The perception of burden was higher amongst OSHC and preschool providers compared to long day care providers, with the lowest perception of burden in FDC. Larger providers had a lower perception of burden than smaller providers.⁴⁰

1.12 2014 NQA Review

In 2013, the Education Council commissioned the 2014 Review of the National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care (2014 Review). The purpose of the 2014 Review was to assess progress towards the objectives and outcomes of the NQF, and to ensure that the goal of improving quality in education and care services was being met in the most efficient and effective way.

The 2014 Review recommended changes to the National Law and Regulations and to operational processes to clarify expectations, reinforce policy intent, and streamline and reduce regulatory burden. The recommendations arising from the Review supported a simplified and more transparent system and consolidated the consistent approach to quality education and care of children, regardless of service delivery type or location.

In October 2017, the Education Council agreed to implement changes recommended from the 2014 Review to the National Law and Regulations. These changes strengthened quality outcomes for children, while balancing the need to reduce red tape and unnecessary administrative burden for approved providers and educators. The key areas of reform included:

- revising the NQS to strengthen quality through greater clarity, removing conceptual overlap between elements and standards, clarifying language and reducing the number of standards and elements
- improving oversight and support within family day care to achieve better compliance and quality across the whole sector
- removing supervisor certificate requirements so service providers have more autonomy in deciding who can be the responsible person in each service, and to reduce red tape
- introducing a national educator to child ratio of 1:15 for services providing education and care to school age children

The agreed changes to the National Law came into effect from 1 October 2017 in all states and territories (except Western Australia which implemented these changes on 1 October 2018). The revised NQS was introduced on 1 February 2018 in all states and territories (including Western Australia).

The changes have been well received, as evidenced by the continued high level of support for the NQF from the sector following the changes.⁴¹

There were a number of proposals in the 2014 Review DRIS that the Education Council agreed required further consideration. These were referred to the current review and include:

- the scope of the NQF, in particular whether it should be expanded to include former Budget Based Funding (BBF) funded services
- governance of services, in particular the definition of ‘person with management or control’
- technical amendments, such as the use of, and transitional arrangements in the use of, regulation 135, regarding relief of an early childhood teacher in circumstances of short term illness or absence
- broadening protections for people who disclose non-compliance
- changes to prescribed fees to increase cost recovery for regulatory authorities.

In regard to the expansion of the NQF to regulate former BBF services, governments have determined that due to the unique operating contexts of these services, and the low number of services impacted (134 nationally) this issue would best be resolved by a separate targeted working group directly consulting with the impacted services, rather than through this CRIS process.

1.13 2019 NQF Review

In December 2018, the Education Council agreed to commission the 2019 NQF Review. This Review is intended to build on the 2014 NQA Review and ensure the NQF is current, fit for purpose and implemented through best practice regulation. Specifically, the purpose of the 2019 Review is to ensure that the NQF continues to meet its objectives⁴² and is effective and sustainable in light of the continuing evolution of the education and care sector.

The 2019 Review is considering possible improvements to the NQF regarding:

- governance arrangements underpinning the NQF
- the alignment of fees with cost recovery guidelines
- the outcomes of the Improving Quality in Family Day Care program of work commissioned by Education Council, the recommendations of the Royal Commission and the 2019 ACECQA Review
- issues that emerge from consultation with the sector, as agreed by Education Council
- residual issues deferred from the 2014 NQA Review
- any additional issues identified by government.



An Issues Paper was released in April 2019 and national consultation was conducted. Results of that consultation can be found on the 2019 NQF Review website.

1.14 Sector consultation

From April to June 2019, face-to-face consultation sessions were conducted across Australia with over 2,500 participants and feedback was also sought through an online survey which received 1,769 responses. Participants were asked to provide feedback on four key areas:

- approvals
- operation
- public awareness of quality
- compliance and enforcement.

Through this consultation, governments received additional responses on the assessment and ratings process (as applied to education and care services for school age children), workforce issues and the approved learning frameworks. As a result, this CRIS includes a proposal to address issues with the assessment and rating process for OSHC services. Governments have agreed to progress workforce issues through the development of a new children's education and care national workforce strategy, and a separate review of the Approved Learning Frameworks.

Some issues consulted on within the Issues Paper (or flagged for inclusion within the Review), such as a joined-up approval process between the NQF and the FAL, FDC co-ordinator ratios and educator caps, have not been progressed through this CRIS, but continue to be developed by governments. Further information can be found on the [website](#).

2 WHAT ARE THE OPPORTUNITIES FOR IMPROVEMENT?

The 2019 NQF Review is focussing on assessing the ongoing effectiveness of the NQF in light of the continuing evolution of the education and care sector, and, whether the regulatory framework enables contemporary best practice regulation.

Cross-government and sector-wide consultation on the Issues Paper identified that the NQF continues to meet the needs of children and families and receive support from the sector. Since the introduction of the NQF there have been continuous improvements to overall service quality within the system, however there are a number of issues for children's health, safety and wellbeing and service quality issues that remain. Refinements to the regulatory scheme will assist in ensuring that the effectiveness of the NQF is maintained over time.

Families choose a service based on their child's needs, and with a strong expectation that their children are safe while in the care of an education and care service. Improving processes to ensure transitions between services are safe for children is an ongoing priority.

The most serious potential outcome from education and care services not protecting the safety, health and wellbeing of children is the death of a child. Child deaths in education and care services remain low, however there continue to be some deaths in these settings, with two recorded deaths in 2018/19 and four in 2017/18. Safety during sleep and rest and the use of swimming pools remain key areas of concern where recent deaths have occurred.

The ways governments consider child safety has progressed since the 2014 Review. This is considered in chapter 3.

Most significantly, the Royal Commission recommendations provide clear advice on protecting the safety of children in organisations, including education and care services. The National Principles for Child Safe Organisations, developed in response to the Royal Commission, can be applied across all service types to drive cultural change to better protect children. This is considered in chapter 4.

The particular service context of FDC requires consideration to ensure the NQF is fit for purpose for this service type. Particular proposals relating to FDC are in chapter 5.

OSHC service providers often perceive the regulatory burden of the NQF to be higher than other service types. The older age of children attending OSHC changes children's educational and developmental needs, as well as what is needed by services to ensure their safety. For this reason, consideration is given in chapter 6 to how some obligations under the NQF for OSHC services may be amended or applied in a way that may better align with the type of care they provide, in order to better balance safety risk and remove any unnecessary regulatory burden.

In education and care services, one of the most significant components of supporting both safety and quality services for children is the staff at the service. The link between high quality staff and better outcomes for children has been explored in chapter 1. Skilled workforce shortages continue to make it difficult for services to appropriately staff their services. This is recognised by other work of governments, including the commitment made in December 2019 to develop a new children's education and care national workforce strategy. In chapter 7, the RIS considers how to ensure that children benefit from education and care through provision by a qualified educator. This chapter also explores ways to reduce the pressures associated with current shortages.

Families choose the service/s most appropriate for their child. Over 57% of complaints lodged to regulatory authorities or approved providers are made by parents. Despite this, research has demonstrated that families are largely unaware of the quality rating of the service their child attends. Families that do not have information about a service's quality or compliance history are unable to make fully informed choices about the service in which they enrol their child. Bridging this information gap is likely to further promote improvements in quality across the education and care sector. This issue is addressed in chapter 8.

Regulatory fees are a key source of funding behind the NQF and assist regulatory authorities to allocate resources to monitor the safety and quality of education and care services. However, fees under the NQF are significantly lower than comparable sectors. Chapter 9 considers increasing certain fees within the NQF, especially for regulatory functions with the highest cost, while maintaining principles of equity.

Chapter 10 considers some of the areas where administrative burden is likely to be encountered by providers and how efficiencies can be made through aligning the NQF with other systems such as the FAL.

In endorsing the terms of reference for this review, the Education Council made a commitment to ensure that the NQF is current, fit for purpose and implemented through best practice regulation. The particular issues identified throughout this document may be best addressed through government action, in particular through legislative and policy reform. Improvements to the regulatory system help to maintain confidence in users of the system, including families (parents and children), approved providers, educators, other staff and the broader community.



Government action that seeks to improve the operation of the NQF aims to fulfil the principles of best practice regulation, with a strong ongoing commitment to keeping children and families at the core of the NQF. Creating efficiencies in discrete areas of regulation promotes system wide efficiencies, allowing resources to be more appropriately targeted.

The options identified in this document focus on regulatory change to the NQF. However it is recognised that in many cases, improved guidance through the Guide to the NQF or other documents may sufficiently address the problem. Governments will consider the feedback provided through this consultation process and note where feedback indicates an alternative solution, including solutions that do not require legislative change.

3 SAFETY, HEALTH & WELLBEING

Ensuring the safety, health and wellbeing of children attending education and care services is one of the objectives of the NQF. The proposals in this section seek to balance access for families to services with ensuring the safety of children attending.

3.1 Safety of children during transitions between services (including school)

Background

In a variety of settings, children will transition from one education and care service or educational setting (such as a school) to another education and care service or educational setting. This is especially common between school and OSHC services.

Under the National Law, education and care services are required to report when a child is ‘missing or unaccounted for’ to the relevant regulatory authority.⁴³ Between 1 January 2012 and 30 June 2019, there were 841⁴⁴ children reported as ‘missing or unaccounted for’ during transition periods between school and OSHC nationally. The majority of these cases (784) were reported as occurring during the afternoon transition period (2:30–3:30pm).⁴⁵ This represents on average more than 100 children being reported missing or unaccounted for each year during the transition from school to OSHC services.

A significant proportion of these incidents involved a child missing for less than 10 minutes (49% in morning session, 13% in afternoon session) or 10–29 minutes (42% in morning session, 30% in afternoon session). Over half of incidents reported (54%) in the afternoon period involved a child ‘missing or unaccounted for’ for more than 30 minutes.

While a reported incident of a child who is ‘missing or unaccounted for’ of less than 10 minutes may carry little risk to the overall health and wellbeing of the child, there are more adverse consequences associated with a child missing for longer periods of time, including, in an extreme case, that the child suffers severe harm or is unable to be located.

Incidents involving missing or unaccounted for children can have a negative impact on the health and wellbeing of children, as well as an emotional impact on families and educators.⁴⁶ According to survey research by Henderson et al., 44.9% of respondents reported a health impact from an incident of a missing child⁴⁷, and 98.9% of respondents reported an emotional impact. Children with additional needs (physical, mental, socio-emotional needs) were disproportionately represented in statistics, representing 38% of incidents reported.

Additionally, a service may experience reputational damage as a consequence of a serious incident of this nature,⁴⁸ as well as a negative regulatory impact or potential prosecution for the approved provider of the service.

What is the problem?

There is a distinct gap in regards to duty of care during transition periods between schools and OSHC services. While education and care services are required to report incidents of ‘missing or unaccounted for’ children, there is ambiguity around whether children’s safety during these transition periods is the responsibility of schools or the OSHC service.

In NSW, for example, school teachers are expected to maintain a duty of care for children while on school grounds.⁴⁹ This duty of care is defined as “reasonable measures to protect students against risks of injury which reasonably could have been foreseen”,⁵⁰ and considered as “requiring teachers to take such measures as in all the circumstances are reasonable to prevent injury to the student”.⁵¹ Further, the Teachers Handbook notes that “Teachers are required to be on duty at their schools half an hour before school work begins in the morning and may be required to be present, if thought necessary by the teacher in charge of the school, for half an hour after the dismissal of the school in the afternoon”.⁵²

When establishing a school supervision plan, principals and teachers of each school will “identify reasonably foreseeable risks and put in place arrangements which are reasonable to protect students against injury”.⁵³ This assessment should include factors such as the age of students, the layout and terrain of the school grounds, the proximity of the school to busy roads, and other potential hazards⁵⁴. Children as young as four years of age can attend a NSW public school, and younger student cohorts are acknowledged as requiring an increased duty of care due to their particular vulnerability⁵⁵

However, despite the requirement of schools to maintain school supervision plans, there is limited information regarding the transition period for children attending OSHC services after school.

Under the NQF, regulation 168 of the National Regulations requires that an approved provider of an education and care service must have policies and procedures in place relating to the delivery of children to and from education and care service premises. The regulation does not require service providers to include information around transition periods between schools and OSHC services.

In the case of NSW, the flexible nature of school supervision plans, coupled with a lack of regulatory oversight during these periods under the NQF, may mean that children in some school ground settings may receive limited supervision during these periods.

What are the options for change?

Option	Description
A	No change.
B	Legislative change to specify staff supervision requirements during periods of transition between education and care services.
C	Recommendation to state and territory school authorities and non-government school sector organisations to develop policies and procedures to safely transfer children between schools and education and care services.
D	Require that where relevant, an education and care service has a policy and procedures for the transition period between education and care services (for example between school and OSHC, or OSHC and preschool), including a risk assessment process.
E	Develop further guidance to support policies and procedures relating to the delivery of children to, and the collection from, education and care service premises, with an emphasis on transition periods between services, as well as further guidance for parents and families around notifying when a child is unable to attend an education and care service.

Note: Options are not mutually exclusive

Impact analysis

Status quo

If no changes are made, there will continue to be a potential gap in the duty of care of children between schools and OSHC services.

Should further incidents occur, subsequent investigations will consider the measures enacted by the service to ensure that children are accounted for at all times

These incidents can have an impact not only on the health and wellbeing of children, but also on the emotional wellbeing of families and service staff involved during the incident.

Incidents may also have a negative financial or operational impact on the OSHC service, as workforce may be temporarily reallocated, or the session cancelled, to search for the child and complete incident reporting. Incidents may also result in reputational damage to the service, resulting in reduced enrolments in the service or potential prosecution.

Option B – Legislative change to require staff supervision

This option would place the burden of responsibility of supervision during the transition onto the OSHC service provider. The cost of doing so is likely to present financial and workforce constraints on education and care services.

Services may need to employ additional staff members to meet this requirement.

Based on the workforce cost of, at minimum, a ‘Children’s services employee 3A.1 on commencement’ under the *Children’s Services Award 2010* (MA000120) at \$22.74 per hour,⁵⁶ the additional cost to an OSHC service would be an additional half hour of pay (\$11.37) per period of transition, per worker. Over the course of the school year, this would equate to an additional \$2,183 per worker to supervise children during transition between schools and OSHC services. In many cases, this workforce cost would likely be higher in line with the employment status and classification under the *Children’s Services Award 2010*.

These additional costs may be reflected in service fees, increasing the cost experienced by families in accessing the service. In certain areas, shortages of qualified staff may affect the viability of the service if they are unable to comply with the legislative requirements.

Option C – Recommendation to school authorities and non-government school sector organisations to develop policies and procedures

This option would require schools play an active role in the supervision requirements of children transitioning between school and the education and care service. Collaboration between schools and education and care services in addressing the gap is expected to increase communication and engagement between OSHC services and schools in ensuring the health, safety and wellbeing of children at all times.

This option would have little to no regulatory or financial burden on the education and care service, however it is expected to impose additional supervision requirements on school staff. Further, the development of policies and procedures for children attending education and care services at a location other than on the school grounds (i.e. at another school or facility) will require schools and services to establish when duty of care is transferred from one educational setting to another.

As schools generally establish supervision plans for children in the context of their school community, there may be varying efforts across school executives to implement policies, as well as limited oversight by school authorities over operations of non-government or independent schools.

Option D – Amend the National Regulations to require policies and procedures for the transition period between education and care services

Current regulation under the NQF does not mandate particular approaches to managing transitions in recognition of varying service contexts.

This option mandates that approved providers develop policies and procedures in consultation with staff, children and families for the transition period between school and the education and care service.

Such procedures would include consideration of how to manage situations where a child is considered ‘missing or unaccounted for’.

Developing effective policies and procedures would ensure staff, particularly casual and temporary staff, are aware of their responsibility for children during the transition period, and would ensure consistent practice is adopted across the service during high-risk periods.⁵⁷ This is particularly relevant for OSHC providers, which often hire staff on casual or temporary staffing arrangements.

The increase in administrative burden for providers is minimal given services are already required to implement policies, procedures and risk assessments for a range of circumstances in education and care services under regulations 100–102 and 168.

Requiring services develop a risk assessment for the transition period is a cost-effective measure that may reduce the number of children ‘missing or unaccounted for’ during transition periods. However, a risk assessment alone is not a guarantee that the transition period will be managed appropriately. It will be incumbent on service providers to communicate their policies and procedures, and to ensure that all staff handling transitions understand plans developed as part of the risk assessment process so that they are more likely to be followed.

Option E – Develop further guidance to support policies and procedures, as well as guidance for parents and families

This option will provide services with guidance and support in developing effective policies and procedures to address transition periods between school and the education and care service.

This option would not mandate the inclusion of a policy and procedures for transition periods, nor will it address the issue of responsibility.

Encouraging families to take an active role in preparing children for the transition period and notifying when a child is unable to attend a service will support the development of personal responsibility and reduce the instances of incorrect reporting, whereby a child is reported as missing or unaccounted for while at home or receiving adequate, approved supervision in another setting.

- **Feedback is sought on whether services hold a duty of care for children during transition periods between school and education and care services.**
- **Feedback is sought on the significance of the risk of the children ‘missing or unaccounted for’ under the current arrangements.**
- **Feedback is sought on the measures currently undertaken by providers to mitigate the risk of ‘missing or unaccounted for’ children.**
- **Feedback is sought on the preferred option/s to reduce the risk of children missing during these transitions.**

3.2 Sleep and rest requirements

Background

The National Regulations require approved providers, nominated supervisors and FDC educators to take reasonable steps to ensure children’s needs of sleep and rest are met, having regard to the ages, development stages and individual needs of children.⁵⁸

Under regulation 168, approved providers must ensure that the service has in place policies and procedures in relation to health and safety, including matters relating to children’s sleep and rest.

The requirement for policies and procedures relating to sleep and rest was introduced in October 2017, following the 2014 Review of the NQF. In making this decision, governments considered the findings from the Office of the State Coroner (Queensland Coroner) regarding the death of a five month old infant, in 2012, due to Sudden Infant Death Syndrome (SIDS).⁵⁹

In 2019, the Queensland Coroner made recommendations about sleep and rest following the death of a young child due to SIDS in 2015. A key finding of the Coroner was that as the family was not aware of safe sleep practices, they were unable to identify that the educator was not following best practice to be able to prevent the child’s death.⁶⁰

Since 2011, there have been 7 sleep related deaths in education and care services across Australia. Additionally, during 2019, there were 20 confirmed instances where a service did not have sleep and rest policies and procedures for children.⁶¹

Sudden unexpected death in infancy (SUDI) includes Sudden Infant Death Syndrome (SIDS) and fatal sleeping accidents. SUDI and SIDS are areas of ongoing research. It is currently widely believed that SIDS is multifactorial.⁶² Although many studies have identified underlying risk factors, the causative mechanism that makes some children more vulnerable than others still remains uncertain.⁶³

Red Nose, the recognised national authority on safe sleeping practices for infants and children, emphasises that as we cannot currently identify all vulnerable babies, we must assume that all babies are vulnerable and ensure safe sleeping strategies are used to provide safe sleep, every sleep.

Red Nose has six evidence-based safe sleeping recommendations. These are:

1. Sleep babies on their back, not on their tummy or side.
2. Keep your baby’s head and face uncovered.
3. Keep babies smoke-free before and after birth.
4. Have a safe sleeping environment night and day. This includes making sure the mattress is firm, clean and flat in a safe cot that meets industry standards, and that there are no blankets, soft bedding, toys, pillows or bumpers in the cot.
5. Sleep your baby in your room.
6. Breastfeed your baby, if possible.⁶⁴

Additionally, Red Nose provides a range of evidence-based advice on reducing the risk of SUDI. In education and care contexts, this includes that sleeping children should always be in sight and hearing distance of a qualified staff member, and that monitoring of sleeping children is done physically at the bedside, rather than through a monitor or viewing window. These allow staff to check on children’s breathing and the colour of their skin – and intervene if something goes wrong.⁶⁵

From 1989 to 2018, risk reduction and public health campaigns led by Red Nose saw the rate of SUDI deaths in Australia decrease by 85% – equating to 10,857 babies saved since the campaigns were introduced.⁶⁶

Year	2011	2012	2013	2014	2015	2016	2017	2018
Number of SUDI deaths in Australia	125	115	117	113	113	94	87	93
SUDI rate per 1,000 live births in Australia	0.4	0.4	0.4	0.4	0.4	0.3	0.3	0.3

Table 4: Current figures on SUDI in Australia⁶⁷:

SUDI deaths in Australia plummeted at the beginning of the 21st century but increased between 2004 and 2007, and plateaued for the next decade.⁶⁸ The infant mortality rate for SUDI has not changed significantly in recent years.⁶⁹

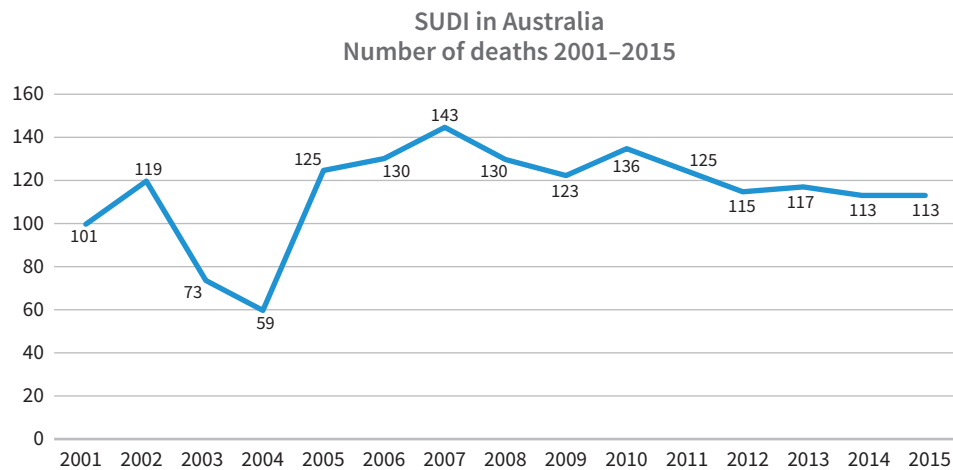


Figure 4: Number of SUDI deaths in Australia, 2001–2015⁷⁰

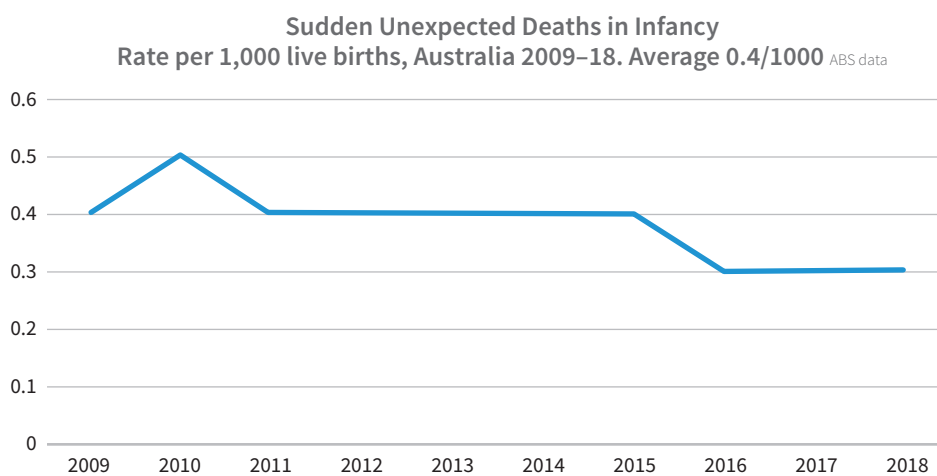


Figure 5: The rate of SUDI deaths in Australia, 2009–2018⁷¹

Many current practices in education and care services do not align with the Red Nose recommendations and advice. Anecdotally, services are relying on CCTV and monitors to check on sleeping children and using sleeping devices (such as bouncers and rockers) instead of a safe cot. Children are placed to sleep with comforters and other items provided by families in the cot, and the time between carrying out physical checks of sleeping children varies.

In 2017, 6.6% of children under the age of one usually attended formal care only. Formal care is defined as regulated care away from the child’s home i.e. education and care services. Comparatively, 18% of children under the age of one usually attended informal care only (non-regulated care, including care by grandparents and other relatives) and 4.9% usually attended both formal and informal care.⁷²

Trends show a significant increase in the use of formal care over the past two decades in Australia. For children aged 0-4, while informal care halved between 1999 and 2017 (32% to 15%), formal care increased by around 70% (16% in 1999 to 27% in 2017). Children who attended a mix of formal and informal care showed a small increase (11% in 1999 to 14% in 2017).⁷³

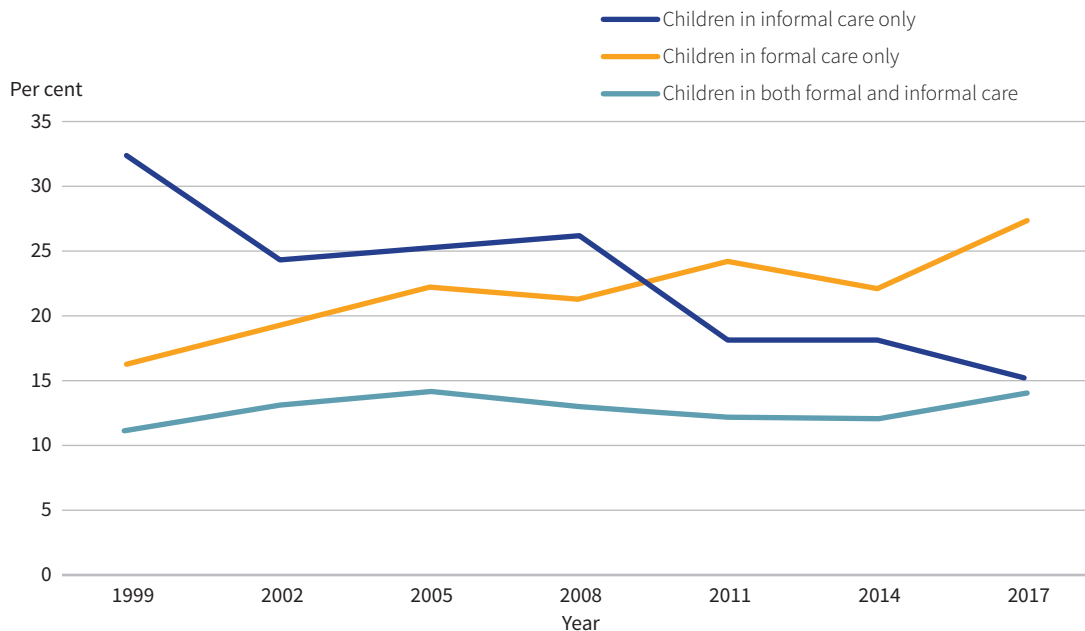


Figure 6: Children aged 0–4 who attended formal and/or informal care in the previous week, 1999–2017⁷⁴

What is the problem?

Despite the reduction in SUDI deaths in recent decades, young children remain at risk of SUDI during periods of sleep and rest, including in education and care services.

There continues to be SUDI deaths in Australia each year, and lack of awareness and knowledge about safe sleeping still exist in many communities. According to Red Nose, safe sleeping messages have been less successful reaching people in ‘Indigenous, rural and remote, culturally and linguistically diverse communities’.⁷⁵ Notably, Aboriginal and Torres Strait Islander babies died suddenly and unexpectedly at over three times the rate of non-Indigenous babies.⁷⁶

A key risk factor of SUDI is the critical and vulnerable development period of a baby less than one year of age, particularly when under six months of age.⁷⁷ This risk is relevant to services that provide education and care to children under the age of one.

Trends in the proportion of children attending formal care indicate that there is an increasing number of children under the age of one attending education and care services in Australia. This means the risks of SUDI are also increasingly relevant in the education and care sector.

Further, the nature of education and care services is different to home contexts, and may present challenges in implementing evidence-based safe sleeping recommendations to address SUDI risks, such as ‘sleep your baby in your room’.⁷⁸

A study by Staton et al. shows ‘approximately a quarter of sleep-related deaths in infancy occur outside the home, many in childcare settings.’ In their 2018 observational study of Australian licensed childcare services, 83% of services were observed to be non-compliant on at least one of 20 target safe sleep guidelines; 44% were observed placing infants prone/side; and 67% used loose bedding, quilts, doonas/duvets, pillows, sheepskins or soft toys in cots. A finding was that despite public health messaging, non-compliance with safe sleeping guidelines remains high in childcare services.⁷⁹

This risk is particularly important for very young children who are likely to sleep for a significant portion of their time in education and care services. It is also significant for overnight care arrangements where children are likely to be sleeping for a long period of time.

What are the options for change?

Option	Description
A	No change.
B	Legislative change to require compulsory safe sleep practices training for all educators who care for sleeping children (birth to five years).
C	Further guidance developed to support policies and procedures for sleep and rest, and to provide information to families on safe sleeping practices.
D	Amend the National Regulations to specify the matters that must be included in services’ policies and procedures for sleep and rest.
E	Amend the National Regulations to require a risk assessment be conducted in relation to sleep and rest, including matters that must be considered within that risk assessment.
F	Legislative change to require that sleeping and resting children in education and care services are within sight and hearing distance of an educator at all times.

Note: Options are not mutually exclusive.

Impact analysis

Status quo

It is expected that current risks of SUDI during periods of sleep and rest in education and care services will continue. This may lead to another serious incident, or, in the worst case scenario, death of a child.

Option B – Compulsory safe sleep training

Compulsory sleep training will require providers to facilitate recognised training in safe sleep practices for all educators. This will improve the knowledge educators have on safe sleep practices and better prepare educators in implementing these practices on a day to day basis. Improvements in daily practice will result in greater safety for children, especially infants who are at higher risk of sudden unexpected death.

Turning research breakthroughs into education for the community, families, and professionals has been the key driver enabling Red Nose to achieve the significant reduction in SUDI to date.⁸⁰ This option would reduce SUDI risks in services as better trained educators will lead to safer sleep practices.

Providers would incur additional costs for prescribed training to educators who care for sleeping children.⁸¹ The cost of safe sleep training is estimated to be \$45 per educator.

The approximate time spent undertaking the training is 1 hour and therefore additional costs to cover the hourly salary of workers would be incurred (approximately \$25.56 per educator at diploma level).⁸² Regulatory burden measurement requires this cost to be inflated by 75% to account for employment on costs (superannuation, workers compensation, leave, office and sundry expenses), and as such would place this expense estimate at \$44.73 for each educator.

Therefore, the indicative cost of this option is approximately \$90 per educator.

Compulsory sleep training represents an eligibility requirement that educators who have not undertaken the training would not be permitted to provide care for sleeping children. This may represent another barrier to labour supply and may result in additional labour costs and contribute to increased costs of childcare. There may be increased charges to parents or taxpayers over time.

Option C – Further guidance

This option would provide information and resources to help services strengthen existing policies and procedures, and provide information to families on safe sleeping practices.⁸³

This would guide providers and services on the expectations to reduce risks and ensure children's safety during periods of sleep and rest, without mandating specific requirements. The availability and implementation of this information is likely to result in greater safety for children, especially infants who are at greater risk of SUDI.

Public health and risk reduction campaigns across Australia have decreased the rate of SUDI deaths in Australia by 85% between 1989 and 2018.⁸⁴ These campaigns largely focused on providing information and guidance on safe sleep practices for infants.

It is not clear the extent to which guidance by governments would reduce the risk of SUDI for infants in early childhood settings, however it is anticipated that it would not be as effective as compulsory training for all educators.

Costs for developing and distributing the guidance material would be covered as business as usual costs to government. To be effective, guidance would need to be made available in a number of commonly spoken languages, as well as in accessible formats.

Option D – Specify matters that must be included in policies and procedures

Option E – Require conduct of a risk assessment, including matters that must be considered

Options D & E are likely to have the same impacts.

While services are already required to have in place policies and procedures relating to sleep and rest, option D means that NQF legislation will specify the content that must be considered and addressed within these policies and procedures. Option E further requires services to conduct a risk assessment, identifying specific matters for consideration in the unique context of each service.

Matters may relate to, for example, how adequate supervision is ensured, physical checks of sleeping children, physical presence in rooms where children sleep, use of technology (e.g. CCTV) for supervision, sleep practices such as swaddling, and sleep environments and equipment.

The process of developing and/or updating policies, procedures and/or risk assessments in accordance with the matters specified will assist in determining service staff responsibilities and the practices required to manage SUDI risks during periods of sleep and rest. This is particularly the case if practices and documentation are informed by advice from recognised authorities, such as Red Nose Australia.

These options are likely to guide stronger safe sleeping practices, adequate supervision, and protection from harm and hazards during sleep and rest in the individual service context. This results in reduced risks and greater safety for children attending education and care services, especially infants who are at greater risk of sudden unexpected death.

There will be an increased administrative burden on services in developing policies and procedures that comply with the specific content requirements brought about by these options. Similarly, if services do not already have a risk assessment in place, there will be an administrative requirement to undertake this process in a comprehensive manner, again addressing specific content requirements. Services will be required to regularly review these documents to ensure they remain relevant to the context within which the service is operating.

The costs to develop and/or update these in accordance with the legislation would include time spent documenting practices estimated at 7 hours work (for a director on level 6.1 this would be \$32.28 per hour totalling \$225.96).⁸⁵ Regulatory burden measurement requires this cost to be inflated by 75% to account for employment on costs (superannuation, workers compensation, leave, office and sundry expenses), and as such would place this expense closer to \$395.43.

In addition, the time spent learning about the policies, procedures and/or risk management strategies is estimated at 1 hour and therefore additional costs, approximately \$25.56 per educator at diploma level per hour, would be incurred.⁸⁶ Again this would be inflated to \$44.73 for each educator at diploma level to account for employment on costs.

The impact on ongoing service practice will depend on the particular circumstances of each service. This may include increased time on physical checks of sleeping children, or increased staffing over sleep and rest periods.

Option F – Legislative change to require that sleeping and resting children in education and care services are within sight and hearing distance of an educator at all times

This option requires an educator to occupy the same physical space as sleeping and resting children, such that children are always in sight and hearing distance. This is in line with Red Nose safe sleeping guidance, as this practice allows educators to check on children's breathing and the colour of their skin, and intervene immediately if something goes wrong.⁸⁷

While this option ensures risk reduction and promotes children's health and safety during sleep and rest, it may have significant impacts for providers and service provision.

Some providers and services may already follow this guidance. Others may incur additional staffing costs to ensure children are within sight and hearing distance of an educator at all times during sleep and rest periods, while maintaining adequate supervision across the service. There may also be impacts on staffing arrangements, which may affect children's learning and development, and physical design requirements of the service.

Where services are unable to have arrangements which ensure sleeping and resting children are within sight and hearing distance of an educator at all times, there may be reduced service availability to parents of children in the early years. This may have flow on effects such as increased charges to parents or taxpayers over time.

- **Feedback is sought on the impacts to service provision of proposed options.**
- **Feedback is sought on the extent to which the proposed options will reduce risk to children.**
- **Feedback is sought on practical measures services can implement to ensure the health, safety and wellbeing of children during periods of sleep and rest.**
- **Feedback is sought on the costs to providers of implementing option F.**
- **Feedback is sought on any other potential options that have not been considered that may result in benefits.**
- **Feedback is sought on whether these options should be considered in the context of overnight care.**

3.3 Improving children's safety during regular transportation

Background

Regulation 4(1) of the National Regulations defines 'regular transportation' as 'transportation by the service or arranged by the service (other than as part of an excursion) of a child being educated and cared for by the service, where the circumstances relevant to a risk assessment are substantially the same for each occasion on which the child is transported'.

Children being educated and cared for by a service may sometimes be transported by the service or on transportation arranged by the service. Transportation forms part of an education and care service if the service remains responsible for children during that period of transportation. An education and care service (whether centre-based or FDC) is being provided during all aspects of the transportation, including when children embark and disembark from the vehicle and during the journey. This applies whether it is an educator's own vehicle or a vehicle provided or arranged by the service to provide transport.

Examples of regular transportation include, but are not limited to: where the service offers a transportation service to collect children from their home and take them to the service; where a FDC educator drives children to and from their home to school; and includes the transitions between the vehicle, service premises and/or other locations.

Approved providers, nominated supervisors and FDC educators have obligations under the National Law to ensure children are adequately supervised at all times,⁸⁸ and that every reasonable precaution is taken to protect children from harm and from any hazard likely to cause injury.

Ensuring the safety of children through adequate supervision is also dependent on physical environment and context, including managing the risks relevant to the specific environment and circumstances.

Consultation on the NQF Review Issues Paper found stakeholders support strengthening regulatory requirements for transportation. Almost two-thirds (63%) of survey respondents support the need for supervision and educator to child ratio requirements where transportation is provided by a service.⁸⁹

However, respondents were divided on whether the driver should be excluded from (34%) or included in (29%) the educator to child ratios.⁹⁰ Other key points raised included the need to balance the requirements for transport with the risks and financial impacts involved.

2,203 services participated in a transportation survey conducted by the Queensland Regulatory Authority in 2020. Through the survey results it was identified that 685 services (31%) operated some form of transport for families. Service types of those operating transport included 405 long day care services; 129 OSHC services; 85 FDC; and 66 a combination of service types (i.e. kindergarten, limited hours care or out of scope/unregulated services).⁹¹

Of the 534 centre-based services (long day care and OSHC) that operate transport, 22% (119 services) transport children with the driver as the only supervisor on the vehicle.

Approved providers may notify the regulatory authority through the NQA ITS portal if an existing service provides transportation. In addition, for new services, the approved providers are requested to include reference to any proposed transportation as part of their application for service approval.

A technical amendment is being proposed to the National Regulations to make it mandatory for approved providers to notify the regulatory authority through the NQA ITS portal of their transport arrangements. Details of the proposed amendment are in Chapter 11.

What is the problem?

Transportation can present heightened risks to children's safety, in particular, during the period of transition between a vehicle and an education and care service premises or other location. Risks are further heightened for very young children in this context. A question exists as to how educator to child ratio requirements apply to periods of regular transportation or whether specific ratio requirements should be put in place that recognise both the unique risk factors and needs of children when they are being transported.

The consequences of leaving children unsupervised on transportation, particularly on hot days, can be fatal. In 2019, there was a case in NSW where a toddler was left unsupervised in a vehicle for six hours, posing an unacceptable safety risk.⁹² In 2020, in Queensland, there was a fatal incident involving a three-year-old which occurred during service-provided transport from the child's home to their centre-based service.⁹³ These scenarios are representative of the types of serious incidents that may occur and can have potentially fatal consequences as a result of inadequate supervision.

Where transportation forms part of an education and care service, the service must now have in place a transportation-specific policy and procedure⁹⁴ that addresses the additional risks that may arise when services are transporting children; conduct risk assessments for the transportation of children in all circumstances; and obtain the required written authorisations before children are transported.⁹⁵ This regulation commenced on 1 October 2020. While these amendments are intended to target particular safety risks associated with transportation, they do not specify what constitutes adequate supervision in relation to the transportation of children, nor do they clarify appropriate educator to child ratios in the transport context.

For example, in the case of a FDC service, FDC educators are able to educate and care for no more than 7 children at any one time, of whom only four can be under school age. In the case of transportation, it is feasible for a FDC educator to use a vehicle that could transport all 7 children at any one time if the vehicle can safely accommodate the number and ages of all children, and provided the requirements to adequately supervise and not expose the children to risk of harm or hazard.

It is however currently unclear for approved providers operating centre-based services, how the existing centre-based educator to child ratios should apply when transporting children, whether the driver of the vehicle may be included in those ratios, what qualification requirements apply, and to whom.

In centre-based services, the numbers of children being transported can vary, and in some cases, depending on the capacity of the vehicle, the numbers of children being transported can be substantial.

In line with requirements under the National Regulations, it is expected that children, at all times they are being educated and cared for by the service including on transportation, are supervised by staff members who hold the required approved first aid qualification, anaphylaxis and emergency asthma management training and a current working with children check.

The driver of the vehicle may not be a staff member of the education and care service. In order to mitigate risks, it is proposed that the approved provider must ensure that the driver of the vehicle holds a current working with children check (unless an exclusion applies), a current approved first aid qualification and has completed anaphylaxis and emergency asthma management training.

It is not being proposed through the options presented that the individuals supervising transportation would need to hold an approved early childhood qualification.

What are the options for change?

Options*	Description
A	No change.
B*	<p>Legislative change to require specific transport ratio requirements for when children are being transported by, or are on transportation arranged by, an education and care service.</p> <p>To clarify that the driver is counted in the ratio during transportation.</p> <p>For example, transport specific ratio requirements could require:</p> <ol style="list-style-type: none"> In the case of vehicles carrying no more than 7 children at any one time, only the driver of the vehicle is required to be on the vehicle; and In the case of vehicles carrying more than 7 children at any one time, there must be the driver and at least one other additional staff member on the vehicle. <p><i>For FDC services the FDC age limitations continue to apply⁹⁶</i></p>
C*	Legislative change to specify in the case of vehicles transporting only school age children that ratio requirements would not apply in the vehicle.
D*	Legislative change to require the presence of a staff member of the service (other than the driver) when children are embarking and disembarking from the vehicle at the service.
E	Legislative change to require that where the driver is not a staff member of the education and care service that prior to transportation of the children the approved provider must ensure that the driver holds a current working with children check (unless an exclusion applies), a current approved first aid qualification and has undertaken anaphylaxis and emergency asthma management training.
F	Further guidance around adequate supervision/risk assessment as it relates to transportation.

Note: Options are not mutually exclusive.

** These options are minimum requirements. A risk assessment must be completed by the service that may indicate requirements for additional staff members to meet adequate supervision because of issues such as numbers of children and their specific characteristics (e.g. age, mobility, behaviour, disability, etc).*

Impact analysis

Option A – Status quo

Currently, while the likelihood of serious harm during regular transportation remains low, the consequences can be fatal. If no changes are made, the risks to children will remain if ratios applicable to service premises continue to be utilised in the transportation context.

While the recent amendments to the National Regulations mandating transport-specific policies and procedures; conduct of risk assessments; and written authorisations for transport were intended to target address specific safety risks associated with transportation, they do not fully address what would constitute adequate supervision during transportation of children; what are appropriate educator to child ratio requirements for transport; whether the driver can be counted in the ratio and what training or qualifications the approved provider needs to ensure they hold.

There is therefore uncertainty of providers about how the legislation should be applied in the transportation context for the particular circumstances of their education and care service. This results in inconsistency of practice and may result in situations during regular transportation where children experience lower levels of protection from harm and hazard by not being adequately supervised.

Option B – Legislative change to require specific transport ratio requirements for when children are being transported by, or are on transportation arranged by, an education and care service

Option B introduces a transport specific ratio to be used by services when providing regular transportation. This option specifies the circumstances where the driver can be included in the ratio during transportation.

As an example, separate transport specific ratios may require

- a. In the case of vehicles carrying no more than 7 children* at any one time, only the driver of the vehicle is required to be on the vehicle; and
- b. In the case of vehicles carrying more than 7 children at any one time, there must be the driver and at least one other additional staff member on the vehicle.

For FDC services the FDC age limitations continues to apply.

This example provides for the allowable maximum number of children in a FDC service being a maximum of 7 children to one educator at any one time. The assumption is made that the FDC educator could be a driver of a vehicle carrying the maximum children at any one time and therefore similar treatment should be given to a bus in relation to a centre-based education and care service that has a driver (who would be counted) for the first 7 children the vehicle.

This option will have no impact on FDC educators, who are not permitted to care for more than 7 children under the National Law and Regulations.

There will be costs associated with achieving compliance if additional staff members are required. Services may have to employ additional staff during periods of transportation, or may cease to provide transport based on the number of children they can safely and viably carry, which may create access issues for families who otherwise cannot transport children to a service. This may also lead to an increase in the cost of education and care services for families and reduce access to education and care for families who may no longer be able to afford education and care. However this is balanced against a reduction in the likelihood of incidents where a child is left on a vehicle due to inadequate supervision.

An estimated cost for an additional staff member to be on a bus transporting children in Queensland for 3 hours in the morning and 3 hours in the afternoon is \$150 per day based on the average cost of approximately \$23 per hour (plus 25% employee costs).⁹⁷ On this basis, the estimated annual cost for the service is approximately \$38,870.00 equating to an annual cost per child of \$103.65.

It is proposed that the additional staff member would not need to hold an approved early childhood qualification.

Option C – Legislative change to specify in the case of vehicles transporting only school age children that ratio requirements would not apply in the vehicle

This option clarifies that a ratio requirement would not apply for school age children, because these children are generally able to transport themselves to school, with their ages and abilities representing a potentially different level of risk when being transported.

Services must undertake a risk assessment to determine whether additional personnel are required to accompany the driver to ensure the adequate supervision of children.

The risk assessment will need to consider circumstances such as numbers of children in combination with their specific characteristics (e.g. mobility, behaviour, disability, etc) to determine appropriate strategies to manage relevant risks and ensure adequate supervision.

It is unlikely there will be additional costs associated with this option as adequate supervision is a current requirement.

Option D – Legislative change to require the presence of a staff member of the service (other than the driver) when children are embarking and disembarking from the vehicle at the service

Transportation presents a number of risks to children’s safety, however a particularly significant risk is presented when children are embarking and disembarking a vehicle at the service. This is particularly the case for very young children who may be non-verbal and unable to draw attention to the fact that they have been left alone inside a vehicle.

The process of embarking and disembarking from a vehicle presents the greatest risk as demonstrated by a case in NSW in 2019, where a toddler in education and care was left unsupervised in a vehicle for six hours.

Transport-specific amendments made to the National Regulations that commenced on 1 October 2020 include the requirement to conduct risk assessments for transporting children and, in particular, the risk assessment must consider procedures for embarking and disembarking the means of transport.⁹⁸

Despite these amendments, the issue of embarking and disembarking requires a particular mitigation strategy to ensure the safety of children.

To help manage this risk, it is proposed that children embarking and disembarking a vehicle at the service must be supervised by a staff member other than the driver of the vehicle. This will provide an additional safeguard to help ensure all children are accounted for during this time of heightened risk to children’s safety.

There are likely to be some costs associated with achieving compliance with this option as a staff member at the service would need to attend to conduct supervision of the embarking/ disembarking process.

Option E – Legislative change to require that where the driver is not a staff member of the education and care service that prior to the transportation of children the approved provider must ensure that the driver holds a current working with children check (unless an exclusion applies), a current approved first aid qualification and has undertaken anaphylaxis and emergency asthma management training

National Regulations require that if the individuals supervising on the vehicle are staff members of the education and care service, at least one of them will hold the required approved first aid qualification, anaphylaxis and emergency asthma management training.⁹⁹ The staff member must also hold a current working with children check.

If the driver of the vehicle is not a staff member of the education and care service, and no staff members are present in the vehicle, this option requires the approved provider to ensure that the driver holds a current working with children check, a current approved first aid qualification and has undertaken anaphylaxis and emergency asthma management training.

This will help ensure the health and safety of children who are being transported by an individual who is not a staff member of the service.

Unless an exclusion applies, working with children checks are mandatory for individuals working or volunteering with children. This should include individuals providing transportation services for children.¹⁰⁰

There may be costs for drivers and/or their employers to ensure they have a current working with children check, approved first aid qualification and anaphylaxis and emergency asthma management training. The estimated cost associated with an approved first aid qualification and anaphylaxis and emergency asthma management training can range from \$100 to \$150.

It is unlikely that this option will place significant administrative burden on approved providers and, by undertaking this check, it will help improve the safety of children being transported.

Option F – Further guidance around adequate supervision/risk assessment as it relates to transport

This option acknowledges that there are various transport scenarios that may arise for a service, and that the management strategy to mitigate risk is particular to the circumstances at the time. For example, the risks and supervisory requirements associated with infants securely strapped into a small car are different to the risks and supervisory requirements associated with a large number of school aged children on a bus.

Providing guidance allows for the flexibility needed by service providers to tailor their risk management strategy according to their circumstances.

It is unlikely there will be costs associated with this option.

- **Feedback is sought as to the nature and extent of problems related to child safety during regular transportation.**
- **Feedback is sought on the likely impacts associated with provider/service costs, child safety and access to education and care services for families.**
- **Feedback is also sought on the extent to which the proposed legislative amendments will impact the administrative burden for providers, and the extent to which this is likely to reduce the risk of harm to children on transport.**
- **Feedback is sought on whether any limitations should be introduced on the ages of the children transported, including the overall number of certain ages that can be transported.**
- **Feedback is sought as to whether the driver of the vehicle should be included in ratio calculations.**
- **Feedback is sought as to the proposed qualification requirements of adults required to supervise regular transportation.**
- **Feedback is sought on any other options that could reduce the risk to children during transportation by a service or arranged by a service.**

3.4 Improving children's safety during emergency evacuations from multistorey buildings

Background

The National Construction Code

The National Construction Code (NCC) sets out the requirements for buildings in Australia. It is a performance-based code containing technical standards for the design, construction and performance of buildings.¹⁰¹

The Australian Building Codes Board recognises that children, particularly those under the care of others in education and care centres, are among the most vulnerable occupants of all buildings¹⁰². Whilst there have been no known fatalities or injuries of children in high-rise buildings as a result of fire in Australia and therefore the benefits of any intervention are difficult to quantify,¹⁰³ it is still recognised that risks to occupants, though very small, are markedly higher when education and care centres are located on upper levels.¹⁰⁴

There have been recent amendments made to the NCC (that commenced on 1 July 2020)¹⁰⁵ that require education and care services located above ground floor to demonstrate a 'performance solution' to mitigate risks in response to emergency evacuations. This requirement usually does not apply to existing services¹⁰⁶ or standalone services.

Implementation of effective building safety features and emergency equipment is a critical measure in supporting the safe and timely evacuation of children and staff.

These issues are continuing to be progressed through concurrent building safety and compliance process reforms.

The NQF

Of the 15,666 centre-based education and care services in Australia,¹⁰⁷ over 470 services are located in multi-storey buildings across Australia (representing 3%), with numbers continuing to increase.¹⁰⁸

Under the NQF there are a number of mandated obligations on approved providers of all services relating to emergency evacuations. They must ensure that services have in place policies and procedures relating to 'emergency and evacuation',¹⁰⁹ including the setting out of instructions for what must be done in the event of an emergency, and a floor plan.¹¹⁰ A risk assessment must also be conducted to identify potential emergencies relevant to the service for the purposes of preparing the procedures.¹¹¹ Following this, approved providers must ensure that services 'take reasonable steps' to ensure that staff and volunteers at the service follow the procedures¹¹² and that the procedures are rehearsed every 3 months.¹¹³

At present, there remains considerable scope for approved providers in drafting these policies and procedures, including the means by which they address any identified fire-safety risks that might apply to their service premises.

In 2019–20, across all education and care services, failures relating to emergency and evacuation procedures (regulation 97) represented 13% of all confirmed breaches of the National Regulations.¹¹⁴ Examples of the types of breaches include issues relating to the emergency and evacuation floor plan, instructions and floor plan not being displayed in a prominent position, a lack of documentation for emergency and evacuation rehearsals and procedures not being rehearsed every three months as required.

What is the problem?

There are specific evacuation risks for children attending services located in multi-storey buildings, particularly where such facilities are located above ground level, as acknowledged by the Australian Building Codes Board noted above. Young children, non-ambulatory children and infants take longer to evacuate than adults, with more prior planning as to the method of evacuation required.

The spread of fire from floors below present increased risks for services located above ground level. Previous fires around the world in multi-storey buildings have showcased the speed at which fire may travel, and in some instances have resulted in loss of life.¹¹⁵

While the NQF provides broad parameters for emergency planning, there is inconsistency across jurisdictions. The lack of expert oversight over the development of emergency and evacuation plans for education and care services means that plans may not adequately address methods of evacuating infants and young children in the event of an emergency. The issue of inconsistency may be further exacerbated given performance solutions are being implemented under the NCC, rather than more prescriptive deemed to satisfy requirements.

In Victoria and the ACT, there is a particular problem with new service premises being developed and built that may comply with local planning requirements but which may not comply with regulatory requirements for the evacuation of young children, non-ambulatory children and infants, when the approved provider applies for service approval. Such new buildings may also not meet requirements for outdoor space and natural light. Planning processes are completely separate from NQF service approval processes, and consider different matters to the NQF requirements for service premises. To enable compliance, an approved provider or developer may have to consider either costly alterations or not pursuing a service approval.

What are the options for change?

Option	Description
A	No change.
B	<p>Amend the legislation about emergency and evacuation procedures to require that for centre-based services located in multi-storey buildings:</p> <ul style="list-style-type: none"> • appropriate experts (such as fire safety experts, fire safety engineers, or emergency management professionals) are required to be: <ul style="list-style-type: none"> – engaged in the development of emergency and evacuation procedures and/or plans; and – to observe and report on one full emergency evacuation rehearsal at least annually and provide a report (which is made available upon request to the regulatory authority); and • that the emergency and evacuation procedures must set out additional information in regard to instructions for what must be done in an emergency, staged evacuations, identification of the person-in-charge and staff roles and responsibilities, and • a review and/or risk assessment, following certain prescribed events or a prescribed time period.
C	<p>Strengthen service approval processes to require that for centre-based services located in multi-storey buildings the regulatory authority, in assessing the suitability of the education and care service premises, is to consider the need for direct egress to safe evacuation areas for very young children and non-ambulatory children.</p> <p><i>This option would also apply to FDC requiring approved providers to assess the FDC residence as part of their approval processes, where located in multi-storey buildings.</i></p>
D	<p>Amend service approval processes to require approved providers wishing to operate a centre-based service from premises in a multi-storey building in Victoria or ACT to apply to the regulatory authority for pre-approval of development and building plans for the proposed premises prior to development and construction. (Victoria and ACT only).</p>
E	<p>Enhance national guidance and communication strategies to improve understanding of service approval considerations for centre-based multi-storey buildings and reinforce existing emergency and evacuation requirements for the early childhood education and care sector.</p> <p><i>Guidance would also be prepared for persons involved in third-party planning and building development processes across states and territories.</i></p>

Note: Options are not mutually exclusive

Please note, it is proposed that the majority of options be limited to centre-based services in multi-storey buildings operating above the ground floor.¹¹⁶ There is one option included about FDC services, given that these risks are also present with multi-storey FDCs and particularly heightened where educators provide overnight care.

The proposals would apply only where there is not an existing requirement in state or territory legislation. For example, state legislation may already require fire and emergency procedures for multi-storey commercial or mixed use buildings to be developed in conjunction with fire safety experts, such as fire safety engineers.

Impact analysis

Status quo

The current likelihood for potential harm to children and staff at services operating in multi-storey buildings is small given the low number of serious fires or other incidents in multi-storey buildings across Australia. However, the possible consequences of an actual emergency evacuation situation could be catastrophic, and may result in loss of life. The impact, and scale of the potential risks, was significantly highlighted following the fire at the Grenfell Tower in West London in 2017 and a fire involving combustible cladding in Melbourne in 2019.

As noted above, breaches relating to emergency and evacuation procedures and the following of these procedures are not uncommon across all services. Incomplete, poorly drafted, or otherwise inadequate procedures may negatively impact the safe and timely evacuation of children. This is especially relevant for multistorey buildings where there may already be long distances to travel to a safe evacuation point, with added complexities of ensure safety around other building occupants. Poorly drafted procedures may increase the time children (and staff) are exposed to fire, smoke and other risks that exist during an emergency evacuation.

If no change is adopted, emergency and evacuation procedures may continue failing to adequately address the unique fire safety risks associated with operating in complex multi-storey buildings with potential life-threatening harm in the event of an actual emergency evacuation.

Option B – Amend emergency and evacuation requirements under Regulation 97 for multi-storey buildings to require:

Involvement of fire safety experts in the development of procedures and/or plans

The involvement of fire safety experts, such as fire safety engineers and emergency management professionals, in the development of emergency evacuation procedures for multi-storey centre-based buildings may ensure that these documents appropriately identify and address site-specific risks to children and staff in attendance.

Element 2.2.2 of the NQS requires approved providers to ensure services have plans to effectively manage incidents and emergencies, developed in consultation with relevant authorities, and are practiced and implemented. There is no definition under the NQF of relevant authorities. While the Guide to the NQF states that providers may seek advice from the fire brigade or emergency services authority about evacuation plans and emergency exits,¹¹⁷ the involvement of fire safety experts in the case of multi-storey buildings may help to ensure children's safety. This is due to the complexity and unique risks of operating in a multi-storey building, such as distance to travel based on building design, structural architecture and co-location of commercial or mixed use premises.

By way of example, the Queensland Regulatory Authority currently expects that policies, procedures and plans are developed by, or in consultation with, persons with 'appropriate expertise' as well as in accordance with jurisdictional fire safety regulations and the building-specific fire evacuation scheme.¹¹⁸ While regulatory authorities may apply particular conditions of service in this way, a nationally consistent approach may ensure that all children are similarly protected in each state or territory.

Observation and reporting on rehearsals

The additional involvement of fire safety experts in observing and reporting on one full emergency and evacuation rehearsal at least annually may enhance understanding and practical competency within the service regarding procedures in order to improve outcomes for children and staff during an actual emergency incident.

The Guide to the NQF states that as part of an assessment and rating visit, assessors may sight records of emergency drills and evaluations of these, however evaluations are not mandated and it is unclear what the specific focus of the evaluation should be.¹¹⁹

It is also noted that despite any differences among individual multi-storey buildings regarding structural or building design or emergency infrastructure, this option may mitigate risks associated with these emergency evacuations.

Clarification on the nature and content of procedures

Amending the National Regulations to clarify the required nature and content of emergency and evacuation procedures, for example, as to staged evacuations, provision of instructions, identification of the person-in-charge and staff roles and responsibilities, may provide greater certainty for the sector as to specific requirements in this area and improve outcomes for children in the event of an emergency evacuation.

The impairment of children under six in emergency evacuation situations is similar to residents in aged care, however no guidance is provided within the NQF as to the specific nature and content of emergency and evacuation procedures.

The Queensland Regulatory Authority requires approved providers responsible for services operating in multi-storey buildings to consider the need for staged evacuation procedures as part of their policies and procedures.¹²⁰ Also, lessons learnt from the 2011 NSW Quakers Hill Nursing Home fire identified that the following procedures may have resulted in improved outcomes for residents: staged evacuations starting with those at greatest risk of harm; provision of clear concise instructions by staff, including visual gestures; and the identification in an emergency plan of the person-in-charge during an emergency, as well as other staff with specific roles.¹²¹

Introduce reviews and/or a risk assessment schedule

The introduction of a mandatory review of emergency and evacuation policies and procedures and/or risk assessment schedule, following certain prescribed events or a prescribed time period, may improve the currency and relevance of these policies and procedures, ensuring they most appropriately address specific risks relevant to each service at a given point in time.

Aside from conducting an initial risk assessment, the NQF does not require any additional risk assessments to be undertaken. They might be performed following a prescribed event, for example, a substantial change in the composition and ages of children at the service, new building tenants, or change in evacuation meeting point. Alternatively, additional assessments could be undertaken at a prescribed time period, for example, every 12 months. In either case, a risk assessment might also be documented, as occurs with rehearsals for emergency and evacuation procedures.¹²²

There is a comparable example within the NQF of risk assessments for the regular transportation of children outside an education and care service being required at least once every 12 months.¹²³ The need for an updated risk assessment regarding an emergency evacuation is equally valid.

National guidance could also be provided to support this change, including information on risk management and identification of new risks, updating of plans and/or demonstrating improved practice.

The introduction of a mandatory review of the emergency and evacuation procedures, again, whether on a regular basis or following a prescribed event (including perhaps the above proposed risk assessment) may ensure that emergency and evacuation policies and procedures are current and remain relevant to the specific risks faced by children at staff at individual services in multi-storey buildings. The NQF is currently silent on this issue.

By way of an overseas example, the New Zealand Ministry of Education requires evidence of the review of an emergency plan, at least, annually, as well as evidence of the implementation of improved practices, as required.¹²⁴

Overarching costs and impacts

There will be a financial cost to providers of services located in multi-storey buildings, arising from the engagement of a fire safety expert/engineer. By way of example, Fire and Rescue NSW report that a fire safety engineer engaged by that service charges \$200 per hour, with fire safety officers and other fire brigade members charging hourly fees less than this amount.¹²⁵ Private contractors tend to range from around \$2000 – \$5000 for development of emergency evacuation procedures and then annual attendance to observe and report on a rehearsal, depending on the complexity of the premises, numbers and ages of children.

There is also likely to be some additional administrative or financial costs for services associated with the introduction of reviews and/or risk assessments, which would be increased depending on their frequency.

More specific policies and procedures that address complex fire-safety risks relating to specific building tenants may be welcomed by landlords and building management in large multi-storey buildings, as this may improve overall coordination and actions during an emergency situation (and rehearsals) and potentially decrease insurance premiums.

Option C – Strengthen service approval processes for multi-storey buildings

This option would also apply to FDC requiring approved providers to assess the FDC residence as part of their approval processes where located in multi-storey buildings.

Mandated consideration of whether very young children and non-ambulatory children who are unable to self-egress in an emergency have direct egress to the safe evacuation areas may provide the best means for ensuring the safety of children during an emergency evacuation. This would likely include consideration of the suitability of premises for very young and non-ambulant children above ground level.

For centre-based services this would be part of the regulatory authorities' determination of a service approval. Based on the realistic expectations of the threshold abilities of staff to assist in the evacuation of children, such an approach mitigates risks associated with staff carrying one or more children in different trips via an emergency exit (particularly with regard to staff/child stamina and movement against an evacuating cohort of other building tenants), long distances to travel to exits and service locations on extreme upper levels.

The Queensland Regulatory Authority currently requires approved providers to consider as part of its policies and procedures the location of very young children (younger than two years of age) and non-ambulatory children on the ground floor of the premises, *or on a level that provides the easiest (and safest) possible egress to a place of safety outside the building.*¹²⁶ An example such as this could be provided as an example of what may be appropriate.

If this option were adopted, centre-based services would still likely be subject to site-specific reasonable conditions informed by expert advice, such as the ongoing location of non-ambulant children, additional staff requirements or different educator to child ratios, based on the building layout and design and the distance to travel.

There are likely to be costs to providers arising from this proposal such as administrative delays from the regulatory authority requiring further information and expert advice to decide the service approval. The decision for service providers to situate a service above ground floor is also usually a financial one and can have lower rental costs than a service operated on the ground floor.

For FDC services, this consideration would form part of the approved provider's role in assessing a residence or venue. The risk is generally present with multi-storey FDCs and particularly heightened where educators provide overnight care.

The approach may improve the safety of children and staff in an emergency situation, noting that evacuation down a single flight of stairs may present additional safety risks, especially when one educator may be attempting to evacuate as many as seven children who are asleep during the night, of which up to four may be non-ambulatory.

The provision of national guidance would be required to provide clarity for FDC approved providers regarding requirements for emergency evacuations, increase general awareness and understanding and strengthen compliance, improving overall outcomes for children.

Option D – Pre-approval (Victoria and ACT only)

A pre-approval application process for service premises to be located in multistorey buildings would provide an opportunity for the regulatory authority to identify non-compliant proposals before construction, and ensure that plans are adequate to meet regulatory requirements, including protecting the safety of young children in emergency evacuations. This process would enable the approved provider to avoid potential refusal of a service approval application or the cost of making alterations for the premises to become compliant. An application fee would apply and a final service approval would still be required following construction. As with a service approval, a pre-approval would be transferrable between approved providers.

The application process would only be available to persons holding a provider approval, and therefore would not be available to a developer or builder who has not entered into an arrangement with an education and care service provider. The local planning approval process would remain completely separate, meaning a pre-approval from the regulatory authority would have no impact on a provider's planning application, nor the decision of the planning authority.

Option E – National guidance

Education and care sector

National guidance may reinforce existing requirements relating to emergencies and evacuations, including for example requirements for rehearsals (regulation 97) and the ‘reasonable steps’ to be taken in ensuring that staff and volunteers follow procedures (regulation 170).

It would also be publicly available for families and include additional information about best practice emergency and evacuations procedures and other items outlined in option B (above).

Persons involved in third party planning and building development processes

While planning and building development responsibilities in each state and territory fall outside the remit of the NQF, the adoption of national communications and/or guidance for third party agencies, such as building developers and certifiers, and planning authorities in each state and territory, may assist in ensuring that the unique needs of education and care services are taken into consideration at the earliest opportunity in the planning process. This might also assist in mitigating problems for providers associated with retro-fitting services once building work has been completed.

These guidance materials might include, for example, information about general health and safety requirements for children under the NQF and the role of state and territory regulatory authorities in determining service approvals, including the factors and information considered under that process. This option is not proposing a formal role for regulatory authorities in state and territory planning processes.

There are no costs to providers or families arising from this proposal. There may be potential financial and other benefits to providers arising from the consideration of education and care requirements at the earliest opportunity in the planning process that may mitigate later costs to address any identified deficiencies.

- **Feedback is sought on the extent to which the options will reduce the risks to children in the event of an emergency evacuation in a multi-storey building, and what additional costs might be incurred by providers.**
- **Feedback is also sought on any other options that could reduce the risks to children in the event of an emergency evacuation in a multi-storey building.**
- **Feedback is sought on whether developers and approved providers would find a pre-approval process helpful, and how it might influence development and building activities in Victoria and the ACT.**

4 ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

The Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) was completed in response to allegations of sexual abuse of children in institutional contexts. The Royal Commission considered childcare services as institutions for the purposes of the Royal Commission with childcare services, accounting for 0.5 per cent of the location for allegations, 32 out of 5771 cases.

During the Royal Commission over 16,000 individuals provided information regarding their experiences, with the Commission hearing more and 8000 personal stories and receiving 1000 written accounts of sexual abuse.

On 15 December 2017, the Royal Commission presented a final report to the Governor General, detailing the culmination of a five-year inquiry into institutional responses to child sexual abuse and related matters. The final report can be found at: www.childabuseroyalcommission.gov.au/final-report. The Royal Commission made over 180 recommendations.

Australian governments have agreed to address the Royal Commission recommendations. The recommendations aim to embed deep and enduring change, through preventative measures such as education, structural controls and cultural changes. There is also an expectation from the community that measures are implemented to reduce the risk to children of experiencing sexual abuse while attending an education and care service.

Recommendation 6.4 of the Royal Commission states that all institutions should uphold the rights of the child and act with the best interests of the child as a primary consideration. In order to achieve this, institutions should implement the Child Safe Standards identified by the Royal Commission.

The National Principles for Child Safe Organisations (National Principles) give effect to recommendations of the Royal Commission relating to the Child Safe Standards and provide guidance on key actions and performance measures in implementing the standards. They provide a nationally consistent approach to cultivating organisational cultures and practices that foster child safety and wellbeing across all sectors in Australia.

The following proposals will enable the NQF to continue to protect children's safety, health and wellbeing in education and care services commensurate with the objectives of the NQF, the relevant recommendations of the Royal Commission, and community expectations. The proposals aim to reduce predatory behaviour and provide survivors of child sexual abuse access their records assisting them to seek redress.

4.1 Embedding the National Child Safe Principles

Background

This CRIS proposal aims to increase awareness and education about child sexual abuse by embedding the National Principles into the NQF. While services are required to have policies and procedures in place on providing a child safe environment, analysis of the National Principles against the NQF identified that while there was a high degree of alignment between the National Principles and the NQF, some gaps are apparent. For further information, see the [supplementary information document on the NQF Review website](#) for a mapping of gaps across the NQF. Measures to address these gaps are required to negate the risk of child sexual abuse and/or the mismanagement of cases by children’s education and care services.

The Royal Commission found that the vast majority of survivors experienced abuse in out-of-home care settings, schools and during religious activities. Between May 2013 and May 2017, these three environments account for 87.9 per cent (5771) of cases. ‘Childcare’ was the setting for 32, or 0.5 per cent of these cases.

Although the number of cases in a childcare setting is not large, there are significant consequences for the children who experienced sexual abuse, which continue throughout adulthood. Whilst implementing and embedding the National Principles into the NQF alone will not ensure a reduction or elimination of child sexual abuse, it aims to increase education, awareness and to change the culture within institutions.

What is the problem?

There are a small number of gaps between the National Principles and the NQF. To address these gaps and the risk of abuse occurring in education and care settings, this proposal and its options addresses expectations that measures should be implemented to help prevent child sexual abuse.

Whilst the NQF generally aligns with the National Principles, the following options provided below address identified gaps and better position institutions to fully implement and embed the National Principles. In particular, the areas most likely in need of strengthening to better align with all National Principles are:

- arrangements for volunteers in education and care services
- how online environments, including video surveillance, are used and monitored in services
- the role of organisational culture in reducing children’s exposure to the risk of abuse

If the gaps between the National Principles and the NQF are not addressed there may remain a risk to children’s safety from sexual abuse. The reason for this is that volunteers will not be familiar with the National Principles, and no procedures would be in place to describe how online environments are used/monitored or organisational cultural change may not occur.

The options below do not include proposals for amending the standards and elements of the NQS, as changes to the NQS are outside the Terms of Reference of the NQF Review.

What are the options for change?

Option	Description
A	No change.
B	Amend the ‘assessment guide’ in the Guide to the NQF to align with the assessment of all the National Principles.
C	<p>Amend the National Regulations so that the requirement for services to have in place policies and procedures for providing a child safe environment specifically refers to implementing the National Principles.</p> <p>Amend the National Regulations and associated guidance so that approved providers will be required to:</p> <ul style="list-style-type: none"> • Ensure that policies and procedures for their service/s address the National Principles for both staff members and volunteers • Ensure all volunteers and staff at their service/s are advised of the existence and application of the National Principles.
D	<p>Amend the National Regulations and associated guidance to address identified gaps between the Child Safe Principles and the NQF to:</p> <ul style="list-style-type: none"> • Clarify that volunteers must be aware of the existence and application of any child protection law and any obligations held under it. • Require that all FDC co-ordinators complete child protection training prior to commencing employment and undertake annual refresher training. • Include working with vulnerable people/children check details on volunteer staff records. • Clarify that service providers’ child safe environment policies and procedures must also cover the creation of a child safe culture. • Require services to develop and implement a policy and procedure around the safe use of online environments. • Require service complaint handling policies to include policies and procedures for managing complaints about children exhibiting harmful sexual behaviours.

Note: Options C and D are mutually exclusive.



Impact analysis

Status quo

Not implementing any change will result in parts of the National Principles not being embedded into the NQF, nor will policies, procedures and/or guidelines be developed to raise awareness of child sexual abuse and educate the education and care sector. The NQF is the national framework in which early childcare education and care services are assessed and rated against a set of quality standards, therefore it is important that the NQF is aligned with the Principles. There are expectations from the community and families that education and care services will maintain the highest standards of child protection. If the status quo remains, there is a risk that reputational damage for the education and child care sector, the community expectation will not be met and governments will need to justify why the implementation of the National Principles has not occurred considering all governments have agreed to implement the recommendations of the Royal Commission.

Option B – Update the Guide to the NQF and align assessment with the National Child Safe Principles

Aligning the National Principles with the assessment process may not promote consistent adherence to the National Principles, as the assessment process only captures information about a service's performance at one point in time. This option also addresses the community expectation that everything possible has been done to enable the safety of children.

This option will result in providers bearing some cost to review their policy and procedure for each service to check and in some cases, adjust for alignment with published guidance, including authorised officers having to become familiar with the National Principles.

Option C – Require policies and procedures to address the National Child Safe Principles

Regulation 168(2)(h) of the National Regulations would be amended to require services to have in place policies and procedures for providing a child safe environment including implementing the National Principles.

Service providers would be required to update policies and procedures to align to the National Principles. There may be time, personnel and financial impacts associated with developing new policies and procedures. However, this option may assure families and the community that service providers are committed to the National Principles.

This option would allow services the greatest autonomy and flexibility in how they implement the National Principles and would allow them to do so in a manner that is specific to their own operating context. Introducing changes, which further align the NQF with the National Principles, may have a secondary benefit beyond the direct benefit to children, by allowing services to rely more on the NQF for considering whether their services operate within a culture and an environment that prioritises child safety and protects children from abuse.

However, the risk with less prescriptive measures is that there may be inconsistencies in how the National Principles are applied by services. Differences in application may result in some children being exposed to a greater degree of risk of harm than others, depending on the services' application of the National Principles.

Services may have increased costs associated with having to align their practices to the National Principles, particularly for smaller services. However, given there is already a significant degree of overlap between the NQF and the National Principles, these costs should be minimal for most services. Regardless of the cost, there are significant negative impacts and consequences for the child, their family, the community and the service if child sexual abuse occurred at a childcare service.

Option D – Amend the National Regulations and associated guidance to address identified gaps between the Child Safe Principles and the NQF

This option would involve amendment to the National Regulations and associated guidance to:

- Clarify that volunteers must be aware of the existence and application of any child protection law and any obligations held under it.
- Require that all FDC co-ordinators complete child protection training prior to commencing employment and undertake annual refresher training
- Include working with vulnerable people/children check details on volunteer staff records
- Clarify that service providers' child safe environment policies and procedures must also cover the creation of a child safe culture
- Require services to develop and implement a policy and procedure around the safe use of online environments.

This option is likely to provide families with the greatest level of assurance that service providers will operate consistently with the Principles in the context of the NQF as the Principles would be entrenched in law. This option also provides a clear and actionable pathway for service providers to better align their practice to the Principles.

Similarly, to the option above, this option may allow service providers to rely on the NQF as a reference point for considering whether their services operate within a culture and an environment that prioritises child safety and protects children from abuse, and therefore operate in a way that is aligned with the Principles.

As with any prescriptive practice, this option reduces the capacity for services to decide how best to implement the Principles. Services will likely be required to update or develop new policies and procedures to comply with the law, and there may be personnel and other financial impacts on services in meeting the new legislative requirements. Given there is already a significant degree of overlap between the NQF and the Principles, these costs should be minimal for most services. Regardless, the consequences of child sexual abuse outweigh likely additional costs.

As noted above, smaller services may be disadvantaged having to comply with legislation this disadvantage may be significant as they will have no flexibility in terms of how they meet these requirements.

- **Feedback is sought on the costs and benefits of implementing the Principles, and what pathway for implementing the Principles would be preferred.**
- **Feedback is sought on challenges in aligning assessment processes with the National Principles.**

4.2 Updating record keeping requirements

Background

This CRIS proposal addresses the importance of good recordkeeping in identifying and responding to the risks and incidents of child sexual abuse, minimising distress and trauma for survivors and seeking information about their abuse while in the care of institutions.¹²⁷

Currently, approved providers are required to keep records relating to incidents and/or allegations of potential child abuse in a safe and secure place until the child is aged 25 years.

The Royal Commission recommends institutions engaged in child-related work retain records relating to child sexual abuse that has or is alleged to have occurred for at least 45 years (Recommendations 8.1 and 8.2).¹²⁸ In addition to this, it recommended that records identified as relevant to child safety and wellbeing, including child sexual abuse, be clear, objective and thorough, be maintained in an indexed, logical and secure manner, and be retained and disposed of in a consistent manner (Recommendations 8.3 and 8.4).¹²⁹

The Royal Commission found that many survivors of sexual abuse could not access the institutional records of incidents and/or allegations during their time in care, either as a result of poor recordkeeping practice, retrieval processes, or because the records no longer existed. This meant that survivors had to seek alternative solutions to obtain basic information about themselves or simply were never able to recover such information, and therefore reduced their ability to seek redress.

What is the problem?

Currently, approved providers are required to keep records relating to incidents and/or allegations of potential child abuse in a safe and secure place until the child is aged 25 years. The Royal Commission found that as it takes on average 23.9 years for survivors to disclose childhood abuse.¹³⁰ This means that any survivor over the age of 25 is not able to access records when they attended child care and need to find alternative solutions to obtain information about themselves and/or not being able to access any information, reducing their ability for redress.

What are the options for change?

Option	Description
A	No change.
B	Improved guidance to assist providers on record keeping utilising existing best practice instructions developed by relevant Commonwealth, State and Territory Archive Authorities (for example, the National Archives of Australia General Records Authority 41) as per Recommendation 8.3, along with the five high-level record keeping principles recommended by the Royal Commission in Recommendation 8.4.
C	Amend the National Regulations to increase record keeping requirements to 45 years (in relation to relevant records regarding actual or alleged instances of child sexual abuse) in line with the Royal Commission recommended minimum.
D	Require not-for-profit, community and for-profit providers to store records in accordance with recommended standards and timeframes of the Royal Commission.

Note: Options B, C and D could be implemented together or separately.

Impact analysis

Status quo

Given the average age of disclosure of abuse is 23.9 years of age, current provisions may result in individuals needing to access records that no longer exist. As the Royal Commission highlighted, in cases where an individual has experienced abuse, this may obstruct the efforts of survivors in seeking redress in their adult lives. While records alone do not secure convictions or successful civil claims, contemporaneous records kept by educators can assist in substantiating claims of child abuse, particularly where other types of evidence (ie: physical evidence such as DNA) are lacking. Not addressing this issue will result in not meeting survivor's needs.

Option B – Improved record keeping guidance

Improved guidance may assist providers to create and maintain relevant, accurate and detailed records and assist with ease of access. This could provide future benefits to those who experience child abuse in these settings, and enable them to seek redress in a way that many current survivors have been unable to do.

However, guidance alone may not incentivise services to adopt best practice record-keeping. Adopting such practices is likely to be costly for services, and they may not feel compelled to do so if there is no legislative requirement. If services do not follow the guidance for whatever reason, adults seeking redress for child sexual abuse may experience difficulties in accessing records that support their claims.

Developing guidance also does not directly address the fact that non-government providers are not legally bound to follow the above recordkeeping guidelines as per Recommendations 8.3 and 8.4. This option only goes part way to addressing the problem.

Option C – Amend legislation to increase record keeping requirements to 45 years

This sets minimum regulatory standards that will directly align the recordkeeping requirements of the NQF with those recommended by the Royal Commission. This option enables survivor's access to their records, particularly those older than 25 years. It takes into account the limitation periods for civil action for sexual abuse, and the 23.9 year delay on average between childhood abuse and disclosure of that abuse.

If there is a legislative requirement to maintain records for a substantial period of time, services will have no flexibility in meeting these requirements. Providers would likely incur additional cost and resourcing impacts associated with maintaining records and providing access to these records for an additional 20 years, however the expectations of the survivor and the community would be met.

The unintended consequences of this option is the question of how records should be maintained should the service close and who would be responsible for this.

Option D – Require not-for-profit, community and for-profit providers to store records in accordance with recommended standards and timeframes of the Royal Commission

As has been noted, adopting stronger record-keeping practices will incur a cost on services as they will be required to store records to a particular standard, and for a longer duration. The financial impacts may be more significant for not-for-profit and community centres where they may not have the financial resources to manage legislative requirements. An unintended consequence of this option is that the cost of meeting such requirements affects their financial viability, which may create access issues for children and their families looking for a child care service in that area.

However, not-for-profit, community, and for-profit providers currently account for approximately 84% of the education and care sector in Australia.¹³¹ If these services are not required by law to maintain records for 45 years, a significant proportion of child abuse survivors seeking redress in adulthood are unlikely to be able to access records to support their claims. Difficulties in accessing records across such a significant number of services may discourage child abuse survivors from disclosing allegations of abuse in adulthood. This may in turn prevent authorities from detecting perpetrators of abuse and putting measures in place to ensure the community at large is protected from individuals who mistreat, neglect, and/or abuse children.

- **Feedback is sought as to how records are stored currently and the costs and benefits of extending record keeping to 45 years.**

5 FAMILY DAY CARE

FDC is a well-established part of the Australian education and care system. FDC plays an important role in delivering professional education and care and is a quality, cost-effective and flexible care choice for families.

Under the NQF, a FDC service is defined as an education and care service that is delivered through the use of two or more educators to provide education and care to children; and which operates from two or more residences or venues.¹³² FDC is regulated through a co-regulatory model where the approved provider is expected to play a significant role in ensuring the individual educators operating within their service are meeting their obligations under the NQF, including protecting the safety, health and wellbeing of children in their care.¹³³ Regulatory authorities monitor FDC providers, but have limited direct oversight of the day to day activities of individual FDC educators.

This chapter will seek feedback on a range of issues associated with the operation of FDC services.

5.1 FDC Register and notification requirements

Background

National Quality Framework requirements

Currently, s 269 of the National Law requires FDC providers to keep a register of all educators, co-ordinators and assistants employed or engaged by the service, and take reasonable steps to ensure that the register is accurate. Upon request by a regulatory authority, FDC providers must provide this register (or any changes to the register) within 24 hours to the regulatory authority.¹³⁴

Regulation 153 of the National Regulations sets out the requirements that must be included within the FDC register, including (and not limited to) the following:

- Full name, address, date of birth and contact details for educators, co-ordinators and assistants.
- The address where the educator provides an FDC service.
- Days and hours of operation of the FDC service.
- Educator qualifications.
- The date the educator/co-ordinator/assistant was engaged by the service.

Family Assistance Law Requirements

Under the provisions of Family Assistance Law (FAL), specified personnel of a CCS approved child care service must be uniquely identified in the Child Care Subsidy System (CCSS) using a PRODA (Provider Digital Access) registration number. PRODA is an online identity verification system used by the Australian Government.¹³⁵ The PRODA number is used to identify FDC and In-Home Care educators on sessions of care reported to the Child Care System by approved FDC and In-Home Care services.¹³⁶ The PRODA identification number remains with the educator even if they move between services or jurisdictions.

The PRODA credentials are not required to be collected by approved providers as part of the FDC register required under the NQF, but are permanently recorded by the Australian Government in the Child Care Subsidy System.

What is the problem?

Fraud within the FDC sector has been an ongoing issue that poses a high cost impost on taxpayers and may pose some safety risks to children.¹³⁷ The impact from fraud largely affects the Australian Government CCS system and its impact has not been quantified for the purposes of the NQF Review. However, in the regulatory context of the NQF this issue may result in children being exposed to educators who were previously found non-compliant with their obligations under the NQF and/or the FAL and who pose risks to the health, safety and wellbeing of children.

Regulatory authorities do not have access to information on the FDC register unless specifically requested. This lack of access limits risk-based proactive approaches by regulatory authorities of preventing inappropriate FDC educators from providing education and care services to children. Likewise, access to educator details during emergency situations such as bushfires and COVID-19 may allow regulatory authorities to support service providers in meeting their obligations to ensure the safety of children. This issue makes it more likely that children and families could come into contact with persons involved in serious criminal activity, such as fraud.

What are the options for change?

Option	Description
A	No change.
B	<p>Amend the register requirements so that the FDC register is kept within the NQA ITS, and records information such as:</p> <ul style="list-style-type: none"> Names and Dates of Birth of children attending the service. Names and contact phone numbers of educators, co-ordinators and educator assistants. Days and hours of care and number of children attending per session. Relevant dates (e.g. residence assessment date, educator commencement/end dates). Educators operating above ratio (and the applicable approved provider approved exceptional circumstance as per proposal 5.2). FDC educators' and co-ordinators' PRODA numbers.

Impact analysis

Status quo

Approved providers must maintain an accurate register of all FDC educators, co-ordinators and educator assistants, and make this information available to regulatory authorities within 24 hours of a request. Non-compliance with the requirements attracts a penalty ranging from \$2000 to \$20,000. If option A is chosen, these requirements will continue to operate unchanged.

If no changes are made, there may be associated risk to children attending services that are linked with these unscrupulous activities.

Option B – amend the requirements of the FDC Register

The change to record-keeping requirements would create a one-off additional task for approved providers to move the information from their register into the NQA ITS. It is expected that in the longer term, the burden on approved providers would drop as the online maintenance of information is likely to be more efficient for approved providers.

This option would improve the traceability and accountability of FDC educators (and in some cases, co-ordinators) across the system, which may help governments to limit services that engage in fraudulent conduct. This is likely to have positive impacts for children's safety, health and wellbeing.

- **Feedback is sought regarding the impact of moving the FDC register onto the NQA ITS for providers, educators and the general public.**

5.2 FDC exceptional circumstances

Background

Generally, FDC educators are limited to caring for seven children.¹³⁸ However, there is an exceptional circumstances clause within the National Law that allows FDC educators to care for more than seven children, or more than four children who are preschool age or under, at any one time, where they are granted written approval by the FDC approved provider. It must only be granted in exceptional circumstances. Exceptional circumstances exist if—

- a. all the children being educated and cared for by the FDC educator are siblings in the same family; or
- b. a child to be educated and cared for is determined to be in need of protection under a child protection law and the FDC educator is determined to be the best person to educate and care for the child; or
- c. the FDC residence or approved FDC venue is in a rural or remote area and no alternative education and care service is available.¹³⁹

What is the problem?

Regulatory authorities do not have access to information on FDC educators caring for more than seven children due to exceptional circumstances, unless this is specifically requested from approved providers. This may present educational and developmental risks for children who attend services operating above ratio for extended periods of time. The limit to the number of children cared for by FDC educators is based on extensive research showing better outcomes for children with lower staff-child ratios, especially for very young children and children from disadvantaged backgrounds.¹⁴⁰

As FDC educators often operate alone, the limit is intended to support each child's learning, development and active engagement in the educational program. The low number of children each FDC educator can care for also contributes to ensuring adequate supervision at all times. There have been instances where FDC educators have continued providing education and care to more than seven children in situations that would not meet the exceptional circumstances test outlined in the National Law.

Option	Description
A	No change.
B	Require approved providers to include details of FDC educators operating above ratio due to exceptional circumstances on the FDC register.

Impact analysis

Status quo

If no changes are made FDC educators may continue to operate above ratio for extended periods of time. The extent of this problem is not known, however it may have developmental and educational effects on children attending these services.

Families may play some role in withdrawing children from services that operate above ratio for extended periods of time, however the extent to which this is the case is unknown.

Option B – Require approved providers to include details of FDC educators operating above ratio on the FDC register

Requiring approved providers to include details of FDC educators operating above ratio on the FDC register would create a minor increase in regulatory burden for approved providers.

However, it may enable regulatory authorities to monitor potential misuse of the exceptional circumstances provision and thereby promote ratio requirements that best promote children’s educational development.

During consultations on the 2019 NQF Review Issues Paper, Family Day Care Australia (FDCA) expressed the view that it would be entirely appropriate and reasonable to introduce notification requirements regarding FDC educators operating above ratio due to exceptional circumstances.¹⁴¹

- **Feedback is sought on the extent of this problem for services and the community.**
- **Feedback is sought on the impact of requiring details about FDC educators operating above ratio to be included on the FDC register.**

5.3 Safety around swimming pools in FDC residences

Background

In November 2015, a 2-year old child drowned in a swimming pool while attending a Western Australian FDC residence. Following the drowning death, the Western Australian Coroner recommended that swimming pools be banned for new FDC educators.¹⁴²

Children under five years of age are particularly at risk of drowning when inadequately supervised around pools of water.¹⁴³

Provisions of the National Regulations that deal with water safety at FDC residences are as follows:

- FDC services are required to include a copy of the service’s proposed water safety policy in their service approval application if the approved provider permits a residence or venue with a swimming pool or something that may constitute a water hazard.¹⁴⁴

- The existence of any water hazards, water features or a swimming pool at or near the FDC residence or venue needs to be considered as part of the assessment of each residence and approved FDC venue. Assessments must be conducted prior to education and care being provided and at least annually.¹⁴⁵

All education and care services must have policies and procedures in place for water safety, including safety during any water-based activities.¹⁴⁶

This proposal does not apply in Western Australia as the Western Australian government is currently progressing jurisdiction-specific legislation to address this issue¹⁴⁷ or Tasmania which currently bans any FDC residence/venue from having a pool.¹⁴⁸ In NSW, swimming pools are prohibited in education and care services except for in FDC services which must accord with NSW fencing requirements.¹⁴⁹

What is the problem?

In the period between January 2017 and June 2019 there were 69 instances where regulatory authorities confirmed children had been exposed to harm or hazard related to swimming pools. During this time there were also 14 instances where children were found to not be adequately supervised in circumstances involving swimming pools.¹⁵⁰ Based on authorised officer's notes, this includes children's access to a pool due to an open, missing or broken pool gate lock; an item/s such as a chair being placed close to a pool fence, making it scalable; and neglected pools which can be a haven for mosquitos that can transmit serious diseases to humans.¹⁵¹ Further, on a large number of occasions, an approved provider was found to have failed to conduct an assessment (including a risk assessment) in which the existence of any water hazards, water features or swimming pool at or near the residence or venue was considered. At times, the approved provider was unaware of a swimming pool at an educator's residence. This highlights the lack of safety around swimming pools in FDC residences.

It is likely that these numbers do not reflect the full extent of circumstances where children were at heightened risk of drowning due to inadequate supervision as this data only reflects instances that resulted in a complaint or incident occurring which was investigated by the regulatory authority and is unlikely to reflect 'near misses'.

Across Australia, twelve children aged 0–4 died in Australia due to drowning in 2019/20. Most commonly these deaths occurred in swimming pools. Accidental falls into swimming pools remain the leading activity prior to drowning for this age group.¹⁵²

Toddlers are curious and attracted to water but lack the cognitive ability and physical coordination to use any swimming skills (if they have them) when they fall into a pool. Active supervision is vital to prevent drowning among young children and requires adults to be within arm's reach of a child in, on, or around water.

While it is rare for a drowning death to occur in FDC, it is a catastrophic consequence (usually) of a lapse of supervision and/or a breach of safety barriers. The number of instances of lapses in supervision around pools, as indicated above, mean the potential for such a catastrophic event is still high.

The single educator model of FDC exacerbates the risk of fatal and non-fatal drowning incidents presented by water hazards and swimming pools due to the potential for distraction when managing multiple children and limited capacity to prevent and respond to incidents.

FDC educators, especially those who are inexperienced, may become overwhelmed when dealing with a number of concurrent issues that may arise, including focussing on a distressed child and failing to adequately supervise the remaining children. Existing FDC educators may also become complacent about supervision over time.

In an emergency, FDC educators may also struggle to balance the requirements for emergency aid to a child and manage the necessary supervision of other children simultaneously.

What are the options for change?

Option	Description
A	No change.
B	Swimming pools allowed with improved oversight. <ul style="list-style-type: none"> • Enable new and existing FDC educators with swimming pools to continue to operate with children under five years of age, with requirements for: <ul style="list-style-type: none"> • fencing (consistent with existing laws) • monthly monitoring by the approved provider (checklist assessment of pool and surrounds – with training: differentiated from compliance checks by council).¹⁵³
C	Prevent the registration or engagement of new FDC educators at residences or venues with a swimming pool to operate from specified date.
D	Regulatory authorities to provide additional guidance and resources in relation to water safety to FDC educators.

These options have been developed to provide:

- additional safeguards by reinforcing the need for active supervision and regular review of risk factors at existing and future FDC residences/venues with a pool (option B); or
- support a gradual reduction of FDC residences/venues with a pool by limiting or removing the registration or engagement of new educators with pools (options C); and
- improved safety information and guidance to FDC educators (option D).

Options B and C are mutually exclusive. Option D could be introduced in conjunction with any other option.

Whilst Tasmania and Western Australia are exempt from these proposals, option D could still apply in those states as it proposes an information based approach to water safety that may be broadly applicable to any form of water hazard.

Impact analysis

Status quo

Swimming pools at FDC residences and venues represent an increased risk to young children due to the need for additional active supervision and checks on the integrity of barriers such as fences.

When used safely, there are benefits swimming pools at FDC residences can offer children, including providing an opportunity for children to learn to swim, and for children attending services in hot climates.

Likewise, the regulation does not current prohibit educators from operating a service because of the presence of a swimming pool or water hazard. This opens the market and may allow for greater access to care.

Any change to regulatory requirements must be balanced with the flexibility and the need for a home-like environment provided by FDC as a care choice for families. The varied climate conditions across Australia have resulted in the prevalence of pools in some jurisdictions who may be more affected by potential regulatory changes to their FDC. Further information is sought from the public about the level of risk for children attending FDC services with swimming pools, and whether changes are required to warrant increased safety.

Option B – Swimming pools allowed with improved oversight

It is not clear how many FDC educators are operating out of residences and venues with a swimming pool. Regulatory authorities in each jurisdiction would be required to collect this information from approved providers.

Requiring approved providers to regularly inspect FDC residences and venues with a pool would increase ongoing awareness and attention to safety requirements such as adequate fencing and maintaining safe environments to minimise the chance of children accessing pool surrounds.

The improved supervision and oversight should assist in reducing the likelihood of an event due to a failure in safety measures, however this cannot be quantified.

Under this option, costs for FDC approved providers will increase including compliance costs associated with training staff to conduct the monthly monitoring of FDC residences and venues.

It is expected that costs would be incurred for staff training. This can be estimated at 3 hour training duration at \$76.68 per educator (approximately \$25.56 per educator at diploma level).¹⁵⁴ Likewise preparation of training material is estimated at 14 hours (for a staff member at director level 6.1 this would be \$32.28 per hour) totalling approximately \$452.¹⁵⁵

Monthly monitoring by a FDC service of educators with a pool is estimated at 1 hour attendance of a co-ordinator, which would be approximately \$25.56 per co-ordinator at diploma level, per month per residence/venue.¹⁵⁶ There may also be time and travel costs associated with travelling to rural and remote residences.

There would also likely be additional costs in accessing or setting up a training program for FDC approved provider staff to be able to undertake the monthly inspections appropriately. These costs are likely to vary from jurisdiction to jurisdiction.

FDC approved providers may find the additional requirements for monthly monitoring onerous and choose to reduce the number of FDC educators with pools as a result. This may reduce accessibility for families and impact the supply of available child care options particularly in regional areas.

FDC educators may find the additional burden of inspections to be excessive and choose to exit the industry, potentially reducing accessibility of services to families.

Option C – Do not allow the registration or engagement of new FDC educators at residences or venues with a swimming pool to operate from specified date

Prohibiting new FDC educators at residences or venues with a swimming pool from being registered or engaged in education and care services may result in a reduction of drowning risk as it would gradually lead to a decline of FDC with pools as no new residences with pools enter services.

However, the extent to which it will reduce this risk cannot be fully known as this would depend on the natural attrition of educators leaving services. This option may reduce overall risk by reducing the numbers of pools at FDC residences but will not improve the risk at existing residences as it does not address supervision, awareness and safety inspections.

It is possible but unknown as to how this may affect the availability of FDC places. A reduced available pool of future educators may result in an increased difficulty for families trying to access care.

Option D – Regulatory authorities provide additional guidance and resources in relation to water safety

This option would work to improve the overall awareness of the sector in relation to water hazards including swimming pools. The provision of relevant guidance and resources by the regulatory authorities may result in increased knowledge of educators and improved ability to respond to emergencies.

It may improve awareness of the risk of water hazards and the safety of children without increasing regulatory burden or costs on the approved providers, educators and families.

This is a relatively low cost option with the cost burden largely falling to the regulatory authorities who would have to source and distribute the additional materials and guidance. As such, it is unlikely to place administrative burden on approved providers and FDC educators.

However, a drowning risk for children would still exist due to the presence of swimming pools at residences and it is unknown whether guidance would be sufficient to help mitigate the risks of a drowning incident.

The form of guidance would need to take into account the needs of educators from a range of diverse backgrounds including whose first language is not English, or who may have difficulties with reading, in order to ensure the message is communicated effectively.

- **Feedback is sought on the level of risk for children attending services with a swimming pool and water hazard, and whether existing regulations are effective and efficient.**
- **Feedback is sought on the extent to which increased regulation is likely to reduce the risk of drowning and other water hazard related incidents, and the impact on approved providers, educators and families using FDC services.**
- **Feedback is sought as to whether there are additional safety requirements that should be required of FDC educators at a residence or venue with a pool than those which been identified above.**

5.4 Safety of glass used by services in Family Day Care

Background

Regulation 117 of the National Regulations specifies the glass safety requirements for FDC services.¹⁵⁷ It was previously amended in June 2014 to bring the National Regulations in line with the Australian Standard (AS 1288–2006) for glazing, in all states and territories with the exception of Western Australia,¹⁵⁸ which has jurisdiction-specific legislation for glass in FDC residences and venues.

Regulation 117 of the National Regulations only applies to FDC services. The glass requirements for centre-based services is 1 metre above floor level and Grade A safety glass.¹⁵⁹

The AS 1288–2006 provides that:

- For residences, glass that is 0.5 metres or less above floor level must meet specified safety requirements; and
- For venues, specific requirements apply depending on the building type.¹⁶⁰

Requirements for FDC services depend on the time the FDC residence or venue was approved. Services approved after 1 June 2014 are required to meet the AS 1288–2006 height. For FDC residences or venues approved before 1 June 2014, all glass under 0.75m above floor height must meet specific safety requirements.¹⁶¹ This represents the superseded version of the current regulation 117(1).

The safety requirements are either safety glazing (if required by the Building Code of Australia) or treatment with a product that prevents glass from shattering if broken (such as safety film), or guarding with barriers that prevent a child from hitting or falling against the glass.¹⁶²

There have been 61 instances of confirmed breaches relating to glass requirements as at May 2019.¹⁶³

In 2019, Worksafe Victoria issued a community alert following an incident at an education and care service where a child was leaning against a window which dislodged and shattered causing severe laceration and resulted in the child being hospitalised. Worksafe Victoria recommended services urgently check to ensure they comply with the Australian Standard.¹⁶⁴

A coronial inquest in NSW (prior to the NQF) into the death of a child involving glass at a home-based setting, resulted in a statement from the NSW State Coroner that there was ‘no reason for different safety standards between home-based care services and commercial child-care centres’ and recommended toughened glass be installed in all services that cared for children.¹⁶⁵

What is the problem?

As the AS 1288–2006 can only be accessed by purchasing a copy from Standards Australia, there is an information barrier for FDC providers attempting to understand and/or access glass requirements which may disrupt the providers’ ability to comply with the regulatory requirements. Non-compliance with the safety requirements can result in significant harm to children who may fall through glass.

The amendment that took place in June 2014 unintentionally lowered the height requirements for FDC residences by 0.25m (to 0.5m) when compared to the superseded 0.75m requirement. This is also inconsistent with the height specification in centre-based services, which is 1m above floor level. The lower height requirement for FDC settings (especially FDC services approved after 1 June 2014) may expose children to a greater risk of harm than in other service settings.

What are the options for change?

Option	Description
A	No change.
B	All FDC residences and venues to comply with 0.75m height requirement. <i>(This reverts to previously superseded version of regulation 117)</i>
C	FDC residences and venues that are approved on or after the date the regulation comes into effect will be required to comply with 1m height requirement. Existing FDC residences will retain current requirements as follows: a. FDC residences/venues approved <u>before 1 June 2014</u> to comply with 0.75m requirement b. FDC residences/venues approved <u>between 2 June 2014 and [date regulation comes into force]</u> to comply with 0.5m requirement, as currently specified by AS 1288–2006. <i>(This mirrors the Western Australia approach, with a clause that does not require residences or venues from 2 June 2014 to the date the regulation comes into effect, to comply with the increased height requirement)</i>
D	All <u>new</u> FDC residences and venues to comply with 1m height requirement from [date regulation comes into force]. FDC residences/venues approved before [date regulation comes into force] subject to the 0.5m and 0.75m requirements to be transitioned into the new 1m requirement by [sunset date]. <i>(This will eventually require all approved FDC residences and venues to comply with a height requirement of 1m by putting in place an expiry date for the 0.75m and 0.5m requirements to allow these residences and venues time to comply with the 1m requirement)</i>
E	Regulatory Authorities to provide additional guidance and resources in relation to glass safety requirements for FDC services.

Impact analysis

Status quo

There were approximately 29,322 FDC educators across Australia in 2016¹⁶⁶ with an approximate reach of up to 205,254 children.¹⁶⁷ The number of approved residences and venues within the FDC system is unknown.

There have been minimal impacts to children from glass related causes since the implementation of the NQF, however, some have been serious. As such, it is likely that some incidents may occur due to the variance of glass across Australia.

FDC providers will continue to find it difficult to understand and/or access the glass requirements in AS 1288–2006, potentially impacting the providers' ability to comply with the regulatory requirements.

Option B – All FDC services must comply with 0.75 m height requirement

This proposal reverts to the previous regulatory requirements that were in place prior to aligning the National Regulations with the AS 1288–2006. It raises the glass height requirement by 0.25m but is likely to only affect those residences and venues approved from 2 June 2019 (the exact number is not known).

This option enforces a less-stringent height requirement compared to centre-based services and also FDC services in Western Australia, thus exposing certain children to greater health and safety risk in FDC services. It is unclear the extent of the risk to children, and whether the increased height requirement will reduce this risk (especially as centre-based services are required to comply with the 1m height requirement).

FDC services may need to either replace glass or implement additional safety measures to comply with the regulation. The cost of complying with this regulation for FDC educators can be achieved in a low cost way, as the requirements can be met by the application of safety film over any glass below the height requirement. The cost of safety film is estimated at \$45 – \$60 per square metre.

Option C – New FDC services must comply with 1m height requirement

This proposal changes the requirements for all new FDC services to meet the same requirements as centre-based services. This would result in three height requirements in existence for FDC services which would be:

- 0.75m for services approved before 1 June 2014
- 0.5m for services approved between 2 June 2014 and [date of new regulation]
- 1m for all new FDC services approved after [date of new regulation]

Having multiple height requirements that vary depending on when the service was approved may create confusion for providers in understanding which sub-regulation applies to their services. Lack of clarity in requirements typically leads to lower levels of compliance with requirements, thus exposing children to greater health and safety risks.

New FDC services may need to implement additional glass safety measures to comply with the requirement. However, the cost of complying with this regulation for FDC educators is relatively minimal as the requirements can be met by the application of safety film over any glass below the height requirement. Cost of safety film is estimated at \$45–\$60 per square metre.

It is unclear the extent that risk of harm to children would be reduced by the new height requirement. However, it is likely that children would benefit from increased safety measures that match those in centre-based services.

Option D – New FDC residences and venues must comply with 1m height requirement and previously approved residences and venues be transitioned

This proposal changes the requirements for all new FDC services to meet the same requirements as centre-based services. Likewise, services that previously had a 0.5m or 0.75m height requirement would need to transition to the 1m height requirement.

There may be additional costs to FDC services with previous height requirements, as they will need to implement additional glass safety measures to comply with the 1m height requirement, such as the application of safety film over any glass below the height requirement which is estimated at \$45–\$60 per square metre.

All FDC residences and venues would eventually need to implement the same level of glass safety measures in line with the higher requirements for centre-based services and FDC services in Western Australia.

Children at all education and care services would be protected by the same, higher level of glass safety. However it is not clear the extent to which this would reduce risk of harm to children.

Existing FDC residences and venues would be given time and notice to adjust to the changes.

Option E – Regulatory Authorities provide additional guidance and resources in relation to glass safety requirements in FDC services

This option may increase an understanding and awareness of glass safety requirements in FDC services, upskilling the sector in relation to the safety of the physical environment. The provision of relevant guidance and resources by the Regulatory Authorities is likely to result in an improved ability to prevent glass-related incidents. It may also achieve a heightened awareness of the risk of glass, improving the safety of children.

- **Feedback is sought regarding the extent of the problems for services, educators and families, including the extent to which changes to a height requirement would reduce the risk to children, increase costs to services and any associated costs to families.**
- **Feedback is sought regarding the level of risk for children attending services that do not meet glass requirements, and for examples where incidents have occurred due to glass.**

6 CENTRE-BASED CARE – OUTSIDE SCHOOL HOURS CARE

OSHC services offer a stimulating and challenging environment for school age children that is designed to provide play and leisure opportunities. OSHC services perceive the NQF to be more difficult to adhere to than other service types. This is because the older age of children attending means their educational and developmental needs differ from younger cohorts, as well as what is needed and expected to ensure their safety. For this reason, chapter 6 considers how the NQF can be better suited to the context for OSHC services, recognising the unique type of education and care they provide.

6.1 Assessment and rating of OSHC services

Background

OSHC services account for 28% of education and care services in Australia, providing education and care to school-aged children, 5–12 years.

OSHC services are regulated as centre-based services under the NQF, and as such, are assessed and rated by their state and territory regulatory authority. Following assessment and rating, services are issued a quality rating for each of the seven quality areas of the NQS and an overall rating of the service.

The assessment and rating process serves a number of purposes.

For families, the assessment and rating process acts as a comparative tool to consider services and make informed choices about which service best meets their child's needs.

Families are also provided reassurance that regulatory authorities review the quality of the program provided to children, and that risks to children's health and wellbeing are addressed through regulatory authorities monitoring provider compliance with the National Law and Regulations.

For service providers, the assessment and rating process allows for an externally-reviewed, objective snapshot of operations at a point in time. For high-performing services, this process can act as a form of recognition, acknowledging quality and overall service compliance with the National Law and Regulations. By contrast, services that find areas of the NQF challenging and perform poorly in assessment and rating can review learnings from feedback to drive quality improvement.

Service providers are required to base their educational program on an approved learning framework. The nationally approved learning framework for school age children is *My Time, Our Place: Framework for School Aged Care in Australia*. This framework emphasises ‘the importance of play and leisure in children’s learning and development’.¹⁶⁸ Therefore, the guiding principles of quality programming in OSHC services differs to other education and care services (long day care or preschool/ kindergarten programs).

The cohort of children attending OSHC services is substantially different to other centre-based services, with children attending OSHC services being school-aged, and in many cases, attending for an intermittent period or on an ad-hoc basis. Families’ reasons for accessing school aged care service provision, and their expectations on how they engage with that service, are often different to other service types that the NQF applies to.

Nationally, OSHC services are more likely to be rated as ‘Working Towards NQS’ (25% of services) than other centre-based service types (18% of long day care, and 7% of preschool/kindergarten services). OSHC services are also less likely to achieve an ‘Exceeding NQS’ rating (14% of services) than other centre-based services (27% of long day care, 57% of preschool/kindergarten services).¹⁶⁹

Standard 1.3	OSHC	Long Day Care	Preschool/ Kindergarten
Working Towards NQS	17.3%	13.2%	3.5%
Meeting NQS	75.6%	65.4%	47.6%
Exceeding NQS	7.1%	21.3%	48.9%

Table 5: Rating of centre-based services against Standard 1.3 of the NQS
 Data source: NQA ITS (30 September 2020)

Noting the requirement of a planned and reflective approach to educational programming, this standard may be more difficult for services to achieve when factoring the type of program that OSHC services offer, the qualifications of the educator workforce, and the enrolment patterns of children in care.

During assessment and rating, OSHC services were less likely to meet the requirements of Elements 1.3.1, 1.3.2 and 1.3.3 when compared to other predominantly centre-based education and care services.

	OSHC	Long Day Care	Preschool/ Kindergarten
Element 1.3.1 — Assessment and planning cycle (learning and development is assessed)			
<i>Met</i>	85.5%	89.1%	96.9%
<i>Not met</i>	14.6%	10.9%	3.1%
Element 1.3.2 — Critical reflection (child’s learning and development)			
<i>Met</i>	86.1%	89.7%	97.6%
<i>Not met</i>	13.9%	10.3%	2.4%
Element 1.3.3 — Information for families (families informed about the program and their child’s progress)			
<i>Met</i>	93.4%	97.6%	99.4%
<i>Not met</i>	6.6%	2.4%	0.6%

Table 6: Performance of centre-based services (nationally aggregated) against Elements 1.3.1, 1.3.2 and 1.3.3. Data source: NQA ITS (30 September 2020)

The assessment and rating process also carries financial costs for education and care services. From the initial notification to the final report, the assessment and rating process can take up to 13 weeks¹⁷⁰, depending on the jurisdiction and the service. During this period, the approved provider is required to engage with the regulatory authority on multiple occasions, including providing documents and feedback on the draft report prior to the notice of final rating.

What is the problem?

While all NQF-regulated education and care services complete the same assessment and rating process, education and care services for school aged children can be considered distinct to other centre-based services. For example, there can be differences in community and family expectations regarding how the assessment and planning surrounding the learning program is undertaken.

Nationally, approximately 76% of OSHC services¹⁷¹ are rated as Meeting or Exceeding the NQS, indicating that the NQS is appropriate and achievable for this service type. Initial 2019 Review consultations made clear that OSHC stakeholders remain very committed to continuing to be part of the NQF, but are eager to work with governments to inform how the NQF could be better modified to fit the OSHC context. Strong stakeholder feedback from OSHC providers / peak bodies has consistently indicated support for more distinction between OSHC and other centre-based service in the regulations, in particular in the manner in which assessment and rating requirements apply. Assessment and rating acts as an essential tool to monitor overall compliance and drive continuous quality improvement of education and care services, however, there may be options to streamline assessment and rating against the NQS for OSHC services, and/or making the process more targeted to the specific service type. This is because some elements of the NQS may be less applicable in a school age education and care context, notably around:

- assessment and planning requirements may not be proportionate to the hours of attendance for children, nor reflective of the play and leisure aspect of service provision.

While long day care and preschool/kindergarten are required to maintain minimum qualification requirements under the National Law and Regulations, there are no national qualification requirements for educators working at OSHC services caring for school-aged children. These factors impact how educational programs in OSHC services are designed, implemented and assessed and raises the question as to whether or not they should be assessed differently.

Approaches to quality assurance and compliance monitoring of OSHC services, in the context of the overall sustainability of the regulatory system, also require attention given increasing demand for this service type and government initiatives to expand OSHC capacity.¹⁷²

What are the options?

Option	Description
A	No change.
B	Modify assessment and rating methodology for services whose main purpose is providing education and care to children over preschool age.
C	Development of additional guidance to support the OSHC sector and regulatory authorities with assessment and rating.

Note: Options B and C are not mutually exclusive.

Impact analysis

Status quo

If no change were to occur, OSHC services providing school-age education and care would continue to be assessed and rated under the current methodology, ensuring overall quality and compliance with the NQF.

Nationally, approximately 76% of OSHC services¹⁷³ are rated as Meeting or Exceeding the NQS, indicating that the NQS is appropriate and achievable for this service type.

However, this option would continue to ignore the distinct quality characteristics of OSHC services, with a small proportion of services likely to continue to receive quality ratings lower than other centre-based service types. If quality is not optimally assessed, families may find making quality-based decisions difficult when choosing a service for their children.

The current requirements for OSHC services associated with the assessment and rating process, such as the workforce costs to the completion, compiling and submission of documents and relevant information to the regulatory authority, would continue under the status quo. This is no different to other service types.

Option B – Modify assessment and rating methodology for services whose main purpose is to provide education and care to over preschool aged children

This option would modify the current assessment and ratings process for services whose main purpose¹⁷⁴ is providing school aged education and care, to better encapsulate the distinct quality characteristics of OSHC services.

A streamlined version of assessment and rating would be designed for OSHC services that will continue to ensure compliance with the NQF and the provision of quality education and care while also giving consideration to their alternative learning framework, significantly varying enrolment patterns, and often shorter hours of care compared to other centre-based services.

One example of a modification could be exempting OSHC services from the requirements of Standard 1.3 as part of the assessment and rating process.

This would likely increase services' capacity to focus on the core educational program and practice needs of children attending this service type, including developmental outcomes, nutrition, relaxation and socialisation, while streamlining assessment and planning requirements. It would also decrease the administrative burden associated with preparing documents relevant to Elements 1.3.1 and 1.3.2 for submission to the relevant regulatory authority.

The quality of educational programs expected to be delivered would not be compromised as this will continue to be assessed through Standard 1.1 (Program), Standard 1.2 (Practice), Standard 5.2 (Relationships between children) and Standard 6.2 (Collaborative partnerships), and be delivered in line with the Approved Learning Framework.

Option C – Additional guidance to support OSHC sector and regulatory authorities with assessment and rating

This option would develop more guidance for OSHC service providers and regulatory authority staff engaging in assessment and rating to support OSHC services in meeting the requirements of the NQS and the assessment and rating process.

The development of additional guidance is unlikely to place greater regulatory burden on providers, however there may be associated benefits for services being guided through assessment and rating processes.

Further, developing additional guidance for authorised officers and other regulatory staff conducting assessment and rating processes in OSHC services would support the overall capacity of regulatory authorities to acknowledge the distinct characteristics of OSHC services and factor in these characteristics when conducting assessment and rating.

- **Feedback is sought on the extent to which the current assessment and rating process adequately enables OSHC services to demonstrate their quality service provision.**
- **Feedback is sought on the perceived challenges associated with the current assessment and rating process for the OSHC context.**
- **Feedback is sought on the option/s presented above, and their perceived impact on the quality of practice in OSHC services and their benefits for children and families.**

7 WORKFORCE

The quality of interactions between children and staff is critical to children receiving the benefits of attending an education and care service, with research indicating that qualified education and care staff support more positive outcomes for children. However, staffing is also the highest business cost for running an education and care service and there are ongoing challenges with attracting and retaining highly-qualified staff in the sector. The proposals in this section seek to balance the workforce pressures with the importance of teacher qualification for education and care quality.

7.1 Restrictions on short term relief for early childhood educators

Background

The quality of education and care is driven by a number of factors, including the relationships between children and staff, programs, community and family connections, leadership, staff qualifications, and physical environment.¹⁷⁵ Higher teacher qualifications are an important factor in improving educational outcomes for children.¹⁷⁶ Qualifications are correlated with a range of quality measures, including better language-reasoning experience, supervision, program structure, activities, educator and child interactions, personal care routines, and varied social experiences.¹⁷⁷

Attracting and retaining highly-qualified staff can be challenging for providers, in part due to comparatively poor pay and conditions, lack of career progression opportunities, and lack of professional recognition.¹⁷⁸ Staffing is currently the highest business cost for running an education and care service, accounting for 60% of providers' operating costs.¹⁷⁹ Qualification requirements were introduced in the NQF to improve the quality of education and care and achieve national consistency, with government subsidies offsetting expected cost increases.

In 2019, 94% of services met NQS Quality Area 4, which assesses staffing arrangements. However, enrolments in the Diploma of Early Childhood Education and Care have decreased since 2015 (see Table 7 below). In 2019, 4.5% of services held a staffing waiver, which represents an increase from 3.9% the previous year. Services in remote and very remote areas have the most difficulty recruiting and retaining qualified staff and the highest proportion of staffing waivers (see Figure 7 below).

Qualification	Number of enrolments			
	2015	2016	2017	2018
Diploma of Early Childhood Education and Care	67,307	74,954	67,281	52,237
Certificate III in Early Childhood Education and Care	51,710	53,941	53,793	52,802
Total	119,017	128,895	53,793	105,039

Table 7: Diploma and Certificate III enrolment numbers.¹⁸⁰

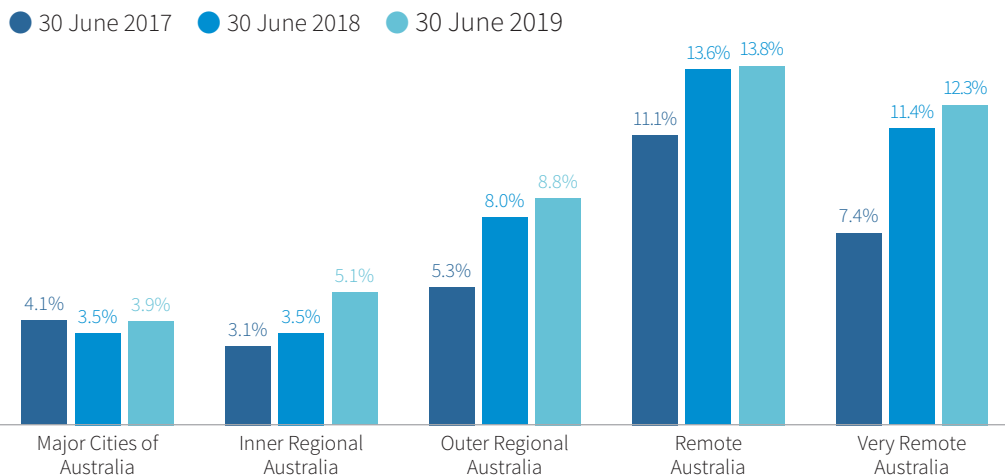


Figure 7: Proportion of services with a staffing waiver by remoteness classification¹⁸¹

Research conducted by ACECQA predicts workforce demand will increase by 20%, with the sector requiring an additional 39,000 educators by May 2023.¹⁸² In combination with declining enrolments in specialised children’s education, low completion rates, high staff turnover and attrition to other sectors, workforce shortages are likely to become a more serious issue in the coming years. Workforce shortages may reduce the quality of education and care that children receive, and may limit the number of places that providers are able to offer. Shortages may also impose an administrative burden on services due to the difficulty of recruiting staff.

What is the problem?

Recruiting educators to relieve staff on short-term absences due to illness or leave can be difficult for providers. Currently, if an ECT is absent due to short-term illness or leave, they can be replaced by a person with an approved diploma or primary teaching qualification for up to 60 days in a 12-month period, pursuant to regulation 135. This flexibility allows service providers to draw from a larger pool of suitably qualified educators to meet staff ratio and qualification requirements.

While this flexibility exists for ECTs, the same rules do not apply for diploma and Certificate III educators, which limits services' capacity to draw on relief educators. Restrictions on relief teachers places an administrative and cost burden on services, which may be passed on to families in fees. If services are unable to fill the role in the short term they may need to apply for a staffing waiver. During this interim period without a suitably qualified educator, the education of children at the service may also be disrupted and the quality of education and care impacted.

Feedback has been received from the sector that allowing primary teachers or other educators to act as short-term relief educators would offer more flexibility for service providers, resulting in reduced administrative and cost burden on the service and improved education and care for children.

What are the options for change?

Option	Description
A	No change.
B	Extend the requirements for 'short-term' absences to 80 days.
C	Broaden the qualification requirements for short-term staff replacements. For example, by allowing primary teachers and/or Certificate III qualified educators to replace diploma qualified educators on a short-term basis.
D	Allow Suitably Qualified Persons (SQPs) to replace a third or fourth ECT to address workforce shortages (NSW only).

Note: Options are not mutually exclusive.

Impact analysis

Status quo

There is an increased likelihood of better education and care if services employ educators according to qualification requirements under regulation 135. However, the ongoing and future workforce shortages are likely to make it difficult for services to replace educators on short notice, and increase applications for waivers and the associated regulatory burden from this process. Reduced flexibility for providers is likely to have adverse impacts on their ability to provide services and result in increased costs over time. Increased costs would likely result in increased fees, which may limit the accessibility and affordability of the service for families.

This lack of flexibility would be likely to have a negative impact on children's educational outcomes if providers apply for a staffing waiver instead of hiring a short-term replacement. If a short-term replacement is not found, lower educator to child ratios would likely have a negative impact on the quality of education and care for children.

Option B: Extending the 'short-term' time period from 60 to 80 days

Currently, regulation 135 only permits a diploma level educator or primary teacher to replace an ECT for short term absences (such as illness or leave) for a period not longer than 60 days in a 12-month period. In the ACT, Queensland, Tasmania and Western Australia, there are additional provisions to this regulation to include absence due to the resignation of an ECT.

Diploma-qualified educators and primary teachers are likely to have sufficient professional knowledge and skills in education and care, so this option would not be expected to compromise the quality of education and care provided to children. In circumstances where a primary teacher replaces an ECT, there may be some impact on the quality of care if the replacement teacher has less experience working with younger children than an ECT. However, the quality of education is likely to improve if this flexibility allows providers to fill roles that would otherwise be vacant.

If option B is implemented in conjunction with option C, allowing lower-qualified educators to replace staff in the short term, providers would likely be incentivised to fill short-term absences with lower-cost educators for up to 80 days. This could allow providers to save on costs, which may also promote lower fees and access to childcare. Children's education is also less likely to be disrupted if this flexibility allows providers to fill roles that would otherwise be vacant. Using lower-qualified educators could be expected to reduce the quality of education in circumstances where they replace an ECT for a significant period of time. However, using a lower qualified educator for a period of 80 days instead of 60 should have no significant impact on the overall quality of education provided at the service.

Extending the time period for relief educators from 60 to 80 days prevents providers from replacing an ECT indefinitely with a diploma-level educator or primary teacher, but allows more flexibility for short-term absences.

Option C: Broaden the qualification requirements for short-term staff replacements

This option provides more flexibility for service providers to comply with staffing requirements in the event of a short-term absence of a diploma or Certificate III qualified educator. This would likely support services to maintain continuity of quality care and education during short-term absences. It could be particularly important for services in rural and remote areas, which commonly face difficulties in recruiting qualified educators. This option will also provide some flexibility against anticipated qualified workforce shortages. Helping to address the problem of workforce shortages can improve the overall quality, accessibility and affordability of education and care for families.

Similarly to option B, this option will likely incentivise providers to fill short-term absences with lower-qualified educators. This could allow providers to save on costs, which may also promote access to childcare. Using lower-qualified educators could be expected to reduce the quality of education at the service in the long-term, but should have minimal impact to no impact in the short-term. Alternatively, if more highly qualified staff are utilised, such as a primary school teacher, there may additional costs incurred by services, however this is less likely to have any adverse impact on the quality of the educational program of the service.

In any circumstance, filling the role with a suitable staff member is preferable to the service having to apply for a staffing waiver. This is because having access to an educator would more greatly benefit the learning and development of the children in attendance than if the role remained vacant.

Option D: Allow Suitably Qualified Persons (SQPs) to be in attendance instead of a third or fourth ECT (NSW Only)

Regulation 133 and 134 specify the number of early childhood teachers (ECT) required at centre-based services with more than 60 children. However, in NSW, a higher number of ECTs is prescribed within regulation 272:

Regulation	Number of children (preschool age or under) in attendance	Number of ECTs required
272(1A)	25 to 29	One ECT must be in attendance for at least 6 hours on that day, if the service operates for 50 or more hours a week, OR for 60% of the operating hours of the service on that day, if the service operates for less than 50 hours a week.
272(2)	30 to 39	One ECT must be in attendance at all times
272(3)	40 to 59	Two ECTs must be in attendance at all times
272(4)	60 to 79	Three ECTs must be in attendance at all times
272(5)	80 or more	Four ECTs must be in attendance at all times

Table 8: Number of ECTs required for preschool age and under

The number of students completing initial teaching qualifications in NSW has decreased over time, while the number of zero to four-year-old children in NSW is projected to grow by 7% from 2016 to 2021. The number of waivers granted in relation to regulation 272 has increased since 2013.

	2013	2014	2015	2016	2017	2018	2019
No. of waivers granted in relation to R272 in NSW	206	103	273	359	285	447	530

Table 9: Number of waivers granted in relation to Regulation 272 in NSW

Source: NQA ITS

The use of a SQP in lieu of ECTs may ease current workforce shortfalls and allow services greater workforce flexibility. Providers would be incentivised to employ a SQP instead of an ECT as a lower-cost option. This could result in cost savings for providers, which may improve affordability and accessibility for families.

A SQP can include:

- a person who holds an approved diploma-level qualification and has completed at least 50% of an approved early childhood teaching qualification that they are ‘actively working towards’; or
- a person who is registered as a primary or secondary school teacher and holds an ACECQA-approved diploma-level qualification or higher¹⁸⁴.

SQPs are likely to have sufficient professional knowledge and skills in early childhood education, so this option would not be expected to compromise the quality of education and care provided to children. In circumstances where a primary or secondary school teacher replaces an ECT, there may be some impact on the quality of care if the replacement teacher has less experience working with younger children than an ECT. However, the quality of education is likely to improve if this flexibility allows providers to fill roles that would otherwise be vacant.

- **Feedback is sought from stakeholders on whether the proposed 80-day limitation is reasonable for short-term absences.**
- **Feedback is sought on the extent of this problem for services, educators and the community, and the impacts on costs, accessibility and quality of education and care.**
- **Feedback is sought on the likely impacts of the proposed options, including on the cost savings, accessibility and quality of education and care.**
- **Feedback is sought on the impact on changes for absences that are planned or absences that are not planned.**
- **Feedback is sought on any other potential options that may resolve this issue.**

7.2 Educators who are ‘actively working towards’ a qualification

Background

The NQF is an integrated national system that sought to replace inconsistent licensing and quality assurance processes across different states and territories and implement a set of improved national standards that focus on quality improvement.

The objective of the NQF was not solely to promote uniformity or integration but to improve educational outcomes for children. It implemented a minimum set of requirements that services in each state and territory must achieve.

Higher educator qualifications are correlated with improved child outcomes¹⁸⁵ and support the objectives of the National Law.¹⁸⁶ The body of international research¹⁸⁷ demonstrates the value of educators’ qualifications in providing high quality learning environments that support improved outcomes for children. Additionally, in its report titled *Progressing a national approach to the children’s education and care workforce*, the ACECQA notes that ‘there is growing evidence linking structural components, such as staff qualifications, to higher quality staff–child interactions, as well as to overall gains in child development, learning and well-being’.

In centre-based care, at least 50% of educators who are counted in ratios are required to have or be ‘actively working towards’ at least an approved diploma-level education and care qualification. All other educators counted in ratios must have or be ‘actively working towards’ at least an approved Certificate III-level qualification.¹⁸⁸

Enrolments in the Diploma of Early Childhood Education and Care have decreased since 2015, while enrolments in the Certificate III increased in 2016, but have since decreased (see Table 7 above). According to the Workforce Census Report 2016, 14.8% of the education and care workforce do not have an early childhood education related qualification.¹⁸⁹

The ‘actively working towards’ provision supports providers to meet their regulatory obligations, while also promoting entry of educators into the education and care sector. Actively working towards a qualification means the educator is enrolled in the course and has provided the approved provider with documentary evidence that the educator has commenced and is making satisfactory progress towards completing the course. The educator must also maintain their enrolment in the course.¹⁹⁰

What is the problem?

The ‘actively working towards’ provision was introduced to allow flexibility in staffing arrangements, to alleviate the effect of workplace shortages on services. Workforce shortages may reduce the quality of education and care that children receive, limit the number of places that providers are able to offer, and impose an administrative burden on services due to regular recruiting or applying for a staffing waiver. However, there is no time limit associated with ‘actively working towards’ a qualification, and there are no specific requirements that staff must meet in order to be making ‘satisfactory’ progress through their course. Low qualification requirements may compromise educational outcomes for children (however the extent to which this would be the case is unquantified). Additionally, early childhood education and care qualifications include training on child safety best practice.¹⁹¹ Educators who have yet to complete this training may be less prepared to respond to and mitigate child safety risks.

Lack of clarity in the National Regulations, and associated guidance materials, about satisfactory progression towards completion of the course, may make the regulations burdensome for services to comply with, or lead to insufficient oversight of progress by providers.

There is anecdotal evidence of providers not monitoring the course progression for staff members who are ‘actively working towards’ a qualification. However, the extent of this problem is not known because regulatory authorities do not track course progression.

Given the importance of a qualified education and care workforce for improved educational outcomes for children,¹⁹² widespread failure to complete qualifications may frustrate the objectives of the NQF by having a negative impact on overall educational outcomes for children and on the reputation of the sector.

What are the options for change?

Option	Description
A	No change.
B	Limit the 'actively working towards' provision by:
(i)	<ul style="list-style-type: none"> Introducing a minimum proportion of educators with a completed qualification (as opposed to 50 per cent of educators required within ratios to be qualified or 'actively working towards' a qualification); or
(ii)	<ul style="list-style-type: none"> Introducing a timeframe in which staff 'actively working towards' a qualification must complete their qualification in order to be counted in ratios; or
(iii)	<ul style="list-style-type: none"> Specifying a threshold staff must meet to make 'satisfactory' progress through their course in order to be counted in ratios.
C	Develop guidance for providers to ensure staff who are 'actively working towards' qualifications are making satisfactory progress.

Impact analysis

Status quo

Under the status quo, there may be staff working with children who count as 'actively working towards' their qualification for extended periods without completing their course. Given educator qualifications are linked to improved child outcomes, this may have implications for the quality of education and care. There may also be implications for child safety if educators have not received formal training in child safety best practice.

There may also be broader impacts on the reputation of the professionalism of the sector if the workforce is not qualified. During the first round of consultations on the NQF review issues paper, educators noted that they seek to be considered as a professional, well respected workforce.¹⁹³

Many services already label staff that are 'actively working towards' a qualification as 'trainee' educators, and there may be associated 'on the job' training benefits for these employees. In a NSW survey of families, 79 per cent of families were aware of the qualifications of the room leaders at the long day care service. Most families believed that education and care during early childhood is beneficial, and that participating in a high quality educational preschool program is important, however the majority of families surveyed noted they valued skills, life experience and commitment over qualifications.¹⁹⁴

Retaining the status quo also allows providers to hire staff that are ‘actively working towards’ a qualification, and fulfil current ratio requirements in the National Law. This flexibility helps to alleviate the impacts of qualified workforce shortages, promotes entry of educators into the education and care sector, and minimizes the administrative burden of applying for staffing waivers.

Option B – Limit the ‘actively working towards’ provision

These options would introduce limitations on the ‘actively working towards’ provision. Providers will continue to be able to hire educators who are ‘actively working towards’ their qualification, but with some limitations or additional requirements.

These options may encourage increased rates of completion of educator qualifications. This may support an increase to the quality of education and care being provided, and is likely to support professionalising the education and care workforce and increasing the number of education and care staff with qualifications.

However, providers may incur additional administrative costs to monitor the proportion of staff ‘actively working towards’ a qualification in addition to the current obligation to monitor staff progress on qualification completion. Educators who are working towards a qualification would be required to produce evidence periodically to demonstrate their progress.

Providers may also incur increased staffing costs to attract qualified staff, especially for services located in rural and remote areas where recruitment and retention of educators is an ongoing issue.

Limiting the ‘actively working towards’ provision would likely increase the demand for qualified educators, which would exacerbate the problems associated with qualified workforce shortages. Applications for staffing waivers may increase, with an additional administrative burden for providers.

Option C – Develop guidance for providers to ensure staff who are ‘actively working towards’ qualifications are making satisfactory progress

Option C would assist providers to track and encourage course completion. This guidance could include an expected course completion time and suggested processes for tracking staff progress. The reasons for course non-completion are various and may include external factors, such as personal, socio-economic and motivational factors,¹⁹⁵ providers may be unable to address. However, this option may help to clarify ‘satisfactory’ course progression for providers, improving their ability to comply with the requirements for counting staff who ‘actively working towards’ a qualification in educator to child ratios. This may also obviate staff remaining ‘actively working towards’ for an indefinite time period and assist them to access the benefits of being fully qualified.

- Feedback is sought on whether the issue of staff ‘actively working towards’ a qualification over extended periods is an issue that requires addressing, and whether qualification requirements are beneficial.
- Feedback is sought on the proposed options and their impacts. For options B.1–B.3, feedback is sought on an appropriate timeframe and progression rate to ensure satisfactory completion of the diploma and certificate III, while allowing flexibility.
- Feedback is sought on any other potential options that may resolve this issue.

7.3 Minimum qualification requirements for educators in FDC

Background

FDC educators must have, or be ‘actively working towards’, at least a certificate III level education and care qualification,¹⁹⁶ except in South Australia where FDC educators must hold a certificate III qualification.¹⁹⁷ Actively working towards a qualification means the educator is enrolled in the course, and has provided evidence that they have commenced and are making satisfactory progress towards completing.¹⁹⁸ This provision supports providers to meet their regulatory obligations while also promoting entry of educators into the education and care sector.

The proportion of unqualified FDC educators has decreased dramatically from 75% in 2004 to 7% in 2016.¹⁹⁹

Year	2004	2006	2010	2013	2016
FDC Staff without a qualification (%)	75%	69%	40%	17%	7%

Table 10: FDC staff without a qualification

Source: National Workforce Census 2004–2016, Department of Education, Skills and Employment.

A 2019 survey conducted by FDC Australia of 1,351 FDC educators found that 4% did not hold an early childhood education and care qualification.²⁰⁰

Within FDC settings, post-secondary training in education and care has been shown to improve FDC quality.²⁰¹ In order to support FDC educators to deliver high-quality education and care, FDC co-ordinators are required to monitor and train FDC educators.²⁰² FDC co-ordinators must hold an approved diploma-level education and care qualification, and providers must comply with co-ordinator-to-educator ratios.²⁰³ FDC educators are also required to hold an approved first aid qualification, and must have undertaken anaphylaxis and emergency asthma management training.²⁰⁴

What is the problem?

In centre-based care, educators who are ‘actively working towards’ their qualification are supported by fully-qualified staff at the service. In the operating context of FDC, however, educators who are ‘actively working towards’ their qualification may not be supported by qualified colleagues on a day-to-day basis. FDC co-ordinators do provide some support, but are not required to be present at the service. Current requirements allow one co-ordinator for every 15 educators for the first 12 months of operation, and for every 25 educators thereafter.²⁰⁵

Only a small percentage of FDC educators do not hold a qualification, so the impact of the ‘actively working towards’ provision affects a small proportion of services. Of these educators who do not hold a qualification, there is a risk that they are less familiar with child safety best practice.

In an inquest into the death of a child at a FDC service, the Queensland coroner noted the educator was actively working towards their qualification, however without clear evidence of progress. The educator did not have up-to-date knowledge of recommendations concerning SIDS risk factors, despite receiving an induction by the FDC provider, and the coroner suggested that formal training through the certificate III may well have provided this awareness.²⁰⁶ The coroner recommended that FDC educators should be required to hold a certificate III before commencing caring for children.²⁰⁷

What are the options for change?

Option	Description
A	No change.
B	Remove the ‘actively working towards’ provisions for FDC educators and require these educators to hold an approved certificate III qualification prior to commencing their role in a FDC service.
C	Require educators in FDC services to have completed at least an approved certification III qualification within 24 months of commencement in an FDC educator role. Not applicable to South Australia.
D	Require educators in FDC services who are ‘actively working towards’ their certificate III qualification to have completed at least 50% of their qualification, including child protection elements, prior to commencing employment. Not applicable to South Australia.

Impact analysis

Status quo

This option allows providers to hire staff that are ‘actively working towards’ a qualification and fulfil current ratio requirements in the National Law. The ‘actively working towards’ provision assists in addressing the impacts of workplace shortages on services by providing flexibility to providers. Workforce shortages reduce the quality of education and care that children receive, limit the number of places that providers are able to offer, and impose an administrative burden on services due to regular recruiting or applying for a staffing waiver.

Retaining the status quo will likely continue to support the access of childcare for families in regional and rural areas where workforce shortages are particularly prevalent.²⁰⁸

In metropolitan areas where workforce shortages are less prevalent, this provision provides flexibility for the sector to adapt to future qualified workforce challenges due to increasing demand and declining enrolments²⁰⁹. This provision may also lower barriers to workforce entry and encourage FDC educators to complete their studies and become qualified while working.

Under the status quo, FDC educators will be able to operate without completing a qualification. This option may place children at risk of harm due to FDC educators’ lack of awareness of child safety best practice, and their lack of access to day-to-day support from qualified colleagues. The likelihood of a serious incident occurring due to an FDC educator not holding a qualification is low, however, the consequences may be severe. In the case of the Queensland SIDS incident, the death of the child was attributed in large part to the educator’s lack of formal training in child safety best practice.

Option B – FDC educators to hold an approved certificate III qualification

Most FDC educators already hold at least a certificate III qualification and only a relatively small proportion of the FDC workforce are unqualified. While the risk of harm to children in FDC would not be removed entirely, this option would help to ensure FDC educators are trained in child safety best practice. In the Queensland coronial investigation, for example, the FDC educator had received some training from the provider, but the coroner recommended formal training would have minimised the risk.

This option would increase educator qualifications, which would likely support the quality of education and care being provided at FDC. This option also aligns with current requirements in South Australia where FDC educators must hold their qualification before they commence their role.²¹⁰

It is expected that this option would affect only a small number of providers as the vast majority of FDC educators hold a qualification. However, providers may encounter difficulty recruiting new, fully qualified educators for FDC services, especially in rural or regional areas where recruitment and retention of educators is an ongoing issue.

Given workforce shortages are likely to be a future challenge for the sector, requiring all FDC educators to hold an approved qualification would place an additional burden on qualified workforce supply. Any additional costs associated with recruiting qualified staff or applying for a staffing waiver would likely be reflected in higher fees. This would reduce access to quality education and care by limiting the number of places that providers are able to offer, and imposing administrative burdens on services due to regular recruiting or applying for a staffing waiver.

Option C – Require the minimum qualification to be completed within 24 months of commencement (not applicable to South Australia)

This option creates a timeframe in which educators in FDC services must complete their qualification. A certificate III qualification has an average course duration of 1 year.²¹¹ Requiring FDC educators to complete their qualification within 24 months of commencing their role provides the flexibility to address workforce shortages while also ensuring educators are actively completing their qualification. This option would support FDC educators to attain their qualification, which would likely improve the overall quality of education and reduce the risk of harm due to a lack of awareness of child safety best practice.

However, introducing a minimum timeframe may still have some impact on staffing due to existing qualified workforce challenges, particularly in regional and remote areas. FDC educators who must defer or delay completion of their qualification would no longer have the flexibility to do so, and providers may need to apply for a staffing waiver. There would also be some administrative burden associated with providing evidence that FDC educators have been ‘actively working towards’ their qualification for less than a year or when FDC educators have completed their qualification.

Feedback from the 2019 NQF Issues Paper consultation indicated a preference within the sector for this option.²¹² However, further feedback from the sector is sought on the likely impacts of this option on workforce supply, costs, quality of child care and reduction of risk of harm.

Option D – Require at least 50% completion of qualifications (not applicable to South Australia)

This option proposes that at least 50% of the minimum qualification has been completed by the relevant educator prior to commencing their employment. This option would require a higher level of educator qualification, which would reduce the risk of harm due to a lack of awareness of child safety best practice.

Unless applied in conjunction with option C, however, this option may not ensure FDC educators complete their qualification if they are only required to have completed 50% upon employment.

This requirement would likely pose a barrier to employment for some prospective educators and may have a larger impact on availability of childcare in rural and remote areas. Reducing provider flexibility may reduce access to quality education and care by limiting the number of places they are able to offer. There may also be some administrative burden for educators and providers to demonstrate that FDC educators are halfway through their qualification before commencing their role. Any costs associated with this option may be reflected in higher fees, which may have impacts on the affordability and accessibility of FDC for families.

- **Feedback is sought on the impact of the current ‘actively working towards’ provision on the quality of education and the risk of harm to children.**
- **Feedback is sought on whether a minimum qualification requirement should be introduced for FDC educators. Feedback is sought on the benefits and costs of imposing such a requirement, and any other options that may resolve this issue.**

8 UNDERSTANDING OF QUALITY RATINGS BY FAMILIES

The quality rating system is a key feature of the NQF. It involves an assessment of quality undertaken by regulatory authorities of education and care services against the 7 quality areas within the NQS. The 7 quality areas include structural and procedural quality elements and focus attention on outcomes for children. The areas are:

1. Educational program and practice
2. Children's health and safety
3. Physical environment
4. Staffing arrangements
5. Relationships with children
6. Collaborative partnerships with families and communities
7. Governance and leadership.²¹³

The NQS was developed drawing from international research about improving learning outcomes for young children.²¹⁴ It is considered a world class framework for its scope and application, most notably that it is 'aiming to bring consistency and quality to a diverse and highly complex system' and has contributed to a lift in service quality across Australia since its implementation.²¹⁵

The following proposal seeks to address engagement with quality ratings from families and carers.

8.1 The quality ratings system

Background

As noted above, regulatory authorities assess services against the 7 quality areas. After the assessment services are given one of 5 rating labels, which are Significant Improvement Required, Working Towards, Meeting and Exceeding.²¹⁶ If a service is rated Exceeding in all 7 quality areas, it can apply for an Excellent rating, which is evaluated by ACECQA using separate criteria.

It is an objective of the National Law to improve public knowledge of, and access to, information about the quality of education and care services.²¹⁷ However, families' knowledge and awareness of the NQF and NQS is low despite efforts over the last 8 years to lift community awareness of the rating system.²¹⁸ During consultations on the 2019 NQF Review issues paper less than half (46%) of survey respondents 'agreed' or 'strongly agreed' that the quality ratings are easy to understand.

Research suggests that the current language and presentation of the NQS rating scale encourages families to confuse the NQS with the minimum standards required for services to legally operate.²¹⁹ Families tend to assume services rated as 'Working Towards' are falling below the minimum standard for education and care services.

Research also suggests that, in selecting an education and care service, families tend to rely on their own assessment about a service and other practical considerations such as accessibility, convenience, word of mouth, recommendation and affordability.²²⁰

What is the problem?

The quality rating system introduced by the NQF has helped improve systematic quality within the education and care sector over time.²²¹ The percentage of services rating 'Meeting' or above has increased every year since the introduction of the NQF. However, the rating labels are perceived by many, outside of the sector and governments, to be difficult to engage with and require additional explanation for families and carers in deciphering expectations of service practice at each rating level.

This lack of understanding may result in families and carers receiving a lower quality of care than what they believe they have purchased.

The community also does not typically understand that minimum safety standards are actively monitored and enforced by regulatory authorities, in addition to the quality rating.

This is a communications issue which means that the rating labels in the current format may confuse rather than aid the community's understanding of the quality of services. There is an opportunity to refine the use of these labels to better support an understanding of the value of quality in education and care settings for the benefit of children, and the broader community.

It is well established that quality education and care is extremely beneficial to children, and provides societies with immense social and economic benefit over time.²²²

What are the options for change?

Option	Description
A	No change.
B	Modify the quality rating terminology.
C	Introduce a visual representation for communicating and promoting the quality ratings.
D	Provide further guidance and advice to the community about the purpose of quality ratings, and the differentiation between a quality rating and minimum standards required under the National Law.

Note: Options are not mutually exclusive.

Further research may be required to determine effective terminology or visual graphic to guide a final decision. Research on how best to communicate varying levels of quality to families, taking into account different education levels and cultural understandings, would be useful. In 2020, NSW will introduce a quality ratings initiative which aligns each of the current quality ratings with a coloured star graphic to provide more user-friendly information to families. Evaluation of this initiative may guide future implementation of proposed options.

Impact analysis

Status quo

This is an ongoing communications issue, and a targeted campaign by governments may alleviate some of the lack of engagement with the rating system. However, the complexity of the rating label system may continue to confuse users, and families may continue to lack understanding of how to use the quality rating to inform choices about childcare.

Option B – Modify the quality rating terminology

Improvements as a result of modifying the way that ratings are described are likely to enable families to better understand the quality ratings and make more informed decisions. It may also better support providers and educators to promote their services and the importance of quality for children and the broader community.

There would be costs associated with implementing new or modified rating labels. This may include updating policies and procedures, promotional material, and retraining educators. Much of the cost of communications would be borne by governments.

The costs for services would be dependent on the level of modification, however the largest cost is likely to be staffing related.

A time estimate for a director to prepare their service for a modified system is two business days of preparatory work. This is estimated at \$32.28 per hour for a director on level 6.1 totalling \$516.48.²²³ Regulatory burden measurement requires this cost to be inflated by 75% to account for employment on costs (superannuation, workers compensation, leave, office and sundry expenses), and as such would place this expense closer to \$903.84.

There would also be associated staffing costs for educators to learn about the modified system. This is estimated at 8 hours and therefore additional costs of \$204.48 per educator at diploma level would be incurred (approximately \$25.56 per educator at diploma level per hour).²²⁴ Again this would be inflated to \$357.84 for each educator at diploma level to account for employment on costs.

Option C – Introduce a visual representation of the quality ratings

A visual representation of the rating may support families to recognise the rating labels, and to easily make distinctions as to overall quality. This may result in greater community engagement with the rating system, which has flow on benefits for raising community understanding about the importance of quality. NSW is already implementing this approach and anecdotally the feedback is positive. NSW has supported the visual representation with materials for families.

As with option B, this option may involve costs for services associated with implementing any new visual representation, due to costs they may incur when incorporating the visual graphic onto any branding and marketing materials used by the service.

Option D – Provide additional guidance and advice to the community

This option may result in greater community understanding of the importance of quality in education and care settings, and the differentiation between a quality rating and minimum safety requirements legislated under the National Law. This will result in greater family confidence that their children are safe and well cared for and educated.

- **Feedback is sought about whether modified terminology for quality ratings would promote community engagement and understanding of the importance of quality, and what terminology may be more useful, especially with regard to ‘Working Towards’.**
- **Feedback is sought on the use of visual representation, taking into account the benefits identified during the recent experience in NSW.**
- **Feedback is sought on any other views on how families can be better supported to understand the quality ratings system.**

9 CHANGES IN FEES WITHIN THE NQF SYSTEM

Background

Fees within the NQF system have not changed since its introduction in 2012, except through the annual consumer price index. The fees within the NQF are lower than comparable sectors. Under general government guidelines for cost recovery,²²⁵ fees should seek to recover some of the costs associated with regulatory authorities providing a service directly to an organisation.

State and territory governments invest significant resources as regulators of the NQF, given the critical role an effective and efficient regulatory system plays in furthering the objectives of the system.

As noted in chapter 1, total government expenditure on early childhood education and care, including through the CCS, was at \$9.8 billion in 2018/19. Australian Government expenditure accounted for \$7.9 billion (80%) and state and territory government expenditure accounted for \$2 billion, with preschool services accounting for 85.5% of the state and territory expenditure.²²⁶

The regulatory system was implemented to improve quality within the sector. Since the introduction of the assessment and rating system, there has been a demonstrated increase in the quality of services measured against the NQS. At 30 June 2019, 79.2% of NQF approved services with a quality rating were rated as Meeting or Exceeding the NQF (including Excellent) – up from 77.9% as at 30 June 2018.²²⁷

The cost of education and care for families continues to increase. The median weekly cost for 50 hours of education and care in 2019 was lower for centre-based day care²²⁸ (\$495) than for FDC (\$500). In 2019, the median weekly cost of centre-based day care in major cities and inner regional areas (\$500) was higher than in outer regional and remote areas (\$450).²²⁹

The average hourly fee of education and care at September 2019 was slightly lower for centre-based day care (\$10.30) than for FDC (\$10.45). The average hourly fee of centre-based day care in major cities and inner regional areas (\$10.50 and \$9.55 respectively) was higher than in outer regional and remote/very remote areas (\$9.30/\$9.10).²³⁰

In 2010, the median cost of centre-based care was \$285 per week. In 2019, this cost rose to \$495 per week. These costs are prior to the application of subsidies, so out-of-pocket costs for most families would be less. Some of the reasons behind this price rise include an increase in costs to the service such as wages, rental and operational costs.

In 2019, the CCS reduced out-of-pocket costs for families with one child attending 30 hours of centre-based day care of FDC per week (across all income categories). The highest impact was for lower income families in Australia.²³¹

9.1 Changes in fees for regulatory authorities

What is the problem?

The current proportion of regulatory costs that are returned to governments in the way of fees levied on approved providers and the services they operate, or are seeking to operate, under the NQF is very small (7% nationally).²³² Modelling of the NQF has suggested that 10–15% is an appropriate figure for fee collection nationally.²³³

In particular, the current ‘entry to market’ fees under the NQF (notably, application for provider approval and application by approved provider to operate an approved service) are very low, given the significant economic benefit derived by providers in being approved to operate under the NQF. Other human services’ regulatory schemes²³⁴ typically charge significantly higher fees to ‘license’ or ‘accredit’ service providers to approve them to operate in that market (and receive government subsidies), as well as maintain accreditation through ongoing quality assurance mechanisms.

Originally, fees within the NQF system were set at a lower rate than cost recovery. Considering the growth in the market as outlined in chapter 1, it is appropriate for governments to review fee amounts within the NQF.

While governments do not intend that the NQF should move to a system of full cost recovery for the provision of regulatory services, it is noted that, except for annual indexation, fees levied on the regulated sector have not increased since the introduction of the NQF. However, the cost of regulating increases as the sector continues to grow. The number of approved services under the NQF has increased from 14,435 as of 30 June 2014 to 15,919 as of 30 June 2019. Although fee income has increased due to the growth of approved services, it remains disproportionate to the actual cost of regulating this increased number of services.

Providers with large numbers of services or with large operations are more complex to assess and regulate than smaller providers. The proposed changes to fees are designed to recognise this. In line with the original intention of fees within the NQF, small providers should continue to pay lower fees than large providers.

Importantly, moderate increases in fees can support a stronger, more responsive regulatory framework, furthering the overall objectives of the NQF.

What are the options for change?

Option	Description
A	No change.
B	Create a fourth category of application/annual fee for centre-based services with 101 or more places and FDC services with 61 or more educators.
C	Increase fees for the following: <ol style="list-style-type: none"> 1. Annual fees 2. Approved provider applications 3. Service approval applications 4. Transfer of service notifications.
D	Introduce a new fee for approval applications for amendment to service approval (which is currently free).
E	Introduce an annual fee for approved providers that is scaled by the number of services operated by the provider.
F	Change legislation to allow states and territories to set their own fees (except for provider application fees).

Note: Options B–E are not mutually exclusive and can be taken in any combination. Option F will only be considered by governments where agreement cannot be reached on options B–E.

Impact analysis

Option B – Create a fourth category of annual/application fee based on size

Currently, the annual fee and a number of application fees for centre-based services are separated into three categories, depending on the number of approved places:

- 24 or fewer places – \$206
- 25 to 80 places – \$311
- 81+ places – \$413

Similarly, fees for FDC services are separated into three categories, depending on the number of FDC educators within the service:

- 5 or fewer educators – \$206
- 6 to 20 educators – \$311
- 21 or more educators – \$413

Option B involves separating the categories into four categories and implementing a higher fee rate of \$515, for larger services, or a higher number of educators in the case of FDC.²³⁵ Again, it is noted that the current application fees for provider and service approval to operate under the NQF are very low relative to other regulatory schemes.

Data from the NQA ITS shows that there are a number of centre-based services with approval to operate with 100 or more children, which may support the creation of a fourth annual fee category for centre-based services.²³⁶ Likewise, there are a number of services approved to operate with 61 or more educators, which may warrant a fourth annual fee category for FDC.

Maximum centre-based service place numbers	National total
1–24	1,195
25–80	10,591
81–100	1,612
101+	1,939

Table 11: Total number of services, by maximum centre-based service place numbers

Maximum FDC service place numbers	National total
1–5	1
6–20	79
21–60	386
61+	115

Table 12: Total number of services, by maximum FDC service place numbers

Option C – Increase annual, application and notification fees²³⁷

The annual fee could be increased as a whole which would result in an increase in annual fees for each fee class, shown in Table 13 below.

Service size/type	Current annual fee	Proposed fee
Centre-based care		
Small centre-based (24 or less children)	\$206	\$309
Medium centre-based (25 to 80 children)	\$311	\$466.50
Large centre-based (81–100 children)	\$413	\$619.50
Extra-large centre-based (101+ children) (Option B and C)	\$515 (option B)	\$772.50 (option B and C)
Family day care		
Small FDC (5 or less educators)	\$206	\$309
Medium FDC (6–20 educators)	\$311	\$466.50
Large FDC (21–60 educators)	\$413	\$619.50
Extra-large FDC (61+ educators) (Option B and C)	\$515 (option B)	\$772.50 (option B and C)

Table 13: Proposed annual fees

Table 14 below shows the proposed increases for application and notification fees. These application and notification types require resource intensive regulatory activity. As the provider and service approval applications are also the entry point into providing education and care services this is also one of the most effective uses of regulatory resources. Ensuring only fit and proper providers enter the sector will reduce the need for regulatory effort in compliance over the longer term. The fee increase aims to bring cost recovery closer to the actual cost of undertaking these regulatory activities.

Fee type	Current fee	Proposed fee
Application for provider approval (s11(d))	\$227	\$340.50
Application for service approval (s44(1)(e))	<ul style="list-style-type: none"> • Small centre-based (CB) – \$454 • Medium CB – \$682 • Large CB – \$910 • Extra-large CB (option B) – \$1138 • FDC – \$682 	<ul style="list-style-type: none"> • Small centre-based (CB) – \$681 • Medium CB – \$1023 • Large CB – \$1365 • Extra-large CB (option B and C) – \$1707 • FDC – \$1023
Notification of intended transfer of service approval (s59(2)(c))	\$111	\$166.50

Table 14: Proposed application and notification fees

Option D – Introduce a new fee for amendments to service approval

This option involves introducing a new fee of \$111 for applications for amendment to service approval (s22(2)(c)), which is currently free.²³⁸ The emphasis is on increasing cost recovery for more resource intensive regulatory activities. For example, applications for amendment of maximum places can require an authorised officer to visit the site as part of progressing an application, which increases costs.

Option E – Introduce an annual fee for approved providers

An annual fee for approved providers is proposed, which would be scaled according to the number of services that a provider operates. The annual fee for a provider would be charged separately to the annual fee for a service.

Approved providers operating a small number of services would pay a lower fee than those operating a higher number of services (and with more capacity to pay). This fee would also be intended to discourage providers that do not operate any services, these providers would also pay the lowest category of fee.

The majority of providers affected (81.6%) would pay the lowest rate of annual fee, with a small number of very large providers (0.5%) paying the highest annual fee rate, shown by Table 15 below.²³⁹

Category	Number	Proportion	Proposed fee
Single services providers (or providers with no service)	5,952	81.6%	\$412
Providers with 2-10 services	1,214	16.6%	\$746.40
Providers with 11-40 services	94	1.3%	\$991.20
Providers with 41+ services	34	0.5%	\$1236
Total	7,266	100.0%	

Table 15: Proposed annual fee for approved providers including breakdown of provider/ service numbers.

Option F – Change legislation to allow states and territories to set their own fees (except for provider application fees)

This option is to be considered only as an alternative to the other fee proposals. Where an increase to annual fees and/or application fees are not preferred, this option proposes legislative change so that states and territories can set their own fees based on local needs, rather than through a nationally consistent system.

Raising fees independent of the national system may result in a wide variance of fees across Australia, depending on the regulatory cost recovery requirements of each jurisdiction. This may create a perverse incentive for applications for provider approval in jurisdictions with lower fees. As such, provider approval applications would be excluded and these fees would continue to be determined consistently across jurisdictions.

Impact analysis

Implementation of options B to E would result in an increase in fee costs to providers and services, and an increase in fee revenues to state and territory governments, of up to \$7.3 million annually as set out in Table 16 below.²⁴⁰ If this increase was realised, this would increase the total contribution of fees from the sector to almost 13% of the costs of regulatory authorities.²⁴¹

The proposed increase would represent a potential average increase in costs of approximately \$4.40 per child per year, or less than 10 cents per child per week, on average. This is based on the number of children that attended approved childcare and were eligible for the CCS in 2018/19.²⁴² However, considering the small scale of the increase, it is unclear how providers would manage this increase, and if it would be passed on to families by providers in any way through fee increases.

Fee increase	Amount of increase
Increase to current fees	
Increase to annual fees	\$2,934,281
Increase to application and notification fees	\$576,208
Introduction of new fees	
Application for amendment to service approval	\$255,300
Annual fee for approved providers	\$3,493,550
Total	\$7,259,339

Table 16: Proposed total fee increase (annual)

Some service providers operate in ‘thin’ markets or very remote locations, and can be highly cost sensitive and may be more negatively impacted by fee increases. However, regulatory authorities may waive, reduce, defer or refund fees by discretion.²⁴³ This may lessen the costs to providers and services (and also reduce increased fee revenue).

Increased regulatory funding within the sector may allow families to be more confident about the quality of their education and care service, because regulatory authorities would be better resourced to assess quality.

- **Feedback is sought on the extent to which fee increases are likely to assist with improvements to quality in the sector and conversely the extent of adverse impacts on families, services and taxpayers.**
- **Feedback is sought on what, if any, impact the proposed fees would have on the viability of your service as a provider?**
- **Feedback is sought on what, if any, impact the proposed fees would have on the accessibility of education and care for families?**

9.2 Changes in application fees for ACECQA functions

What is the problem?

Currently the application fees paid to ACECQA for its regulatory functions only account for a small proportion of costs associated with administering these functions (ranging from 4% to 19%). While it is not intended to move to a full cost recovery model for all regulatory fees levied by ACECQA, under general government guidelines for cost recovery²⁴⁴, application fees should seek to recover some of the costs associated with an authority providing a service directly to the organisation making the application. The proposals below aim to increase cost recovery within the regulatory system, similar to regulatory authorities in the proposal above.

What are the options for change?

Option	Description
A	No change.
B	Increase application fee for a review by the Ratings Review Panel of rating level (s145(2)(c)).
C	Increase application fee for determination of equivalent qualification (regulation 139).
D	Increase application fee for assessment of a course to be included as an approved qualification (regulation 138).
E	Introduce a fee for an application for the highest rating (Excellent rating).

Further detail about options B–E

With respect to the assessment of individual qualifications for equivalence (option C below), it is noted that a function assigned to ACECQA in November 2019 – migration skills assessment²⁴⁵ – involves a comparable level of regulatory effort to undertake that assessment. Based on cost recovery, the current fee for these applications is approximately ten times²⁴⁶ the fee for individual qualification equivalence assessments under the NQF.

Similarly, the Tertiary Education Quality and Standards Agency (TEQSA), which has a legislated function to assess courses of study by registered higher education providers, has a legislated fee structure that has been developed in accordance with the Australian Government Cost Recovery Guidelines. This is the framework²⁴⁷ under which Australian Government entities design, implement and review cost recovered activities. The combined fee currently levied by TEQSA for preliminary and substantive assessment of a course of study for accreditation is \$9,000.²⁴⁸ The fee currently set under the National Regulations for a higher education institute seeking to have its program/course of study recognised as an approved qualification by ACECQA is \$2,281.

Additionally, the fee for Excellent rating applications was removed in the 2014 Review of the National Quality Agenda.²⁴⁹ The assessment of Excellent rating applications by ACECQA is a resource-intensive process. In the absence of a supplementary source of revenue or partial cost recovery means to meet foregone income following removal of the application fee, ACECQA's capacity over time to properly administer this regulatory function is reduced.

Fee type	Current fee	Proposed fee
Option B – Application for review by the Ratings Review Panel of quality rating level (Section 145(2)(c))	Small (CB/FDC): \$454 Medium(CB/FDC): \$682 Large (CB/FDC): \$910	Small (CB/FDC): \$590 Medium (CB/FDC): \$887 Large (CB/FDC): \$1183
Option C – Application for determination of equivalent qualification (Regulation 139)	\$112	\$146
Option D – Application for an assessment of a course to be included as an approved qualification (Regulation 138)	\$2,281	\$2,965
Option E – Introduce a fee for an application for the Excellent rating	\$0	Small (CB): \$241 Medium (CB): \$482 Large (CB): \$724 Extra Large (CB) (see 10.1, option B above): \$967 Small (FDC): \$241 Medium (FDC): \$482 Large (FDC): \$724 Extra Large (FDC) (see 10.1, option B above): \$967

Table 17: Proposed increases for ACECQA functions

Impact analysis

Options B–E

The proposed increases in application fees seek to increase the recovery of costs associated with ACECQA providing a service directly to the organisation making the application, especially where the organisation is likely to derive a future benefit from a successful application.

Implementation of options B to E would result in an increase in fee costs to providers and services, and an increase in fee revenues to ACECQA, of up to \$97,000 annually as set out in Table 18 below.

Option	Fee Type	Annual Increase/Change
B	Application for review	\$7,300
C	Application for determination of equivalent qualification	\$55,200
D	Application for assessment of course	\$22,400
E	Introduction of application fee for Excellent rating	\$12,100
Total		\$97,000

Table 18: Proposed total fee increase (ACECQA annual)

- Feedback is sought on the extent to which these fee increases are likely to assist with improvements to quality in the sector and conversely the extent of adverse impacts on families, services and taxpayers.
- Feedback is sought on what impact the proposed fees would have on your decision as a provider to apply for the relevant services provided by ACECQA?
- Feedback is sought on what impact the proposed fees would have on the accessibility of education and care for families?

10 OVERSIGHT AND GOVERNANCE OF SERVICES AND PROVIDERS

The maturation and growth of the education and care sector has resulted in a variety of different management practices emerging in the sector. Regulatory settings need to:

- have the capacity to allow regulators to identify responsible persons
- hold those individuals to account for the services they deliver to children and families
- ensure regulators are kept informed of governance or operational changes which may impact materially on children and families
- have the opportunity to investigate or intervene should the circumstances warrant.

10.1 Assessing suitability of individuals to work directly or indirectly with children

Background

There is an expectation in the broader community that individuals who work with children, either directly or indirectly, will be assessed in terms of their suitability. This system is designed to protect children by identifying potential risks to their health, safety, and wellbeing, and to screen out individuals who pose such a risk.

The National Law requires the appointment of a Person with Management or Control (PMC) of a service. The PMC may or may not work directly with children in their day-to-day work, but they are responsible for key decisions regarding how the service is run, including the appointment of individuals who do engage in direct work with children. As such, any persons applying to be a PMC must satisfy fitness and propriety requirements in order to be validly appointed.

There are currently two definitions of PMC for providers within the education and care sector, because of the operation of both the National Law and the FAL.

Education and Care Services National Law Act, s 5:

Person with management or control, in relation to an education and care service, means—

- (a) if the provider or intended provider of the service is a body corporate, an officer of the body corporate within the meaning of the [Corporations Act 2001](#) of the Commonwealth who is responsible for managing the delivery of the education and care service; or

- (b) if the provider of the service is an eligible association, each member of the executive committee of the association who has the responsibility, alone or with others, for managing the delivery of the education and care service; or
- (c) if the provider of the service is a partnership, each partner who has the responsibility, alone or with others, for managing the delivery of the education and care service; or
- (d) in any other case, a person who has the responsibility, alone or with others, for managing the delivery of the education and care service.

A New Tax System (Family Assistance) (Administration) Act 1999 (FAL), s 194F:

Meaning of *person with management or control*

- (1) A person is a ***person with management or control*** of a body, if the person is any of the following:
 - (a) a member of the group of persons responsible for the executive decisions of the body;
 - (b) a person who has authority or responsibility for, or significant influence over, planning, directing or controlling the activities of the body;
 - (c) a person who is responsible for the daytoday operation of the body (whether or not the person is employed by the body);
 - (d) a person who is responsible for the daytoday operation of a child care service in respect of which the body is approved or is seeking to be approved (whether or not the person is employed by the body).
- (2) Without limiting paragraph (1)(a), the following persons are taken to be members of the group referred to in that paragraph:
 - (a) if the body is a body corporate—an officer of the body corporate (within the meaning of the *Corporations Act 2001*);
 - (b) if the body is a partnership—a partner;
 - (c) in any other case—a member of the body’s governing body.

The National Law makes no reference to the methods that regulatory authorities may use to assess fitness and propriety, including the capacity to test a person’s knowledge of the NQF to ensure their suitability (nor does it explicitly specify that knowledge is a factor pertaining to fitness and propriety). As such, there is some jurisdictional variation in processes for how regulatory authorities make these assessments.

The FAL does not prescribe in its legislation how the Secretary can determine a person's fitness and propriety. It only prescribes the matters to which the Secretary must have regard.²⁵⁰ There is some overlap in the matters to be considered and both sets of legislation contain a broad power to consider other (undefined) circumstances in which a person may not be fit and proper. However, the determination of who is a fit and proper person differs between the National Law and FAL in that:

- The FAL contains a more comprehensive list of matters to which the Secretary must have regard and, in this respect, is clearer on matters that are definitely considered relevant to fitness and propriety (rather than the Secretary relying on the broader power to consider other circumstances).
- The FAL does not contain any discretionary matters, i.e. matters to which the Secretary may have regard.

What is the problem?

The National Law and the FAL differ in their definition of who is a PMC, the role and responsibilities of a PMC and the process for assessing the fitness and propriety of individuals who work with children.

The definition of a PMC within the National Law does not include the management and operational responsibilities that are included in the FAL definition.²⁵¹

There is some overlap in the two definitions of a PMC. However, the definition under the FAL is broader. This creates a situation where a person (or persons) could satisfy the regulatory authority under the National Law that they are a suitable PMC, but may need to satisfy additional requirements under the FAL. This places an additional administrative burden on services in meeting two sets of regulatory requirements. It is also likely to create confusion as the term 'Person in Management or Control' is used in both sets of legislation, and yet is defined differently. An individual may not be aware of the differences in definition and may assume that because they are compliant with one law, they must be compliant with the other due to the terminology used.

PMCs are an essential role within the legislative framework to ensure appropriate responsibilities are allocated to individuals who control the operations of education and care services and that these persons are held accountable for the practices occurring in services. As such, it is critical to correctly identify who is a PMC, and for this individual to be properly scrutinised. This provides a mechanism for keeping children safe and is in the public interest because there is confidence that children are educated and cared for in environments that have appropriate oversight. Fitness and propriety checks include criminal history and fraudulent behaviour to ensure a robust screening process in identifying those individuals not suited to work with children.

Furthermore, differing approaches to assessing fitness and propriety also pose risks to children and require significantly more resources from regulators to later exclude inappropriate providers from the sector once they have been granted provider approval.

Issues have also arisen in FDC settings, where care is provided in the home of an educator. While the educator is required to satisfy fitness and propriety requirements, there is no express requirement to assess the suitability of other residents to be around children being educated and cared for, including young people residing in the FDC residence (i.e. under 18 years of age). Furthermore, there is no requirement for FDC educators to notify the approved provider of any matters that may affect the suitability of residents in their home to be in the presence of children.

What are the options for change?

Option	Description
A	No change.
B	Align the matters that must be taken into account in a fitness and propriety assessment under the National Law to be the same as the FAL, including in defining who is a PMC.
C	Specify in the National Law that the regulatory authority can administer questions to an applicant in any format, in addition to the already existing powers to ask the person to provide further information and undertake inquiries in relation to the person.
D	Make provision in the National Law to require applicants to undertake an assessment of their knowledge of the NQF prior to making an application, if requested by the regulatory authority.
E	Include an explicit obligation for FDC educators to notify the approved provider of circumstances arising that pose a risk to the health, safety or wellbeing of children of the service and that APs use this information in a risk assessment.

Impact analysis

Status quo

If no regulatory changes are made, there will continue to be two different definitions of PMCs within legislation governing education and care services in Australia. It is unclear how often providers and services are confused by the two definitions, however this confusion is likely to continue because of the duplication. This also means that prior to commencing operations, providers must continue to navigate two approvals processes. There is no evidence that suggests that maintaining two separate systems for designating a PMC produces any benefit to educators, or leads to any improvement in the quality of the education and care provided to children. If two definitions are maintained, it reduces the capacity to correctly identify who is a PMC, and to ensure that persons carrying out the duties of a PMC are assessed in terms of their suitability.

There may also be instances where inappropriate individuals are permitted to enter the sector (as a PMC or an educator) and pose a risk to children if there are inconsistencies between how fitness and propriety is assessed under the FAL and the National Law. Other suitability assessments (e.g. working with children checks) are likely to identify a significant proportion of individuals deemed unsuitable to work with children. However, working with children checks are narrower in scope (i.e. they focus heavily on an individual's criminal record), are not nationally available for persons under 18 years of age, and may not capture other features that may make an individual unsuitable to work with children (e.g. poor business or personal practices that do not amount to a criminal offence, but may still be improper in the context of operating or working in an education and care service). The differences in the way fitness and propriety measures are applied under the FAL and the NQF will remain a source of confusion for individuals, particularly for those who satisfy the requirements of one legislative scheme, but not another.

Option B – Align the National Law and the FAL in terms of matters to be assessed as part of a fitness and propriety check, and in defining who is a PMC

Fitness and Propriety Assessment

Aligning the National Law and the FAL could assist in assessing the suitability of individuals who work directly or indirectly with children, and identifying individuals who warrant such an assessment.

The fitness requirements under the FAL are not discretionary, whereas there are some discretionary powers under the National Law to take into account any relevant matters. While the regulatory authority could feasibly take into account the same matters as the FAL using existing powers, the legislation could be strengthened to the regulatory authority applying the National Law to be required to consider the same factors.

This would ensure there is consistency in the assessment processes under the National Law and the FAL, and minimise any confusion experienced by an individual who may be found fit under one scheme, and unfit under another.

However, removing the discretion afforded to the regulatory authority under the National Law reduces its capacity to assess fitness based on an individual's circumstances, which may result in more individuals being excluded from working in education and care settings. There are two potential impacts flowing from this. If stronger requirements correctly identify unsuitable individuals, children and families will benefit from reduced exposure to harm. However, if stronger requirements exclude individuals unfairly, then the pool of educators available to work in services will be unnecessarily reduced, which may create access issues for children (due to child to educator ratio requirements). The appeals processes currently contained in the NQF describe how applicants can apply to have regulatory decisions reviewed. These processes would be maintained, mitigating any concerns regarding unfair decision making.

PMC

Further alignment could be achieved if there was only one definition of a PMC under both legislative schemes. This alignment would ensure that individuals who meet the definition under both sets of legislation are identified as a PMC, and that they need to meet suitability requirements before being validly appointed.

The National Law takes a narrower approach to defining a PMC than the FAL, which provides more detail about the tasks expected to be undertaken by the PMC.

If the National Law were amended to match the FAL, a wider number of individuals are likely to be captured as PMCs, given the inclusion of responsibilities undertaken by a PMC in the legislation. This will increase the number of individuals who have to meet fitness and propriety requirements, and create an administrative burden for these individuals who will have to produce evidence as part of an assessment of their suitability. There remains the risk that unsuitable individuals may still be selected as PMCs as background checks underpinning fitness and propriety assessments can contain errors.²⁵² However, the appeals process would remain, providing an avenue for individuals to apply to have decision-making reviewed. Furthermore, the data captured as part of a fitness and propriety assessment relies on formal findings of guilt or some other misconduct, and there will be individuals who will commit an offence for the first time in an education and care setting, or have simply escaped detection in the past. In these instances, regulations requiring fitness and propriety checks will have no impact on averting the harm done to children who come into contact with unsuitable persons, or any harm done through mismanagement of the business.

If the FAL were to be amended to align with the National Law, services would have more autonomy in deciding who would be nominated as a PMC. The FAL states that a person has management or control if they undertake certain activities, whereas the National Law only outlines the governance requirements (i.e. that a PMC can be a corporate entity or an individual). Adopting the National Law definition will still pose an administrative burden to whomever seeks to be appointed as the PMC, as they will have to produce evidence in order to satisfy fitness and propriety requirements. However, there is likely to be less of an administrative burden than if the broader definition under the FAL were adopted. The inability of fitness and propriety measures to completely avert the risk of exposure to unsuitable persons has been noted above, and would also apply if the narrower definition were preferred.

Aligning the two definitions may also improve efficiency for processing applications between the two systems. This could reduce application processing times and enable approved providers to begin operating sooner.

Aligning the two definitions is likely to decrease risks for children and improve public confidence in the integrity of the system.

In order to align the FAL definition with the National Law, a recommendation to the Australian Government to make this change would need to occur.

Option C – Regulatory authorities can administer questions to an applicant

The requirements for meeting fitness and propriety are likely to be clearer for applicants, and regulatory authorities would have a greater range of methods to assess fitness and propriety. This option has the potential to more accurately identify inappropriate providers and exclude them from the sector before they can pose a risk to children.

However, it could impose costs on providers as they need to demonstrate their knowledge in a specified format, depending on the form of questions determined by the regulatory authority. If this option were to be considered, it would be incumbent on the regulatory authority to give sufficient notice about the form of testing and the subject matter, and to address any access and equity issues the individual may experience when questioned.

Administering an assessment may create barriers to entry for individuals from non-English speaking backgrounds, or with other learning challenges. There may be significant costs in ensuring that assessments are accessible, in order to properly gauge the suitability of the individual.

Option D – Require applicants to undertake an assessment

The requirements for meeting fitness and propriety are likely to be clearer for applicants, and this option gives regulatory authorities a greater range of methods for fitness and propriety assessments. This option has the potential to more accurately identify inappropriate providers and exclude them from the sector before they can pose a risk to children.

However, testing to establish fitness and propriety may pose a time impact on applicants and a cost impact where the applicant is unable to pass the assessment. Administering an assessment may create barriers to entry for individuals from non-English speaking backgrounds, or with other learning challenges. As noted in option C, there may be significant costs in ensuring assessments meet suitability requirements. Such an assessment is also limited to capturing an individual's performance at a particular point in time, and may not reflect their overall performance over time. It could also limit future flexibility and innovations in assessment by regulatory authorities.

Option E – Include an explicit obligation for FDC educators to notify the approved provider of circumstances arising that pose a risk to the health, safety or wellbeing of children of the service and that APs use this information in a risk assessment.

This option would create an obligation for FDC educators to report any matter that pose a risk to the health, safety or wellbeing of children in attendance at the service to the approved provider. This would include matters relating to household members under 18 years of age. There may be some costs associated with providing guidance to educators on how to meet this obligation. However, this option would create a notification process by which educators would inform the providers, who in turn would be required to notify the regulatory authority under existing provisions of the National Law.

It would be expected that any information received by the approved provider through this notification mechanism would be considered, and addressed or mitigated, as part of their risk assessment process.

This option would impose further administrative requirements on approved providers in FDC settings, but would help ensure children's health and safety in FDC.

- **Feedback is sought on the perceived costs and benefits of an assessment of an applicant's knowledge under the NQF, and whether this is likely to improve upon current methods of assessing the suitability of an individual to work with children.**
- **Feedback is sought on the regulatory authority being able to administer questions in any format, in terms of the costs and benefits, and whether this would improve current methods to assess suitability of individuals who wish to work with children.**

- **Feedback is sought on the costs and benefits to the community of the current approaches to assessing fitness and propriety of individuals working directly and indirectly with children, and what matters the community expects to be taken into account when making such an assessment in order to mitigate risks to children in education and care settings.**
- **Feedback is sought on the benefit for safety of children and for applicants in having an aligned approach to assessing fitness and propriety and a common definition of a PMC under the National Law and the FAL.**

10.2 Cancellation of provider approval under Family Assistance Law

Background

State and territory regulatory authorities are responsible for assessing and determining provider and service approval applications under the NQF for children’s education and care. Regulatory authorities may refuse or cancel a provider approval under the NQF where the continued provision of care would constitute an unacceptable risk to the safety, health or wellbeing of children, or where the approved provider is not a fit and proper person to be involved in the provision of education and care.²⁵³

The Australian Government also approves child care providers and services under the FAL, enabling eligible families to receive Child Care Subsidy (CCS) or Additional Child Care Subsidy (ACCS) for children attending those services. The subsidy is paid directly to service providers who are approved to administer the subsidies on behalf of families.

The NQF and FAL require determinations by both levels of government about whether an applicant is a fit and proper person to be an approved provider.

The FAL also imposes a number of conditions on approved providers and services with which they must comply in order to remain approved and receive/administer payments under the FAL. A key condition of FAL approval is obtaining and maintaining provider and service approval under the NQF.

The Australian Government may decide to cancel provider approval under the FAL for reasons such as:

- failure to comply with obligations under the FAL (e.g. failure to keep attendance records, or pass CCS payments on to families)
- the quality of the service’s governance arrangements
- the provider’s understanding of obligations under the FAL and their commitment to compliance

- failure to comply with undertakings (e.g. relating to older children or ‘child swapping’).

Note in some cases, when a provider loses access to CSS funding, they cease operation. Some providers will agree to voluntarily suspend or surrender their NQF service or provider approval. If provider approval is cancelled, service approvals are also cancelled.

What is the problem?

Grounds for cancellation of provider approval under the FAL are relevant and sufficiently serious to support the grounds for cancellation under the NQF (fitness and propriety, unacceptable risk, indictable offenses). However, cancellation of provider approval under the FAL is not explicit grounds for cancellation of provider approval under the NQF.

Instead, when regulatory authorities receive a notification from the Australian Government of a recent cancellation under the FAL, they may move to cancel the provider approval under the National Law. In order to cancel a provider approval under the NQF, regulatory authorities must first identify sufficient evidence to establish grounds. This process is slow and burdensome. As a result, services proven unsuitable under the FAL continue to operate under the NQF for a period typically for longer than 44 days,²⁵⁴ and may be posing risks to the safety, health and wellbeing of children.

This is at odds with the community expectation that services cancelled under one system should automatically result in cancellation under the other system.

Further, as the provider will no longer be receiving the Australian Government subsidy to administer on behalf of families, families may be incurring higher fees during this time.

What are the options for change?

Option	Description
A	No change.
B	Legislative change that provides for FAL cancellation as explicit grounds for cancellation of provider approval under the NQF in circumstances where the FAL cancellation relates to fitness and propriety and/or a breach of the NQF.
C	Legislative change that provides for refusal of provider approval under the FAL as explicit grounds for cancellation of provider approval under the NQF, where the FAL refusal relates to fitness and propriety and/or a breach of the NQF.

Note: Options B and C are not mutually exclusive.

Impact analysis

Status quo

The fact that services are unsuitable under the FAL will remain insufficient direct grounds to cancel or refuse provider approval under the NQF. This will likely allow services to continue operating under the NQF and pose a risk to children during the time it takes for regulators to build a case, for which regulators and taxpayers will continue to incur additional administrative costs.

Option B – FAL cancellation as grounds for cancellation of provider approval under NQF; and

Option C – FAL refusal as grounds for cancellation of provider approval under NQF

Both options B and C have the same impacts.

These could lead to shorter timeframes for cancellation or refusal of provider approval, which is likely to reduce the risk that children in these services are exposed to, as well as save taxpayer money in the process.

However, it could temporarily affect families with children in these services as they have less time to seek alternative solutions for the education and care of their child. This may also have a pronounced impact in areas where access to alternative education and care options is limited, or non-existent. When the cancelled provider is the only provider in the area, families may have to make significant life adjustments in order to care for their children (e.g. reducing work hours, leaving a job, travelling out of area). This impact may be mitigated by support from jurisdictions to families to source alternative care. It is preferable than families continuing to attend care that may be unsafe and present risks to children.

- **Feedback is sought on whether cancellation or refusal of provider approval should be aligned across legislative instruments.**
- **Feedback is sought on appropriate grounds where cancellation or refusal of provider approval under one legislation should automatically result in cancellation under another.**

10.3 Arrangements to transfer a service to another approved provider

Background

Under current legislative requirements, the transferring and receiving providers must jointly notify the regulatory authority of the transfer at least 42 days before the transfer is intended to take effect. The regulatory authority's consent for the service transfer is taken to be given, unless the regulatory authority actively intervenes within 28 days before the date of transfer.

Following the transfer, both the transferring and receiving providers must give written notice to the regulatory authority that the transfer has taken place, in order to receive an amended service approval.

What is the problem?

The process by which service approval is transferred from one approved provider to another has complexities for services and for families who use education and care services.

The limitations on intervening in a transfer mean that significant changes to the circumstances of a transfer could occur after the regulatory authorities' window to intervene has closed. The community expects that services and service providers will be appropriately vetted and considered appropriate to deliver care and education to children.

The need for both the transferring and receiving providers to give notice to the regulatory authority of the transfer has in the past created delays to the receiving provider being able to commence providing education and care to families, especially in instances where the service is located on a government site and the provider is determined through a tender process. This may occur due to the transferring provider having no incentive to complete this obligation.

Under current legislative requirements, advice of a transfer is only required to be provided to families by the receiving provider two days before the transfer occurs, leaving families with limited options to reconsider their needs in the event of a transfer occurring.

While there are complexities with notice periods before transfers occurring, they are required because they enable families and the regulatory authority to receive information about potential changes in the operations of a service. Families who receive this information are in a better position to make an informed choice about education and care for their children. Similarly, notice provisions enable the regulatory authority to vet incoming service providers and ensure they can provide a service that meets the stringent requirements under the National Law and Regulations and protect children's health, safety and wellbeing.

What are the options for change?

Option	Description
A	No change.
B	Develop guidance for services and providers about the service transfer process and how to best advise families about the transfer (for example, in relation to storage of children’s records).
C	Minor legislative changes to address challenges associated with timeframes including: <ol style="list-style-type: none"> 1. Increasing the notification period to 60 days; 2. Allowing the regulatory authority to refuse or delay a transfer if a significant issue arises after the intervention period has ended (intervention period is at least 28 days prior to intended transfer date) but before the transfer date; and/or 3. Making it mandatory for transferring and receiving providers to notify the regulatory authority of any change or delay to the intended date of transfer. 4. Increase the notice period to families from 2 to 7 days.
D	Amend the National Regulations to ‘deem’ the transfer to have occurred based on the advice of the receiving provider only, with receipt of the receiving provider’s right to occupy.

Impact analysis

Status quo

Families are unlikely to have sufficient time to understand and reassess the impact of a transfer on the education and care of their children. There could also be adverse impacts to children in instances where issues impacting the safety or quality of service provision arise after the window to intervene in a transfer has closed. It is also an administrative burden for incoming and outgoing service providers to meet current notice requirements, and the delays with the transfer process will likely continue.

Option B – Develop guidance for services and providers about the service transfer process

This could provide greater clarity and understanding of the process amongst providers, and can support families to better understand the potential impact of the change on their child or their records. Depending on the form the guidance takes, there may be negative impacts for families and service providers who do not speak English or experience difficulties with reading. However, strategies could be developed to ensure such communications are accessible.

Option C – Minor legislative changes to address challenges associated with timeframes

These changes could manage the risks associated with transfers to children are given sufficient scrutiny by regulatory authorities who have more time to consider them. However, expanding the time frames for notification and intervention will inevitably slow down the transfer process. This may have a significant cost impact on incoming and outgoing service providers, and it may discourage some parties from entering into a transaction with foreseeable delays.

Requiring both providers to advise of any delays may assist with a smooth transition between the incoming and outgoing providers, but it places an additional administrative burden on both service providers.

Extending the timeframe for notifying families of transfers may have a minor, positive impact for allowing families the opportunity to scrutinise the incoming provider and make a decision. The extension is not significant (from 2 days to 7 days). However, in areas where access to childcare is an issue, the one-week timeframe may not constitute sufficient notice for families to make alternative arrangements with another provider if they are not comfortable remaining at the service with the incoming provider.

Option D – Amend the National Regulations to ‘deem’ the transfer to have occurred

This may improve the efficiency of the service transfer process for transferring and receiving providers and regulatory authorities. It may prevent delays for some transfers, reducing the regulatory burden on transferring providers and allowing for greater flexibility and certainty of transfer dates.

However, relying solely on the receiving provider’s notice has significant legal risks. There is a chance that the transfer of the service between the incoming and outgoing provider may not finalise in time, or at all. If the transfer is not finalised, but a deemed approval is in place, a ‘legal limbo’ will be created where neither the incoming or outgoing provider will have full legal control of the service. There is also the question of who is best placed to ‘deem’ the transfer. While the receiving party may be able to present their right to occupy, there may be other legal issues that impact on the business transfer that are improper for the regulatory authority to make a determination on.

- **Feedback is sought on the costs and benefits of changing notice requirements (to the regulatory authority, and to families) about the transfer process, including whether there should be any requirements of notice for service providers.**
- **Feedback is sought on the perceived risks and benefits of ‘deeming’ a transfer, and under what circumstances such an option could be exercised.**

- **Feedback is sought from the community on the impact of the current notice periods on the capacity to make an informed choice about education and care, and how much notice is required to ensure families can make informed decisions.**
- **Feedback is sought on the manner in which notice is currently provided to families, and what kind of notice is required to ensure that families are able to make informed choices about education and care for their children.**

10.4 Maintaining current information about service delivery

Background

When applying for a service approval²⁵⁵, education and care services are required to provide ‘a description of the nature of education and care service’²⁵⁶ and ‘the proposed ages of children to be educated for’.²⁵⁷ Some jurisdictions put the approved ages as a condition on service approval.²⁵⁸

The National Law and Regulations do not require approved providers to notify the regulatory authority of changes in the ages of children cared for, nor the nature of care provided by the service. Services may apply for an amendment to service approval, the National Regulations do not stipulate the required details for amendment applications.²⁵⁹

In July 2019, a new editing function was developed to allow approved providers to *voluntarily* update the nature of care through the NQA ITS portal.²⁶⁰ Further changes to the NQA ITS are being considered to allow approved providers to *voluntarily* update the age groups of children.

To maintain an up-to-date system record, the National Law requires approved providers to notify certain information to the regulatory authority.²⁶¹ Regulation 175 outlines the prescribed information required to be notified to the regulatory authority:²⁶²

1. changes to the hours and days of operation of the service
2. changes to the provider’s location or the contact details
3. financial viability affecting an ongoing operation of the service
4. the attendance of any additional child or children in an emergency in the circumstances set out in 123(5)
5. any incident relating to a physical or sexual abuse of a child while the child is being educated and cared for by the service
6. any incident that requires the provider to temporarily close, or reduce the number of children attending the service
7. any circumstances that may pose a risk to the health, safety or wellbeing of children attending the service.

What is the problem?

The absence of notification requirements has resulted in services providing education and care to children of different age groups than originally identified in their service approval. Services could be operating without the facilities, staffing qualifications or knowledge specific to the current age range of children attending them. Thus, children could be placed in service settings that operate with approval but are in fact inappropriate for their needs and pose a risk to their safety, health and wellbeing.

Without up-to-date information about service delivery, regulatory authorities are unable to identify and prevent potential risks within services. For example, it may affect services' (including services in high-rise buildings) ability to safely evacuate in emergency situations such as bushfires or flooding. Also, regulatory authorities are unable to provide appropriate support and resources to services considering to change their nature of care or age groups of children.

The nature of care and age groups of children are self-reported by approved providers at the application stage. The absence of notification requirements is likely to affect the accuracy of data in reports and national registers, such as the 'Report on Government Services' and ACECQA Snapshots. In particular, the ACECQA Snapshots report on the number of services and Quality Area ratings by nature of care types.²⁶³

Outdated information may result in inaccurate ACECQA national registers, which contain information about the nature of care. Inaccurate registers would misguide families relying on the ACECQA service search for information about services, and consequently, adversely affect their informed decision making processes.

The extent of the problem has not been quantified; it is not possible to determine the number of cases where services changed their nature of care and/or age groups without notifying regulatory authorities.

What are the options for change?

Option	Description
A	No change.
B	Amend the National Regulations to require notification of changes to the ages of children being cared for and nature of care provided to the regulatory authority, with an associated offence for failing to notify.
C	Amend the National Regulations to introduce an approval requirement, which obliges providers to apply to the regulatory authority to change the ages of children cared for and nature of care delivered by a service.
D	Regulatory authorities to provide guidance and resources in relation to age-appropriate programs and facility requirements.

Impact analysis

Status quo

This will continue to allow services to change the nature of care that they offer or accept children of different age groups than originally approved for, without taking into account the need for different facilities, staff or knowledge and for which they are potentially ill-equipped. Operating without the knowledge or approval of the regulatory authority could lead to children being exposed to risks that may have been prevented or mitigated by intervention of the regulatory authority, and is likely to have adverse impacts on children's safety, health and wellbeing. Further, the absence of notification requirements may affect the accuracy of data in reports and national registers.

Option B – Require notification of changes to the age of children being cared for and nature of care provided to the RA, with an associated offence for failing to notify

A requirement to notify may create an incentive for providers to ensure they have adequate knowledge of the different requirements of different service types, and that their services cater for the needs of the current age group. This also ensures that regulatory authorities have access to accurate information about the type of care provided by a service, and allow them to engage more proactively with services to safeguard the health, safety and wellbeing of children where risk is identified. It would also improve the accuracy of data in reports and national registers. While there will be a small increase to the regulatory and administrative burden for providers, the lodging time is likely to be minimal at under an hour.

Option C – Introduce an approval requirement, which requires providers to apply to the regulatory authority to change the ages of children cared for and nature of care delivered by a service

This could ensure that providers and their services are assessed regarding their ability to provide alternative service types to differing ages prior to operation. Information recorded in NQA ITS is likely to be current and more accurate, which could assist family decision making.

Regulatory authorities would be able to conduct a compliance visit if they were concerned to ensure that the service was appropriately catering to any new age groups. A notification requirement would enable the regulatory authority to distribute information about how the service may need to change its practice in advance, allowing the service to reconsider its decision or implement age-appropriate programs the service may have omitted. This would reduce the risk to the safety, health and wellbeing of children.

However, this will incur application and processing costs for providers and the regulatory authority, as well as create longer timeframes to change service type and age group due to an application process of at least 28 days. It could lead to families temporarily unable to access the services they require, and potentially result in foregone earnings for the provider. Providers will also likely need to invest 1–5 hours to complete the application and provide information throughout the application process.

Option D – Regulatory authorities to provide guidance and resources in relation to age-appropriate programs and requirements

The provision of guidance and resources by the regulatory authority on matters that a service must have regard to before changing its nature of care and/or age groups would allow the service to reconsider its decision or implement age-appropriate programs the service before making the changes.

However, a risk to the safety, health and wellbeing of children still exists without a regulatory requirement to notify or apply for changes to their service delivery. Further, the absence of notification requirements may affect the accuracy of data in reports and national registers.

- **Feedback is sought regarding the extent of this problem for services and the broader community, including the impacts on the proposed options such as administrative costs for services, access to education and care for children and the health, safety and wellbeing of children.**

11 TECHNICAL AMENDMENTS

Number	Proposal	Description	Impact
11.1	Notice of transport in NQA ITS	Amend the regulation to improve notice requirements during periods of transport using the NQA ITS.	This amendment would require services to provide indication on their service record where transport is provided as part of the service. This field currently exists in NQA ITS but is not mandatory.
11.2	Implementing physical activity guidelines	Amend the National Regulations to require services to implement physical activity policies.	Services will be required to develop new policies, or update existing policies, in order to meet the minimum physical activity requirements.
11.3	FDC: Display in venue/ residence	Amend the National Law to require FDC operators to display the approved provider's assessment of a residence/venue (including risk assessment).	The impact on providers is, in most cases, going to be negligible. There may be some reputational risk in displaying an assessment of a residence/venue where an FDC is operating if the assessment contains unfavourable information. However, families being able to make more informed choices will likely improve their confidence in the FDC model of care.

Number	Proposal	Description	Impact
11.4	Tasmania-specific Amendment	Revoke regulation 353, which was intended to bring Tasmanian school-based kindergartens into line with the NQF. Regulation 353 can either be revoked immediately, or there could be a transition period before revocation.	If regulation 353 is revoked immediately, this will have a significant impact on the 4 affected services, as they will be required to meet the NQF requirements without any preparation. If there is a transitional period, the impact will be minimised, and services will have 12 months to become compliant.
11.5	Excellent rating	Amend section 155(5) to extend the validity of an 'Excellent' rating from a period of 3 calendar years, to 5 calendar years.	This extension will allow services who achieve this rating to trade on the goodwill associated with the 'Excellent' rating for a further 2 years. There will be a reduction in the administrative burden associated with applying for, and producing evidence as part of, the 'Excellent' assessment process.
11.6	Death of an approved provider	Amend the National Law to include notice requirements in the event of the death of an approved provider, and include grounds for cancellation or cancellation of provider approval following the death of an approved provider.	Any cancellation of approval could result in continuity of care issues, and potentially lost revenue for the service. However, this is balanced against ensuring that incoming providers are suitable under the National Law. Providing notice to families imposes a slight administrative burden on the administrator of the estate.

Notice of transport in NQA ITS

Existing providers, as well as new providers, will be required to notify the regulatory authority via the NQA ITS of their transport arrangements. Notification to include:

- whether the service provides transport
- the circumstances under which transport will be provided, such as the method of transportation
- confirmation that the service has transportation policies and procedures in place that comply with the National Law and Regulations
- how risks will be managed and minimised as part of risk assessment requirements
- confirmation that all children have a valid authorisation to travel from an authorised parent/carer.

Rationale: There have been a number of serious incidents nationwide during transport, where children were inadequately supervised, or exposed to harm and hazard likely to cause injury. The consequences of leaving children unsupervised on transport, particularly on hot days, can be fatal. As it stands, the regulatory authority has limited knowledge of which services provide transport, which provides limited opportunities to assess the policies and procedures services have around transport, and how they are mitigating the risks.

Implementing physical activity guidelines

The National Regulations will be amended to require education and care service providers to include physical activity policies and procedures as part of their health and safety policy (Element 2.1.3 of the NQS).

Rationale: In an average eight-hour day spent at an Australian education and care service, only 12% of children meet the recommended 180 minutes of physical activity per day.²⁶⁴ Limited physical activity in childhood contributes to obesity, and is negatively associated with a child's immediate and long-term health, quality of life and educational outcomes.²⁶⁵ There is currently no specific requirement for providers to have physical activity policies and procedures.

FDC: Display in venue/residence

Insert into the National Law a requirement that FDC educators display the approved provider's assessment (including risk assessment) of the venue where they are operating the FDC service from (whether they are operating from their own home, or from another approved venue).

Rationale: FDC services can currently operate from their own home, or from another venue, once it has been assessed by the approved provider. While an approved provider may assess a residence or venue and deem it suitable, there is currently no requirement that families using the FDC service are informed about the assessment, and the findings made by the approved provider. This information gap may present as a problem for some families, who may unknowingly allow their child to be cared for in areas of a residence or venue that are not approved by the approved provider. Some of the potential risks that children may be exposed to include unsafe environments, inappropriate learning areas or limited emergency and evacuation plans.

Tasmania-specific amendment

Either regulation 353 should be revoked with immediate effect, or services should be given one year to transition to the requirements of the NQF before the regulation expires (i.e.: a transitional period).

Rationale: Regulation 353 was brought in to support school-based kindergartens in Tasmania transition to the NQF, but these services were ultimately not incorporated into the NQF. This regulation affects a total of 4 services. Affected services are not required to meet all of the physical environment regulations within the NQF, such as those pertaining to fencing, indoor space, outdoor and shade.²⁶⁶ These could impact on the health, wellbeing, and safety of children attending these services.

Excellent rating

The National Law should be amended to allow services to retain their 'Excellent' rating for a period of 5 calendar years. At present, services who wish to retain their 'Excellent' rating must do so every 3 years.

Rationale: The 'Excellent' assessment process is rigorous, as it is only awarded by ACECQA to services who promote an exceptional level of education and care, visionary leadership and a commitment to continuous improvement. The process imposes significant costs on services who wish to obtain this rating due to the administrative and evidentiary burdens of meeting the threshold of being deemed exceptional.

Allowing services to retain this rating for 5 years, rather than 3 years, will significantly reduce this burden without compromising the high standards expected as part of the 'Excellent' assessment process. Services will have an additional 2 years to utilise the goodwill associated with the 'Excellent' rating, as well as the benefit of additional time to gather evidence to form part of the 'Excellent' rating process. This extension would also ensure that services holding an Excellent rating that have not had a recent assessment and rating are not penalised as a result of any delays in their re-assessment.

There is a safeguard against the service no longer maintaining this high level of service quality over an extended duration, in that a state or territory regulatory authority can continue to assess and rate the service at any time, and if that service fails to maintain a rating of Exceeding in all 7 quality areas, they will automatically lose their Excellent rating.

Death of an approved provider

The National Law should be amended to:

- Cancel provider approval upon notification of a death of the approved provider if they were a sole trader (or a partnership of two persons where one is deceased)
- Require an executor to notify families of their appointment, and their obligations in terms of the ongoing operation of the service, within 7 days of their appointment
- Include possible grounds for suspension or cancellation of a service approval where there is a failure to notify the regulatory authority of the death of an approved provider, and/or apply to suspend, surrender, or transfer or apply for provider approval within 30 days)
- Include a new provision for the regulatory authority to extend the relevant period to enable an executor to be appointed, and to action their next steps.

Rationale: Currently, following the death of an approved provider, there is no requirement for the executor to notify families of their appointment. They may also continue operating the service for 30 days, and it is unclear whether the regulatory authority can cancel the provider approval in circumstances where the executor does not take action to suspend, surrender or transfer the service/s or apply for provider approval within the prescribed time periods. Families expect that any variations to care arrangements or to who is providing that care, would be promptly communicated to them. There is also no means of checking the suitability of an executor in the 30 day grace period, which may impact on the quality of education and care provided to children attending services operated by unsuitable providers.

12 CONSULTATIONS

Consultations to date

To commence the 2019 NQF Review, governments released an issues paper as the basis for Australia wide consultations on the NQF. The issues paper set out the issues for public discussion, which were broadly divided into four topics:

- Approvals
- Operation
- Public awareness of quality
- Compliance and enforcement.

Public consultation on the 2019 NQF Review commenced on Monday 15 April 2019 when the NQF Review website was launched. The consultation period ended on Sunday 30 June 2019, and during this period, engagement with the NQF Review resulted in:

- 17,500 website visits
- 2,500 participants attending 79 face-to-face consultation sessions
- 1,769 online survey responses
- 17 written submissions.

Consultation on CRIS options

Further public consultation will be conducted to seek feedback on the options presented in this CRIS.

Public information sessions will be held in each state and territory, either online or face-to-face in capital cities and a selection of regional areas.

The information sessions will focus on the proposed options for change in the CRIS and their impact on the sector and/or families. The CRIS has been endorsed by Education Council.

The information sessions will encourage attendees to provide their feedback through one of two ways, an online survey or a written submission. Feedback will be accepted through the NQF Review website only, at www.nqfreview.com.au. The website also contains the summary report of the consultation on the Issues Paper.



Consultation timeframe

Public consultation will be carried out from 1 March to 30 April 2021. This two-month consultation period is consistent with the requirements set out in the Australian Guide to Regulation which recommends up to 60 days of consultation, with no less than 30 days as the minimum requirement.

13 IMPLEMENTATION AND EVALUATION

Following the public consultation process on this CRIS, further analysis of the options will be undertaken by governments and a DRIS will be released which outlines the preferred options for implementation.

Subject to Ministers' agreement to preferred options, the introduction of all potential legislative changes is expected to occur from 2022. As the NQF operates under an applied law system, Victoria (the host jurisdiction) must then pass the amendments to the *Education and Care Services National Law Act 2010* and following this process, other states and territories will then need to adopt the amended legislation. Western Australia, which will need to amend its own corresponding legislation, will likely enact any changes at a later stage in 2022. The Education and Care Services National Regulations support the National Law by providing detail on a range of operational requirements. Potential changes may also be required to the National Regulations. NSW is the host jurisdiction for these National Regulations.

It should be noted that, even where the changes are enacted by the end of 2022, some of these changes are likely to involve a transition period for the sector.

To ensure that regulation of the education and care sector remains relevant and effective over time, there will be ongoing monitoring and review of the implemented changes by all governments and ACECQA, as part of its national oversight role in guiding the implementation and administration of the NQF and monitoring and promoting consistency in its implementation and administration.

ACECQA publishes an annual report which is publicly available, as well as quarterly NQF Snapshots that are also publicly available. ACECQA also regularly reports to the Education Council on the implementation and administration of the NQF. More information on ACECQA is available from www.acecqa.gov.au.

14 APPENDIX A – FURTHER INFORMATION ON PROPOSED OPTIONS

Chapter 3 – Safety, health and wellbeing

3.1 Improving the safety of children during transitions between services (including school)

Children missing or unaccounted for during transition periods at OSHC services²⁶⁷

Data relating to serious incidents involving children missing or unaccounted for during transition periods at OSHC services revealed:

- Serious incidents involving children missing or unaccounted for during transition periods at OSHC services overwhelmingly occurred during the *afternoon transition period* and children were more likely to be missing for longer durations during that period.
- As at 30 June 2019, there were 841 incidents involving children missing or unaccounted for during transition periods at OSHC services since the commencement of the NQF in 2012.
- Of these:
 - only 53 (or 6%) were reported as occurring during the main *morning transition period* (8:00–9:00am)
 - the overwhelming majority (784 or 93%) were reported as occurring during the main *afternoon transition period* (2:30–3:30pm).
- Almost all reported incidents involving children missing or unaccounted for in the *morning transition* (91%) involved a child missing for less than 10 minutes (49%) or 10 to 29 minutes (42%).
- In contrast, 43% of reported incidents involving children missing or unaccounted for in the *afternoon transition* involved a child being missing for less than 10 minutes (13%) or 10 to 29 minutes (30%) (this may be due to failure of families to advise that arrangements for their child has changed that day).
- More than a third of reported incidents in the afternoon transition (37%) involved a child being missing for 30 to 59 minutes (18% were reported missing for 1h to 2h 59 minutes, and 1% for 3h to 5h 59 minutes).

- OSHC services with a reported serious incident (child missing or unaccounted for) most commonly occurred at services located on government school sites (73%). Respectively, 16% and 11% of these reported incidents occurred on non-government school site and non-school sites.

Proportion of approved OSHC services, by location, as at 30 June 2019

- There were 4,483 approved OSHC services as at 30 June 2019.²⁶⁸ Only 12% of these services were located on non-school sites. The remaining services (88%) were located on government school sites (57%) or non-government school sites (31%).

Chapter 5 – Family day care

5.1 Notification requirements

Additional evidence of the problem

- The current structure of the FDC register does not distinguish between fundamental information required by the regulatory authority and operational details that may be better kept in the staff record under Regulation 154 of the National Regulations. This leads to inconsistencies between how services maintain records and causes increased administrative burden on the regulatory authority to ascertain if information is relevant and accurate.
- There may be information stored in the current form of the register that makes it a burdensome regulatory requirement for approved providers and burdensome for the regulatory authority to ascertain the relevant information required from the register.
- There is no explicit requirement to keep a contact phone number for educators and co-ordinators on the FDC register, making it difficult for the regulatory authority to contact these persons.
- As regular changes to the details of service delivery occur within services on almost a daily basis, it is difficult for services to comply with register requirements.
- Issues of accuracy and currency of information may disguise irregularities or approved providers not understanding their responsibilities. For example, regulatory authorities have identified issues in relation to the principal office moving locations continually without notifying the regulatory authority, leading to difficulties in corresponding with the service, compliance monitoring and obtaining the register.
- There is no functionality in the software enabling the register to hold ‘evidence’ of required information (training, educator qualifications, etc.) so services may only be able to make a reference to the document and then must store the document in a secondary location.
- ACECQA provides a template in order to collect the information required to maintain an accurate register (ACECQA advises the template is to be updated). However, the format is not mandatory or prescribed, and may not be useful for providers who maintain the key information on other business information systems.

Chapter 7 – Workforce

7.1 – Option D NSW Specific Amendment Regulation 272

Current Regulation

Currently, NSW prescribes the qualification requirements via state specific Regulation 272, which applies in place of Regulations 133 and 134 of the National Regulations:

- 3 ECTs must be in attendance at all times that a centre-based service is educating and caring for 60 to 79 children preschool age or under (Regulation 272(4)).
- 4 ECTs must be in attendance at all times that a centre-based service is educating and caring for 80 or more children preschool age or under (Regulation 272(5)).

Jurisdictions other than NSW require centre-based services educating and caring for 60 to 80 children preschool age or under to have (Regulation 133):

- an ECT in attendance at the service for at least 6 hours on that day, if the service operates for 50 or more hours a week; OR for 60% of the operating hours of the service on that day, if the service operates for less than 50 hours a week; and
- a second ECT or a SQP in attendance at the service for at least 3 hours on that day, if the service operates for 50 or more hours a week; OR for 30% of the operating hours of the service on that day, if the service operates less than 50 hours a week.

Jurisdictions other than NSW require centre-based services educating and caring for more than 80 children preschool age or under to have (Regulation 134):

- an ECT in attendance at the service for at least 6 hours on that day, if the service operates for 50 or more hours a week; OR for 60% of the operating hours of the service on that day, if the service operates for less than 50 hours a week; and
- a second ECT or a SQP in attendance at the service for at least 6 hours on that day, if the service operates for 50 or more hours a week; OR for 60% of the operating hours of the service on that day, if the service operates less than 50 hours a week.

7.2 Actively working towards provisions

Under the National Regulations, an educator who is ‘actively working towards’ an approved qualification can be recognised as having that qualification for the purposes of meeting staffing requirements although there are some jurisdiction-specific requirements.²⁶⁹

Certificate III	<p>An educator can be counted towards meeting the certificate III level qualification requirements if they are:</p> <ul style="list-style-type: none"> • enrolled in an ACECQA approved qualification and have started study • making satisfactory progress towards completing the course • meeting the requirements to maintain enrolment.
Diploma	<p>An educator can be counted towards meeting the diploma level qualification requirements if they can satisfy all of the above and one of the following:</p> <ul style="list-style-type: none"> • hold an approved certificate III level qualification, or • have completed the approved components of a certificate III qualification, or • have completed 30% of the units in an approved ECT qualification.
ECT	<p>Under a transitional provision in Regulation 242 of the National Regulations, in most jurisdictions²⁷⁰ an educator is ‘taken to be’ an ECT if they:</p> <ul style="list-style-type: none"> • are enrolled in an approved ECT qualification, and • give the approved provider documentary evidence from the course provider that they: <ul style="list-style-type: none"> – have started the course, and – are making satisfactory progress towards completing the course, and – are meeting the requirements for maintaining the enrolment, and – have completed at least 50% of the ECT course or they hold an approved diploma level educator qualification.
FDC	<p>While a family day care (FDC) educator can be ‘actively working towards’ at least an approved certificate III level qualification,²⁷¹ FDC co-ordinators must hold a diploma level qualification and cannot be ‘actively working towards’ this qualification.</p>
OSHC	<p>There are no national qualification requirements for educators at centre-based services educating and caring for school age children (e.g. OSHC services). State and territory specific qualification requirements apply in all states and territories except NSW and Tasmania.</p>

Table 16: The ‘actively working towards’ requirements under Regulation 10

Chapter 8 Understanding of quality ratings

8.1 The quality ratings system

Case studies: Visual display of ratings system

Visual rating systems are widely used in Australian consumer decision making contexts such as hospitality, food safety, nutritional values, and energy ratings. Existing studies have proven that graphic rating systems work effectively for all subgroups of the population, irrespective of their socio-economic background.²⁷²

For example:

Oklahoma and Indiana’s Star Rating System	<p>A study of Oklahoma and Indiana’s star rating system for education and care services found that two thirds of families agree that the number of stars received by the service would influence their choice. 50% of families in Indiana claim they would be willing to pay more for a higher rated star program.²⁷³</p>
NSW Children’s Education and Care Quality Ratings Guide	<p>Recently, NSW has introduced a coloured star graphic as a visual representation of the current ratings under the NQS. From 1 July 2020, all services in NSW will be required to display the star graphic in a prominent place and will be asked to provide rating information to families at enrolment.</p> <p>NSW will be conducting a post implementation evaluation into the star quality rating system and its effectiveness of raising family awareness and quality improvement. The research may help to guide the direction of the proposed options and provide further direction to policy makers.</p> <p>For more information about the NSW quality ratings system, please refer to the NSW Department of Education website: https://education.nsw.gov.au/early-childhood-education/information-for-parents-and-carers/safety-and-quality.</p>

Chapter 9 – Changes in fees within the NQF system

9.1 Changes in fees for regulatory authorities

Transaction and section of the National Law	Centre-based Service (Number of approved places or places to be offered)				Family Day Care Service (Number of educators engaged by or registered with service)				Number processed during 2018/19	Approx. fees collected 2018/19	Total fees under proposed increase	
	Small (24 or less)	Medium (25-80)	Large (81 or more)	Extra-large (proposed 101+) (Opt. B)	Small (5 or less)	Medium (6 to 20)	Large (21 or more)	Extra-large (proposed 61+) (Opt. B)				
Annual Service Fee (s53)	Current	\$206	\$311	\$413	N/A	\$206	\$311	\$413	N/A	Assuming 16,000 services	\$5,252,890	
Application for provider approval (s11(d))	Proposed (Opt. C1)	\$309	\$466.50	\$619.50	\$772.50	\$309	\$466.50	\$619.50	\$772.50	Assuming 16,000 services		\$8,187,171
	Current	\$227	\$227	\$227	N/A	\$227	\$227	\$227	N/A	1,362	\$309,174	
Application for service approval (s44(1)(2))	Proposed (Opt. C2)	\$340.50	\$340.50	\$340.50	\$340.50	\$340.50	\$340.50	\$340.50	\$340.50	Assuming 1,362 applications		\$463,761
	Current	\$454	\$682	\$910	N/A	\$682	\$682	\$682	N/A	905	\$668,510	
Notification of intended transfer of service approval (s59(2)(c))	Proposed (Opt. C3)	\$681	\$1023	\$1365	\$1707	\$1023	\$1023	\$1023	\$1023	Assuming 2018/19 figures		\$1,053,723
	Current	\$111	\$111	\$111	N/A	\$111	\$111	\$111	N/A	656	\$72,816	
Application for amendment to service approval (s54(2)(c))	Proposed (Opt. C4)	\$166.50	\$166.50	\$166.50	\$166.50	\$166.50	\$166.50	\$166.50	\$166.50	Assuming 656 applications		\$109,224
	Current	None	None	None	N/A	None	None	None	N/A	2,300	\$0	\$0
	Proposed (Opt. D)	\$111	\$111	\$111	\$111	\$111	\$111	\$111	\$111	Assuming 2,300 applications	\$0	\$255,300
											Total \$6,303,390	Total \$10,018,221
												Increase over base case: \$3,714,831

Table 19: Proposed fees for options B-D

Category	Number of providers	Proposed annual fee	Total fee impact
Single services providers	5,952	\$412	\$2,452,224
Providers with 2–10 services	1,214	\$746.40	\$906,130
Providers with 11–40 services	94	\$991.20	\$93,173
Providers with 41+ services	34	\$1,236	\$42,024
Total	7,294		\$3,493,550

Table 20: Proposed fees for option E – Introduction of new annual provider fee

9.2 Changes in fees for ACECQA functions

Fee type	Current or Previous fee	Fees collected during 2018/19	Total fees if increase adopted	Increase over base case
Application for review by the Ratings Review Panel of rating level (s145(2)(c))	\$454 to \$910	\$14,520 (20 applications)	\$18,876	\$4,356
Application for determination of equivalent qualification (Regulation 139 of the National Regulations)	\$112	\$110,320 (985 applications)	\$143,416	\$33,096
Application for assessment of course to be included as an approved qualification (Regulation 138 of the National Regulations)	\$2,281	\$63,868 (28 applications)	\$83,028	\$19,160
Introduce a fee for the excellent rating	Currently \$0. Previously \$219 to \$658	\$0 (22 applications at no cost).	Assumed \$13,288 (using average of proposed fee and 22 applications)	\$13,288
				Total: \$69,900

Table 21: Proposed fees for ACECQA functions (options B–E)

Chapter 10 – Oversight and governance of services and providers

10.1 Assessing suitability of individuals to work directly or indirectly with children

Limitations in the current approach of assessing ‘fitness and propriety’

There are a number of limitations in the current regulatory authorities’ approach in determining fitness and propriety. For example, reviewing resumes and compliance history may only be relevant if the individual has a history within the education and care sector. Face-to-face interviews are effective, however are highly resource intensive for regulatory authorities and logistically problematic for applicants in rural and remote areas.

A written assessment can provide information on an applicant’s understanding of the NQF and their legislative requirements in a way that is much less resource intensive for regulatory authorities. A valid written assessment has the additional benefit of providing a nationally consistent approach.

However, the NSW Civil and Administrative Tribunal has questioned the legitimacy of requiring applicants to undertake a written assessment as written assessments may not be considered to be asking the person to ‘provide further information’ or undertaking ‘inquiries in relation to the person’ as prescribed in s 14 of the National Law.

10.2 Cancellation of provider approval under the Family Assistance Law

Current regulation

The current Family Assistance Law (FAL) is the collective term for the following Acts and instruments:

- *A New Tax System (Family Assistance) Act 1999*
- *A New Tax System (Family Assistance) (Administration) Act 1999* (‘Administration Act’)
- Child Care Subsidy Minister’s Rules 2017
- Child Care Subsidy Minister’s Amendment Rules (No. 1) 2018
- Child Care Subsidy Secretary’s Rules 2017.

The Commonwealth Government assists families with their childcare fees through the CCS, which is administered under the FAL (formerly the Child Care Benefit (CCB) prior to the FAL changes that commenced on 2 July 2018). The subsidy is paid directly to service providers who are approved to administer the subsidies on behalf of families.

A person is only eligible to hold its provider approval under the FAL if it broadly satisfies the eligibility criteria in s 194C of the Administration Act. The FAL imposes a number of obligations on approved providers and services that they must comply with in order to remain approved and receive/administer payments under the FAL.

A key requirement is that a provider must hold an approval or licence to operate a child care service under the law of the state or territory in which the service is situated (s 194C of the Administration Act).

Under Division 2 of Part 8, it is a condition for continued approval under the FAL that providers satisfy the eligibility rules in s 194C. For example, this includes not contravening the FAL and conditions imposed by the Minister, not exceeding the limit of approved places and abiding by required operating periods.

If the provider breaches the conditions for continued approval, the Commonwealth Government may impose sanctions on it, including cancelling the provider approval under the FAL (s 195H). A ‘show cause’ process must be followed in order to impose any sanctions under s 195H. S 199A requires that a notice be given to the provider concerned that, amongst other things, sets out the grounds and summarises the evidence.

Examples of findings on which the sanction of cancellation has been based are:

- failure to comply with obligations under the FAL (e.g. obligations to keep attendance records, or pass on payments to relevant families)
- the quality of the service’s governance arrangements
- the provider’s understanding of obligations under the FAL and their commitment to compliance
- failure to comply with undertakings (e.g. in relation to older children or ‘child swapping’).

In most cases, the grounds for FAL cancellation are relevant and sufficiently serious to support grounds for cancellation under the NQF.

10.3 Arrangements to transfer a service to another approved provider

Number of service transfers per year

Between 2014 and 2019 there were 2,947 service transfers nationally as recorded in the NQA ITS. Usually there are between 300 and 600 service transfers nationally each year.

Year	Number of service transfers
2014	593
2015	544
2016	357
2017	461
2018	598
2019 ²⁷⁴	394

Table 22: Total number of service transfers nationally, by year

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- 266 National Regulations, Regulation 104, Regulation 107, Regulation 108 and Regulation 114.
- 267 Data extracted from the NQA ITS on 14 October 2019 for serious incidents with an incident type of 'child missing or unaccounted for'. Data is as at 28 June 2019 and covers the period 1 January 2012 to 28 June 2019. Only incidents with a status of 'closed' at time of data extraction were included.
- 268 Only approved centre-based services that report only providing OSHC services have been included in this data set.
- 269 Regulation 126(1), 127 and 242 of the National Regulations. Regulation 126(1) does not apply in South Australia and Western Australia. Regulation 242 does not apply in Victoria.
- 270 Regulation 242 of the National Regulations does not apply in Victoria.
- 271 In South Australia, FDC educators must hold at least an approved certificate III level qualification, and cannot be actively working towards this qualification.
- 272 Ducrot, P., Julia, C., Méjean, C., Kesse-Guyot, E., Touvier, M., Fezeu, L. K., Péneau, S. (2016). 'Impact of different front-of-pack nutrition labels on consumer purchasing intentions: a randomized controlled trial', *American journal of preventive medicine*, 50(5), p. 627–636.
- 273 Oklahoma's Reaching for the Stars Program involves a tiered system of quality and reimbursement for education and care programs that meet the 'star' criteria. Oklahoma Human Services (2020), Stars Program. Retrieved: <http://www.okdhs.org/services/cc/Pages/childcareSTARS.asp>.
- 274 This number is as of October 2019.