



## **Regulation Impact Statement for proposed options for changes to the National Quality Framework**

**COAG Consultation Regulatory Impact Statement**

**November 2014**

This Consultation Regulation Impact Statement has been prepared  
with the assistance of Deloitte Access Economics.

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## Acronyms

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ACECQA	Australian Children's Education and Care Quality Authority
AP	Approved provider
BBF	Budget Based Funded
CCMS	Childcare Management System
COAG	Council of Australian Governments
ECEC	Early childhood education and care
ECT	Early childhood teacher
FAL	Family Assistance Law
FDC	Family day care
FT	Full time
FTE	Full time equivalent
LDC	Long day care
NCAC	National Childcare Accreditation Council
NP NQA	National Partnership Agreement on National Quality Agenda
NQF	National Quality Framework
OSHC	Out of school hours care
PIDTDC	Person in day to day charge
QIP	Quality Improvement Plan
RIS	Regulation Impact Statement

## Definitions

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<b>Service types</b>	<p>In the early childhood education and care sector, there are a range of types of education and care services. These service types provide different types of education and care and are treated differently under both national and state/territory regulations. The service types currently under scope of the National Quality Agenda are:</p> <ul style="list-style-type: none"><li>• Family day care</li><li>• Out of school hours care</li><li>• Long day care</li><li>• Preschool.</li></ul>
<b>Regulatory authority</b>	<p>Refers to state and territory regulators of the early childhood education and care sector. Regulatory authorities regulate and assess early childhood education and care services according to the National Law and National Regulations under the NQF. Regulatory authorities also regulate some services that are out of scope of the NQF.</p>
<b>Family day care</b>	<p>Refers to services that support a network of individual educators, and are services in receipt of the Child Care Benefit where a professional carer provides flexible care typically in their own home for other people's children and as part of coordinated home-based care schemes. Care is predominantly provided for children aged birth to 6 who are not yet at school, but may also be provided for school-aged children. Educators can provide care for the whole day, part of the day, or for irregular or casual care.</p> <p><i>Clause 15 (m), NP NQA</i></p>
<b>Long day care</b>	<p>Refers to centre-based services in receipt of Child Care Benefit. LDC services provide all day or part-time care for children who attend the centre on a regular basis. Care is generally provided in a building, or part of a building, that has been created or redeveloped specifically for use as a child care centre. Centres, in the majority of cases, operate between 7:30 a.m. and 6:00 p.m.</p> <p><i>Clause 15 (t), NP NQA</i></p>
<b>Outside school hours care</b>	<p>OSHC is defined as care provided by formal OSHC services, principally for school-aged children – up to approximately 12 years of age – before school, after school, during school holidays and/or on pupil free days. OSHC may use standalone facilities, share school buildings and grounds and/or share community facilities.</p> <p><i>Clause 15 (bb), NP NQA</i></p>
<b>Preschool</b>	<p>Refers to services covered by the NQF that provide an early childhood education program, delivered by a qualified teacher, often but not necessarily on a sessional basis in a dedicated service.</p> <p><i>Clause 15 (cc), NP NQA</i></p> <p>Under the National Partnership Agreement on Universal Access to Early Childhood Education, a childhood education program is</p>

defined as a program delivered in the year before full-time schooling in a diversity of settings, including long day care centre-based services, stand-alone preschools and preschools that are part of schools.

The programme is to provide structured, play-based early childhood education delivered in accordance with the Early Years Learning Framework and the National Quality Standard and delivered by a qualified early childhood teacher.

**Occasional care**

Refers to a centre-based child care service that provides care for children aged birth to five years. The distinguishing feature of occasional care is that it provides care for children on an hourly or sessional basis for short periods or at irregular intervals. Currently, occasional care services are not within the scope of the NQF.

**Budget Based Funded**

Refers to services that receive direct funding under the Commonwealth Budget Based Funded program only and not any services that are directly funded. These services are generally located in Indigenous communities, regional and remote areas where the market would otherwise be unviable. Often these services are the sole providers of early childhood education and care in their community. Currently, budget based funded services are not within the scope of the NQF.

**Mobile services**

A service providing education and care primarily to children preschool age or under that transports its equipment and materials or staff to one or more locations on each occasion that the service is provided.

**Playschools**

Refers to services licensed under the *Children and Young People Act 2008* in the ACT that provide sessional education and care to children from three years to school age. Currently, playschools are not within the scope of the National Quality Agenda.

**Note:** A key objective of the National Quality Agenda (NQA) was to deliver an integrated and unified national system for early childhood education and care and Outside of School Hours Care. As a result, almost three years into the implementation of the NQA, some of the service types defined here reflect this integration. For example, the requirement for an early childhood teacher in long day care services under the National Quality Framework, means that many long day care services now offer preschool programs clearly demonstrating the integration of services.

# Summary Guide

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## Purpose of this document

This document is a consultation Regulation Impact Statement (RIS). It describes possible changes – known as ‘options’ – which could be made to the *Education and Care Services National Law Act 2010* (National Law) and the *Education and Care Services National Regulations 2011* (National Regulations), or guidance material which are all part of the National Quality Framework (NQF).

Organisations and individuals with an interest in the NQF are invited to review the options and provide feedback through a national consultation process. The feedback will be used to update the RIS and assist governments in making decisions about what changes will be made.

## What is a RIS?

A 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 all governments 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?

The content of this RIS corresponds to these questions.

## Guide to the document

This RIS is divided into six chapters and three appendices:

- Chapter 1 – Background to the problem
- Chapter 2 – The problem
- Chapter 3 – Options for consideration
- Chapter 4 – Consultations
- Chapter 5 – Identifying best options
- Chapter 6 – Implementation
- Appendix A – Detailed overview of proposed options for changes to the NQF
- Appendix B – Draft revised National Quality Standard
- Appendix C – Assessment of other changes that will have a regulatory impact.

### **Chapter 1 and 2 – Background and the problem**

Chapters 1 and 2 explain what has happened in the lead up to this RIS. They also describe in broad terms the policy problems that are being responded to. Additional detail on the justification for considering change in specific areas is provided in Chapter 3.

### **Chapter 3 – Options for consideration**

Chapter 3 describes individual options that could be used to address the identified problems including more detail about the specific issue being addressed and what the impacts of each option could involve. The chapter includes questions that stakeholders may consider when framing feedback.

*This chapter is likely to be of greatest interest to stakeholders.*

- *If you have an interest in the National Quality Standard and assessment and rating, see Chapter 3.1.*
- *If you have an interest in services that are currently outside the scope of the NQF, see Chapter 3.3.*
- *If you have an interest in outside school hours care services, see Chapter 3.6.*
- *If you have an interest in family day care services, see Chapter 3.7.*

*Other areas covered in Chapter 3 include supervisor certificates, extending liability to educators for not adequately supervising children under their care or not taking every reasonable precaution to protect the children from harm or hazard, and changes to certain fees.*

### **Chapter 4 – Consultation**

Chapter 4 describes the consultation that has happened in the lead up to the RIS. It also describes consultation that is now occurring as part of the RIS process.

### **Chapter 5 – Identification of best options**

Chapter 5 describes the advantages and disadvantages of the options. This is a chapter that will be more detailed in the next version of the RIS. The consultation now occurring will assist in deciding the best options.

### **Chapter 6 – Implementation and evaluation**

Chapter 6 describes the possible timing for any changes that flow from the RIS. It also refers to planned future review of the changes.

### **Appendix A**

Appendix A lists all proposed changes which are presented in Chapter 3.

### **Appendix B**

Appendix B provides the draft amended National Quality Standard which is outlined in 3.1.

### **Appendix C**

Appendix C provides a summary of other proposed changes that are expected to have a regulatory impact.

# 1 Background to the Problem

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## 1.1 Pre-National Quality Framework

Prior to the establishment of the National Quality Framework (NQF) in 2012, the early childhood education and care (ECEC) sector in Australia was governed by a regulatory environment which was characterised by elements of complexity, inconsistent quality and duplication.

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 the associated compliance activities. At the national level, the Commonwealth funded the National Childcare Accreditation Council (NCAC) to oversee quality assurance. Standards and processes varied across jurisdictions, as did regulatory coverage (both across jurisdictions and between state/territory systems and the national quality assurance scheme). This meant that services would be subject to different standards depending on the jurisdiction/s in which they operated – and children’s experiences would vary accordingly. The quality of a child’s development experience could possibly have varied depending on the state or territory in which they lived.

At the same time, given overlapping requirements of state licensing agencies and the NCAC, services that fell within the scope of both would be subject to duplicative requirements. The lines of regulatory demarcation were not clearly established and the regulatory compliance burden was increased as a result.

There was also limited information available to parents about the quality of education and care services. Limited information in turn constrained parents’ ability to make informed decisions about the quality of the service their child attended.

## 1.2 Establishment of the National Quality Framework

In July 2009, the Council of Australian Governments (COAG) endorsed a vision of the Early Childhood Development Strategy that ‘by 2020 all children have the best start in life to create a better future for themselves, and for the nation’. The NQF is one of the national reform initiatives that enable this vision to be progressed.

The process to establish the NQF commenced with the Commonwealth and state and territory governments agreeing in December 2009 to a National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care (NP NQA).

### 1.2.1 Rationale for government intervention

As part of the NP NQA, it was recognised that governments may intervene in the education and care sector for a range of reasons, with the overarching goal of improving the welfare of children and parents. These reasons, which were outlined in the 2009 *COAG Decision Regulation Impact Statement for Early Childhood Education and Care Quality Reforms*, include:

- **Supporting families’ workforce participation** through ensuring the availability of high quality and affordable formal education and care services – a critical prerequisite to many parents’ ability and willingness to remain in or re-enter the workforce.

- **Improving child development through the provision of high quality education and care.** A large body of evidence underscores the critical importance of high quality education and care to childhood development. Key aspects of quality linked to developmental outcomes include educator qualification standards and qualifications, educator to child ratios, the quality of the program and the nature of the interaction between the child and the educator or care giver.
- **Minimising the risk of harm** to children occurring in the education and care services context. A responsibility of government is to ensure the welfare of vulnerable members of society. This extends to ensuring that all services provided to children, regardless of their socio-economic characteristics, meet minimum standards that support the developmental and educational outcomes of children. Regulation of education and care services provides a basis for establishing and maintaining minimum quality standards, and mitigating the risk that children will come to physical, developmental, social or emotional harm.
- **Addressing information asymmetries.** Historically, it has been difficult for families to accurately assess the level of quality on offer by a service. This may limit their ability to make informed decisions regarding their children's participation in ECEC. Governments are in a unique position to overcome this and to collect and disseminate data and information which is relevant, reliable and comparable.
- **Supporting children from disadvantaged backgrounds.** The participation of children from disadvantaged backgrounds in high quality early education and care has been found to be associated with increased participation and retention in later education, positive social behaviours in school and later life and higher educational achievement.

### 1.2.2 NQF objectives

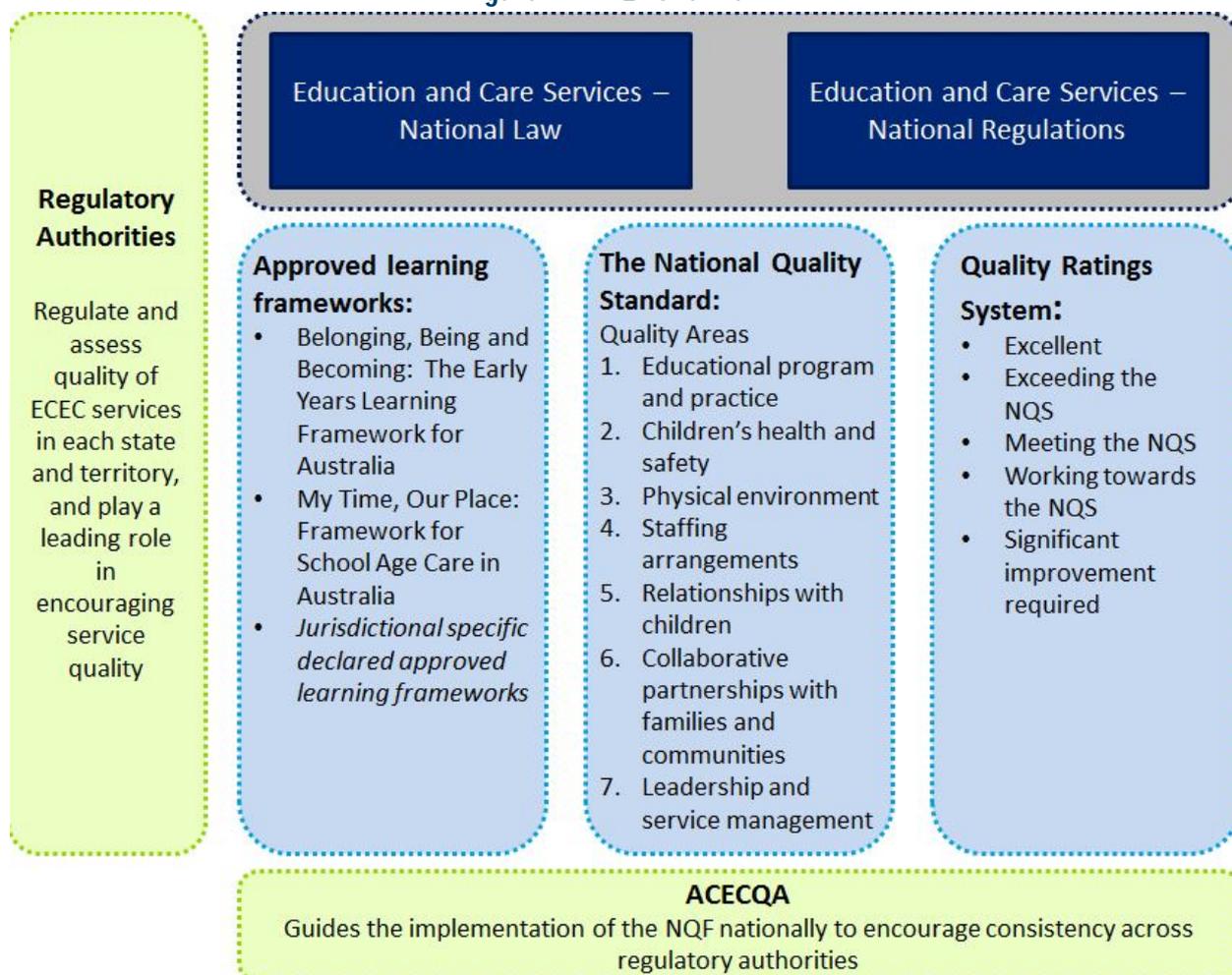
In line with the rationale for government intervention articulated above, the objectives of the NQF, as outlined in Section 3(2) of the *Education and Care Services National Law Act 2010* (National Law), is to:

- 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; and
- reduce the regulatory and administrative burden for education and care services by enabling information to be shared between participating jurisdictions and the Commonwealth.

### 1.2.3 NQF structure and components

The structure and major components of the NQF, including the National Law and the *Education and Care Services National Regulations 2011* (National Regulations), are shown below.

Figure 1.1: NQF overview



### 1.2.4 NQF legislative structure

The NQF replaced separate licencing and quality assurance systems across jurisdictions, including those by state and territory governments and the former NCAC, and is applicable to most long day care (LDC), family day care (FDC), outside school hours care services (OSHC) and preschools in Australia. The NQF operates under an ‘applied law system’ where a national law is established by a host jurisdiction enacting a law and other jurisdictions adopt the law or pass corresponding legislation. In the case of the NQF, Victoria enacted the National Law and other jurisdictions either enacted its own legislation that applied Schedule 1 of Victoria’s law, or passed other legislation that corresponded to it.

The law enacted in each state and territory is outlined in Table 1.1.

**Table 1.1: Legislation establishing the NQF across jurisdictions**

Jurisdiction	Legislation
Victoria (Host)	<i>Education and Care Services National Law Act 2010</i>
New South Wales	<i>Children (Education and Care Services National Law Application) Act 2010</i>
Queensland	<i>Education and Care Services National Law (Queensland) Act 2011</i>
South Australia	<i>Education and Early Childhood Services (Registration and Standards) Act 2011</i>
Western Australia	<i>Education and Care Services National Law (WA) Act 2012</i>
Tasmania	<i>Education and Care Services National Law (Application) Act 2011</i>
Australian Capital Territory	<i>Education and Care Services National Law (ACT) Act 2011</i>
Northern Territory	<i>Education and Care Services (National Uniform Legislation) Act 2011</i>

Supporting the National Law is the National Regulations, which provide details on a range of operational requirements and related information that dictate how the provisions of the National Law are to be applied.

It should be noted that in Western Australia and Tasmania, preschools are subject to the NQF but not regulated under the National Law and National Regulations. Rather, they fall within the remit of each state's school education law. However, these jurisdictions have agreed, through the National Partnership arrangements, to reflect the NQF in early childhood settings within schools.

### 1.2.5 Regulatory responsibilities

A regulatory authority in each state and territory is primarily responsible for administering the NQF, including approving, monitoring and assessing the quality of services. These bodies are usually the first regulatory point of contact for services.

The Australian Children's Education and Care Quality Authority (ACECQA) is responsible for overseeing the NQF and supporting the consistent and effective implementation of the new system across all states and territories. ACECQA has a limited range of regulatory responsibilities, including assessing educator qualifications. While ACECQA does not quality rate services, it does award the 'Excellent rating' and conduct second tier reviews of rating decisions.

### 1.2.6 National Quality Standard

The National Quality Standard is a key aspect of the NQF. It is established as part of the Framework under the National Law.

The National Quality Standard consists of seven quality areas, each containing standards and elements against which children's education and care services are assessed and rated. Assessment is the responsibility of state and territory regulators (although the 'Excellent' rating can only be awarded by ACECQA following consideration of a provider's application).

The seven quality areas covered by the National Quality Standard are listed below, noting that under each area there are standards and elements (which are not listed here):

## 1. Educational program and practice

- Standard 1.1: An approved learning framework informs the development of a curriculum that enhances each child's learning and development.
- Standard 1.2: Educators and co-ordinators are focused, active and reflective in designing and delivering the program for each child.

## 2. Children's health and safety

- Standard 2.1: Each child's health is promoted.
- Standard 2.2: Healthy eating and physical activity are embedded in the program for children.
- Standard 2.3: Each child is protected.

## 3. Physical environment

- Standard 3.1: The design and location of the premises is appropriate for the operation of the service.
- Standard 3.2: The environment is inclusive, promotes competence, independent exploration and learning through play.
- Standard 3.3: The service takes an active role in caring for its environment and contributes to a sustainable future

## 4. Staffing arrangements

- Standard 4.1: Staffing arrangements enhance children's learning and development and ensure their safety and wellbeing.
- Standard 4.2: Educators, co-ordinators and staff members are respectful and ethical.

## 5. Relationships with children

- Standard 5.1: Respectful and equitable relationships are developed and maintained with each child.
- Standard 5.2: Each child is supported to build and maintain sensitive and responsive relationships with other children and adults.

## 6. Collaborative partnerships with families and communities

- Standard 6.1: Respectful and supportive relationships with families are developed and maintained.
- Standard 6.2: Families are supported in their parenting role and their values and beliefs about childrearing are respected.
- Standard 6.3: The service collaborates with other organisations and service providers to enhance children's learning and wellbeing.

## 7. Leadership and service management

- Standard 7.1: Effective leadership promotes a positive organisational culture and builds a professional learning community.
- Standard 7.2: There is a commitment to continuous improvement.
- Standard 7.3: Administrative systems enable the effective management of a quality service.

Ratings aim to promote transparency and accountability and help parents to access information about the quality of education and care services. Every service receives a rating for each standard, quality

area and an overall rating. These ratings must be displayed by each service and are published on the ACECOA and the MyChild websites.

There are five rating levels within the national quality rating and assessment process:

- Excellent
- Exceeding National Quality Standard
- Meeting National Quality Standard
- Working Towards National Quality Standard
- Significant Improvement Required.

### **1.3 Implementation of the National Quality Framework**

The NQF is a major national policy initiative that has affected the majority of education and care services across Australia and has required the co-operation of governments and the sector in its establishment and implementation in 2012. When the Framework was introduced, there were a number of areas where, despite a strong justification for inclusion, it was considered appropriate that the status quo be retained for the time being, in the interests of ensuring the process of implementation and transition was a manageable one. In these instances, it was intended that the introduction of the measures under consideration – whether regulatory coverage, standards or process – would be re-assessed when the policy was reviewed in 2014. Hence, among the options put forward for consideration in this RIS are changes which were deferred when the policy was originally introduced.

Almost three years after its establishment, evidence has emerged – both positive and negative – regarding the implementation of the NQF and its impact on the sector. This evidence contributes to the case for reconsidering whether the parameters of the NQF are appropriate and sufficient for the effective, efficient achievement of its purpose.

The NQF uses a mixture of outcomes based legislative approaches and instruction for structural components of quality (which refer to characteristics which can easily be measured, such as educator to child ratios, workforce qualifications and the physical environment). Previously some jurisdictions had more prescriptive legislation which had clarity, but didn't offer the flexibility of an outcomes based approach which is considered best practice regulation when it is appropriate for the activity being regulated. The NQF requires that services understand the interaction between the legislation, assessment and rating processes and the National Quality Standard. To support implementation a *National Quality Framework Resource Kit* was developed and distributed to all services in scope of the NQF in order to provide information and guidance to the sector on the National Law, National Regulations, the National Quality Standard and the Quality Improvement Plan.

The 2014 Review of the National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care (2014 NP NQA Review) aims 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 is being met in the most efficient and effective way. The 2014 NP NQA Review is a formal requirement of the National Partnership Agreement. The review should not be viewed as meaning that the system is not working as intended. It provides an opportunity to consider possible improvements to the system.

A recent national public consultation process undertaken by Woolcott Research Pty Ltd (Woolcott Research) as part of the 2014 NP NQA Review indicated the NQF has been successful in delivering a more unified national regulatory system which contributes to improved quality in the provision of education and care services, with a general consensus of support for the NQF.

- Sector consultation identified a widespread view that the NQF has resulted in considerable benefits since its introduction, such as ongoing practice improvement, providing nationally consistent regulations and quality standards, a focus on outcomes for children, improving educator to child ratios, increasing the professionalisation and quality of educators, building relationships with families and educating the community on the importance of ECEC.
- The public consultation process revealed that of those parents who were aware of the NQF, most were relatively positive about its introduction, with focus group participants supportive of its implementation, as they felt the importance of the education and care sector meant it should have strict quality standards, similar to other sectors such as health. Almost half of respondents in the family survey reported they had seen an improvement in the quality of their child's service over the last two years.

However, the Woolcott Research consultation process also identified issues regarding implementation of the NQF which have resulted in increases in perceived administrative burden. An example of this is a lack of clarity about what is expected of services, particularly in interpreting NQF requirements (although these concerns are expected to diminish as the requirements become better understood and the efficiency of regulatory compliance improves).

A desire to reduce administrative burden relating to the regulatory requirements of the NQF was commonly suggested by those consulted. This is consistent with ACECQA's 2013 findings on sector administrative burden associated with the NQF.

Implementation issues were also identified by regulatory authorities. In particular, there are concerns the National Law and National Regulations are not clear. This lack of clarity or other factors may lead to an increased risk of inappropriate practice.

**This Consultation Regulation Impact Statement (RIS) presents proposed policy options for elements of the NQF where consultation and review have revealed the potential for refinement.**

These policy options have been informed by consultation conducted for the 2014 NP NQA Review, and have been subject to consultation between the responsible authorities from state and territory governments, the Commonwealth and ACECQA.

This Consultation RIS has been prepared consistent with Council of Australian Governments requirements for regulatory proposals, as described in *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies* (COAG 2007). It represents an important opportunity to obtain feedback from the sector and community regarding the options proposed and to further refine them in the interests of maximising the efficacy and efficiency with which the NQF achieves its objectives. **The overriding objective of the options put forward in this Consultation RIS is to address regulatory shortcomings that have been identified and to further refine the NQF with the aim of maximising the net public return it generates.**

## 2 The problem

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Almost three years post-implementation, and following an array of consultation and review activities, it has been identified that a case exists to consider refining or enhancing the operation of the NQF. That is, a number of areas have been identified where changes to regulatory conditions would improve the ability of the NQF to better deliver on its original aims – aims which are as relevant today as they were when the reforms were implemented in 2012. Moreover, the Commonwealth and the states and territories have affirmed a strong commitment to the principles of reducing regulatory burden, which is an ongoing objective of the NQF. A number of the measures put forward for consideration are directly geared to this purpose.

### 2.1 Problems emerging since the implementation of the NQF

Anecdotal evidence from both the sector and the community indicates the NQF is generally viewed as having a positive impact on the ECEC sector, in terms of enhancing the quality of service provision and introducing a streamlined regulatory framework. However, implementation of the NQF has highlighted areas exist where the framework has not fully addressed the policy problems it sought to, or it has had unintended consequences in seeking to do so. In some instances, these areas were identified for change when the NQF was first introduced, but were deferred in the interests of ensuring the transition and implementation process remained a manageable one (for both regulators and the sector).

In broad terms, the nature of the current problem can be classified under three general headings:

- areas of unnecessary regulatory and administrative burden;
- insufficient consistency and clarity; and
- incomplete regulatory coverage.

#### 2.1.1 Areas of unnecessary regulatory and administrative burden

One of the objectives of the NQF was to introduce a uniform national set of regulatory standards and reduce regulatory duplication and inconsistency between the Australian Government and state and territory governments, and the associated costs. At the same time, the increased emphasis on quality and continuous improvement – including the collection and publication of information on service quality – brought with it additional regulatory costs. Naturally, quality improvement is not costless.

Evidence from the *ACECQA Report on the National Quality Framework and Regulatory Burden* (2013) and the Woolcott Research public consultation process undertaken for the 2014 NP NQA Review, suggests areas exist where unnecessary regulatory and administrative burden which have been identified could be removed, reduced or clarified to benefit providers without compromising the quality of service provision. There is a case for governments to refine the way in which they regulate the sector to reduce regulatory and administrative burden. This is consistent with principles of regulatory best practice, the commitment of the Commonwealth and the states and territories to reduce 'red tape' and the feedback received from the sector and service providers.

The following areas are examples where it is considered the intent of the National Regulations could potentially be achieved with reduced administrative burden:

- **Assessment and rating.** Stakeholders have raised issues regarding the burden imposed on ECEC providers from participating in, and complying with, the assessment and rating process. There are aspects of assessment and rating which may not be as efficient as they could be and this increases the time and effort being expended on this process for little or no gain. These include the time and cost involved if a provider chooses to apply for an Excellent rating, and the complexity that arises in the assessment process from the National Quality Standard comprising 58 elements and 18 standards. Stakeholders identified areas of duplication and a lack of clarity in some parts of the National Quality Standard.
- **Supervisor certificates.** The process for applying for a supervisor certificate, which is required for a person to be the nominated supervisor or person in charge of a service, is considered burdensome. In particular, a regulatory authority is required to undertake a desk-based assessment of a person's skills and experience, therefore duplicating the approved provider's role in making its own assessment of whether a person is suitable to be in charge of a service.
  - While recent changes to regulation have gone some way to reducing burden, the imposition of the supervisor certificate process through the NQF has neither achieved consistency in approach to determining skills for a person to be placed in charge, nor removed the requirement for approved providers to do their own assessment.

#### *Areas of unnecessary regulatory and administrative burden: summary of the need for action*

The type of action that is most appropriate is for specific areas of regulatory and administrative burden to be removed or alleviated where these do not positively and materially contribute to quality improvement, and the removal does not pose a risk to child safety. This will typically involve some modest change to existing regulation. In some areas, it may also be appropriate to provide information which informs the sector of what is now required.

### **2.1.3 Insufficient consistency, clarity and regulatory issues**

The intent of the NQF was to introduce a nationally consistent and integrated system for early childhood education and care services. The regulatory environment that preceded it was characterised by duplication across levels of government and inconsistency both across and within jurisdictions (that is, across services types within a given state or territory). Consistency and integration was aimed at reducing the redundant regulatory and compliance costs associated with this and providing parents with an assurance that, regardless of which service they chose for their child to, a minimum/benchmark standard of safety, care and quality would be provided.

While significant improvement in national integration and consistency has been achieved, variability remains within and across jurisdictions. This variability may be due to either differing interpretation and/or a lack of clarity of laws, regulations and operational policy. Some variability in approach will inevitably occur to address specific jurisdictional issues; however the policy focus has always been on promoting national consistency of outcomes.

The issue of perceived inconsistency in the application of the National Law and National Regulations has been raised throughout consultations for the 2014 NP NQA Review. As a result of this variability, the full benefits of the NQF are possibly not being realised. Some of the requirements for meeting the National Quality Standard are reportedly being interpreted and applied differently by providers and regulatory authorities, with the effect that quality ratings may not be directly comparable between jurisdictions. This is particularly problematic for providers offering services in multiple jurisdictions.

Inconsistencies across and within jurisdictions increase the compliance costs on providers operating multiple services across states and territories. It also reduces the value of information available to parents while at the same time leaving them uncertain whether their child will receive a standard of education and care commensurate with the NQF. If this is not addressed, the integrity of the national system established by the NQF will be eroded over time, which will undermine public confidence in the system.

In general terms, confusion or uncertainty about what is required by legislation or regulation can lead to adverse outcomes which impose additional costs, including:

- **Excessive compliance-related activities:** Services that are uncertain of what they are required to do may err on the side of caution, and do more than is actually required. There is strong anecdotal evidence that this is currently occurring.
- **Information costs:** Services and/or regulators who are uncertain may spend resources in order to clarify issues. For example, services might send all staff to training sessions, hire external consultants, or spend unnecessary time on trying to understand regulations. There is strong anecdotal evidence that this is currently occurring.

The quantum of these costs across the system is uncertain. However, there is sufficient evidence from the extensive consultation process undertaken for the 2014 NP NQA Review to conclude that the problems resulting from lack of consistency and clarity are driving these behaviours and imposing these costs unnecessarily on a considerable number of providers.

As well as imposing costs on services attempting to adequately comply with regulatory requirements, insufficient consistency and clarity can reduce the benefits derived by families and children. The ability for children to realise the benefits that the NQF seeks to achieve relies on the safety and quality of care that they receive meeting a minimum benchmark – irrespective of where they live or what service type they decide best suits their family's needs. Equally, it relies on the information available with respect to the characteristics of services – including their quality – being consistent and comparable. The current regulatory environment does not provide these assurances.

Major areas where there appear to be problems stemming from uncertainty or inconsistency in relation to existing requirements include:

- **Assessment and rating:** perceived lack of clarity in expectations for services (for example, the extent of documentation that must be prepared prior to an assessment visit or to support the program for children's learning and development) and some reportedly inefficient processes that have resulted in assessment taking longer than necessary, or not being clear enough in stating how minor issues will be resolved.
- **OSHC:**
  - Uncertainty regarding the amount of documentation required to adequately demonstrate the appropriate delivery of education programs.
  - Evidence from sector consultations has consistently demonstrated this as a redundant cost incurred by services.
  - The absence of a national educator to child ratio leading to variability in levels of supervision and quality across jurisdictions. As the Productivity Commission has recently observed, as mandated educator to child ratios are in place for children younger than school age, there is no rationale for not having a national ratio in place for school age children.

- **Family day care:**
  - The family day care sector has experienced significant growth since the introduction of the NQF. With this growth has come higher rates of regulatory non-compliance (compared with other service types). This has given rise to a number of concerns regarding supervision and quality in FDC provision.
  - While approved providers must ensure that co-ordinators are engaged to support, monitor and train family day care educators, there is uncertainty about what constitutes compliance with these provisions for both regulatory authorities and approved providers (i.e. how many educators can a single co-ordinator support, monitor and train). The lack of clarity on this issue also raises perceptions about variability in quality of service delivery by some family day care providers. Uncertainty also exists about when a risk assessment is needed and there is reportedly a lack of clarity about whether it is the regulatory authority or the approved provider that is responsible for approving family day care venues.
  - Powers and coverage provided in the current framework did not adequately foresee the service structures currently being implemented by FDC operators. For example, while providers under current arrangements can have educators in all states and territories, regulators can only regulate within their own borders. This limits regulators' ability to monitor whether adequate support is provided to all educators and that appropriate quality education and care is provided by all educators and monitored by the service.
  - Evidence has emerged that some FDC providers operate on a scale and/or with a level of internal supervision (as indicated by the coordinator to educator ratio) that inconsistent with the provision of the quality ECEC experience that the NQF seeks to ensure. Regulators have responded to concerns regarding the governance of FDC services by introducing informal measures to limit size and improve internal supervision.
  - FDC educators have similar qualification requirements to centre-based educators where they are currently only required to be actively working towards the Certificate III qualification. However, FDC educators work without direct supervision or daily staff contact, unlike Certificate III qualified educators in centre-based services. This has in turn given rise to concerns regarding the quality of care and education children are receiving.
- **Out of scope services:** possible lack of clarity on quality standards for these services and varied jurisdictional regulations, which may result in variability in the developmental experiences that children receive in comparison to those services under the NQF. Under the NP NQA, while at the outset it was agreed that most long day care, family day care, OSHC and preschools would be covered by the NQF, it was always envisaged that some other ECEC service types may eventually be brought into the NQF to create a national system for ECEC services. In some cases the current exclusion of these services results in inconsistent regulatory and quality standards.

These issues demonstrate potential improvements could enhance the effective administration of the NQF and prevent practices which are at odds with the objectives of a national system.

#### *Insufficient consistency and clarity: summary of the need for action*

A type of action that can address national consistency and clarity is for specific areas of the National Law, National Regulations and guidance material to be altered to encourage consistency and clarity. In some areas, it may be appropriate to simply provide better information to assist the sector in understanding current requirements and ensuring they are clearly communicated. In other cases, regulatory changes would clarify requirements, but also ensure the goals of improved quality

outcomes for children and reduced regulatory burden on services are achieved. Other strategies already in place include further guidance, sector education and refinement of authorised officer training. Any changes would be limited to areas where improving consistency and clarity is expected to deliver a net benefit to the community.

### **2.1.3 Incomplete regulatory coverage**

The NQF was introduced for a number of ECEC service types – covering the majority of children enrolled in formal ECEC – but not all. While the intention was to introduce a universal, nationally consistent system, the inclusion of some service types in the NQF was deferred in the interests of the manageability of the transition and implementation process. Examples of services which are not included under the scope of the NQF include Budget Based Funded (BBF) services, occasional care services, playschools, mobile preschools, other mobile services. In some cases these services are overseen by other state-based regulatory systems, in other cases they are currently unregulated.

The NQF is designed to provide families and the community with assurance that services meet the National Quality Standard. Those services which are currently exempt are not required to comply with the National Quality Standard. Some service types that are excluded from the NQF are not currently regulated at all. Other out of scope service types are regulated under other state or territory laws, including some laws that effectively mirror the National Law. However, there is no consistency of approach across jurisdictions. Non-inclusion detracts from the policy goal of a more nationally consistent approach to ECEC service where all services are required to meet nationally agreed requirements, to ensure that all children receive the benefits of quality education and care.

Families whose children attend a provider that falls within the scope of the NQF may be more assured regarding the quality of care and educational experience that will be received. Many out of scope services that are not regulated do not benefit from the requirements of the NQF, that set out minimum standards to operate – for example space requirements, staff to child ratios and qualification requirements for educators. In cases where regulation does not mirror the National Law or there is no regulation, there is no formal mechanism for monitoring and no capacity to penalise poor practice. While there is variability across jurisdictions, monitoring in these cases often generally focuses on health and safety issues rather than child developmental outcomes that are the focus of the NQF

Out of scope services have also raised concerns in consultation forums they are disadvantaged because they are not perceived as representing a level of quality matched to NQF requirements.

Services outside the scope of the NQF have not had the opportunity to be assessed and to demonstrate they meet the national benchmark. Including these services could support the provision of quality child care and early learning to all families and children, including those who are vulnerable and disadvantaged.

Of particular note in considering this aspect of the current policy problem is the fact that among those services not subject to the NQF is, as noted above, BBF services. Many of these services are run in a similar manner to services covered by the National Law. BBF services typically provide education and care to children from Indigenous and disadvantaged backgrounds. These cohorts are among those where empirical research shows return to investment in quality to be greatest. That is, those services where the justification for investment in quality is greatest currently fall outside the scope of the NQF.

*Incomplete regulatory coverage: summary of the need for action*

The type of action that could be appropriate to address the incomplete regulatory coverage consistency with the original policy goals of the NP NOA is for services that offer similar services and have similar responsibilities as those within the NQF to be brought into its scope. Expanding the scope of the NQF would occur on the basis that there was a net social benefit, taking account of both the quality benefits from expanding scope, the benefits to these service providers, and the additional compliance cost imposed on those providers coming into the NQF.

## 3 Options for consideration

### Overview

As noted in Chapter 2, a range of proposed options for change to the NQF have been identified, to address the following policy problems:

- Areas of unnecessary regulatory and administrative burden
- Insufficient consistency and clarity
- Incomplete regulatory coverage.

### Headline proposed changes to the National Law and National Regulations

The proposed options for change that are considered likely to have the greatest impact on the sector can be grouped into **seven headline areas**:

- Refining the National Quality Standard and assessment and rating process
- Removing supervisor certificate requirements
- Expanding the scope of services covered by the NQF
- Extending some liability to educators
- Changes to prescribed fees
- National educator to child ratio for OSHC services
- Improved oversight of and support within FDC services.

For these areas, there are a range of options to be explored through consultation. The options are outlined in this chapter.

### Other changes which will have a regulatory impact and guidance material

The remainder of the proposals span approvals; waivers; supervisors; operational issues; compliance, review, monitoring and enforcement; information sharing; administrative requirements; and transitional and saving provisions.

Some of these proposals are expected to be of particular interest to the sector, such as those involving amendments to child protection training provisions.

There are two broad options for these other changes which will have a regulatory impact: (1) no change; and (2) comprehensive change (all proposals put forward).

A range of guidance and clarification proposals have also been identified. They are not considered to involve any material regulatory change, but rather seek to provide further detail on the operation of existing regulations.

### Net benefit of each option

For each option, there are potential costs and benefits. The relative size of these costs and benefits are important considerations in determining which set of reform options is the most appropriate to resolve the regulatory problems that have been identified. Potential costs and benefits are considered from the perspective of the community as a whole.

To facilitate comparison between options, in line with the *Council of Australian Governments Best Practice Regulation Guide* (COAG 2007), preliminary costs and benefits under each option have been identified and quantified to the extent that the available data permits. In many instances, it is not possible to quantify these impacts at this time. Where quantification is not possible, the anticipated effects of each option have been described qualitatively.

Weighing the preliminary costs and benefits against each other ultimately provides an understanding of the likely net benefit to the community of each option. **Where the benefits are greater than the costs, this results in a net benefit.**

Note that any cost savings for regulatory authorities associated with the options outlined in this section ultimately translate to benefits for the sector and families. This occurs as regulators saving costs means they have more resources to spend on completing assessment and rating visits and monitoring and compliance, rather than on unnecessarily burdensome regulatory activities. Families and children will in turn benefit from improved service quality.

One of the objectives of the consultation process is to collect further information that will enhance the understanding of the costs and benefits, including which options are most likely to deliver a net benefit. Your views and feedback are very important to this process.

Early analysis indicates there is likely to be a net benefit for most of the headline options for change:

- Refining the assessment and rating process
- Removing supervisor certificate requirements
- Changes to prescribed fees
- Improved oversight of and support within FDC services.

However, the net benefit of the other headline options for change is unclear, given limitations on estimating the likely preliminary cost of the option.

The remainder of this chapter describes each option, then considers likely preliminary costs and benefits for the option and assesses whether there is likely to be a net benefit. Further information is outlined in Appendix A, including descriptions of each numbered proposal and guidance and clarification.

This chapter is focused on those proposed options for change which are expected to have the greatest impact on the sector and broader community – that is, the headline options for change. Other changes to the National Law and National Regulations which will have a regulatory impact have been analysed at a higher level in Appendix C.

***Consultation questions have been included throughout this chapter to seek additional information and to test the identified merits of each option with stakeholders.***

## 3.1 Refining the National Quality Standard and assessment and rating process

*Proposal 1.1 - Reducing the complexity of the National Quality Standard*

*Proposal 1.2 - Streamlining of quality assessments*

*Proposal 1.3 - Reduction in documentation of child assessments or evaluations for delivery of educational program in OSHC services*

*Proposal 1.4 - Significant Improvement Required rating*

*Proposal 1.5 – Exceeding the National Quality Standard rating*

*Proposal 1.6 - Excellent rating*

*Proposal 1.7 - Ensuring ratings accurately reflect service quality*

*Proposal 1.8 - Length of time until services are re-assessed*

***Policy problems addressed: Areas of unnecessary regulatory and administrative burden; Insufficient consistency and clarity.***

The National Quality Standard (as described in Chapter 1) is a core component of the NQF, as it is directly geared towards improving the quality of education and care services. The assessment and rating process measures how well services are performing against the National Quality Standard and the National Regulations. Stakeholders have raised a number of issues concerning the effectiveness of the implementation of quality assessment and rating, including:

- burdens imposed on education and care services from participating in and complying with the assessment and rating process;
- lack of consistency of assessment and rating processes and outcomes across states and territories; and
- the costs of implementation for regulatory authorities and the time required to conduct assessment and rating.

It is important that quality ratings provide accurate and meaningful information about service quality and that the assessment and rating system is sustainable into the future. A range of potential options have been proposed to address these issues.

### 3.1.1 Proposal 1.1 – Reducing the complexity of the National Quality Standard

#### Options for reducing the complexity of the National Quality Standard

Option number	Description
1.1A	No change
1.1B	Reduce the complexity of the National Quality Standard through a draft revised Standard

In its 2013 *Report on the National Quality Framework and Regulatory Burden*, ACECQA reported a widespread perception that the National Quality Standard is contributing to an increase in the quality of service delivery across the sector. However, ACECQA also reported that some providers have found the National Quality Standard to be complex and administratively burdensome, noting that providers whose services had been assessed and rated perceived a much lower level of administrative burden.

For example, Wave 1 of ACECQA's perceptions of regulatory burden survey found that Quality Improvement Plans, documenting children's learning, and quality assessment and rating visits were perceived to be the most burdensome of the administrative activities for respondents (ACECQA 2013).

One of the measures identified to reduce regulatory and administrative burden is the streamlining and clarification of the National Quality Standard, by removing or consolidating some of the 58 elements and 18 standards. A refined draft National Quality Standard may reduce the costs to providers and regulatory authorities of administering each part of the quality rating system, from preparing and reviewing Quality Improvement Plans to seeking and responding to reviews of rating decisions.

A draft revised National Quality Standard is provided at Attachment B. It contains 15 standards and 40 elements and incorporates learning from administering the current National Quality Standard and feedback from a cross-section of sector experts. Under the draft option presented, the seven quality areas would remain, but the number of standards and elements would be reduced. The conceptual overlap between elements and standards has been removed and the language made clearer to make the draft National Quality Standard easier to understand.

Feedback on the proposed draft National Quality Standard is sought, including:

- any further streamlining that would be beneficial,
- whether there is increased clarity provided by the draft revised National Quality Standard and
- whether there are still areas of duplication or ambiguity.

## **Costs**

It is anticipated that a move to reduce the complexity of the National Quality Standard is, if effectively implemented, unlikely to bring about any cost increases as it represents a streamlining of current requirements. A modest level of one-off costs associated with implementing any changes would be incurred.

## **Benefits**

Assessment and rating has been found to be one of the most costly and administratively burdensome aspects of the NQF to the sector. For example, the sector perceives that assessment and rating has increased their administrative burden, with documentation of Quality Improvement Plans found to be a high, ongoing administrative cost for the sector (ACECQA 2013, Deloitte Access Economics 2013).

Reducing the complexity of the National Quality Standard is likely to ease the administrative burden for the sector in preparing for an assessment and rating visit and complying with requirements on an ongoing basis. It is also likely to improve families' understanding of the National Quality Standard.

## **Assessment of net benefit**

There is likely to be a net benefit arising from the streamlining of the National Quality Standard, as the ongoing benefits to the sector in terms of reduced administrative burden should outweigh the modest one-off cost of implementing the change.

### 3.1.2 Proposal 1.2 – Streamlining the process for quality assessments

#### Options for streamlining the process for quality assessments

Option number	Description
1.2A	No change
1.2B	Streamline the national approach to assessment and rating, including through supporting templates and documents and further rigorous training of authorised officers

There is broad concern from the sector that assessment and rating is taking too long. In April 2014, governments agreed to some initial operational changes to the assessment and rating process to speed up the rate of assessment and rating visits. This included changes to the quality rating report writing template and timeframes for assessment visits. Since implementing these changes, regulatory authorities have reported positive effects on the rate of quality rating visits.

Regulatory authorities also report that assessment and rating is resource intensive to administer, in both the writing of assessment and rating reports, and the conducting of rating reviews. This is resulting in the roll out of quality assessments taking much longer than expected. All services are to be quality assessed at least once by June 2015, but as at 30 September 2014, only 46% of all approved children’s education and care services had received a quality rating (6,722 services) (ACECQA NQF Snapshot Q3 2014).

To help promote national consistency and improve timeliness of assessments, it is proposed that the national approach to assessment and rating be streamlined, while ensuring that the requirements of the National Law and the minimum requirements of all jurisdictions are still met. The streamlined approach would aim to incorporate current efficient practices across jurisdictions to deliver a nationally consistent process for assessment and rating visits, recognising that a consistent process will be more efficient and provide more consistent feedback to services in a timely manner.

The proposed change is that the streamlined process will be clearly defined through supporting templates and documents and further rigorous training of authorised officers. The templates and documents may also be supplemented as needed by jurisdictions, while maintaining the validity and reliability of quality ratings.

This streamlined process continues to comprise:

- Stage 1
  - Pre-visit review of the service’s Quality Improvement Plan
  - Desktop assessment of provider and service
- Stage 2
  - Assessment of practice at service by observation, discussion with staff and sighting of documentation
  - Clarification of inconsistencies and minor adjustments
- Stage 3
  - Post visit review of evidence against requirements of National Quality Standard
  - Consideration of feedback
  - Determination of rating.

The supporting templates will be trialled with the sector. This option canvasses the sector's willingness to adopt a more streamlined process, noting that national implementation would not be expected to occur until further testing has occurred to ensure validity and reliability of the process.

## **Costs**

Making the assessment and rating process more efficient and consistent both nationally and with the original intent of the NOF is unlikely to bring about any significant cost increases as it represents a streamlining of current practices. There would likely be a one-off cost to implement any changes, but this has not been quantified.

## **Benefits**

Streamlining existing assessment and rating processes may reduce the time required to carry out an assessment and rating, in turn potentially reducing the cost per assessment – both to regulators and to services. Given the overall number of services under the NOF and therefore the number of assessments and ratings that must be conducted, the scope for achievement of benefits is potentially significant.

Although the precise reduction in preliminary cost cannot currently be estimated, the following example provides an indicative order of magnitude. In 2013, the total preliminary cost to regulatory authorities of assessment and rating is estimated at around \$21 million, based on data from Deloitte Access Economics (2014). Therefore, for every 1% decrease in regulatory effort, this would result in a preliminary saving of \$210,000 to regulatory authorities.

Assessment and rating is a major driver of regulatory effort and accounts for, on average, 42% of all resources deployed by regulatory authorities (Deloitte Access Economics 2014). Anecdotal evidence and perceptions research suggests it is similarly burdensome for services (ACECQA 2013).

It is not possible at this point in time to quantify the reduction in cost for services, given lack of available data on the full cost of assessment and rating for the sector (because not all services have been assessed). However, given the requirement for services to self-assess under the Quality Improvement Plan, it could be expected that these changes may result in some cost reduction for services.

As well as cost savings generated from having a streamlined, less burdensome system, there would also be benefits where the pace of the assessment and rating process is accelerated. That is, improvements in the timeliness of assessments would see the information that this process generates available to parents sooner and the quality benefits it generates for services materialise earlier.

## **Assessment of net benefit**

There is likely to be a net benefit arising from the streamlining of the assessment and rating process, given the current preliminary cost burden of assessment and rating and that any streamlining of the process should result in significant benefits for both the sector and regulatory authorities.

### 3.1.3 Proposal 1.3 – Reduction in documentation of child assessments or evaluations in OSHC services

#### Options for reduction in documentation of child assessments or evaluations in OSHC services

Option number	Description
1.3A	No change
1.3B	Amend Regulation 74 so that services that educate and care for children over preschool age must keep documentation about development of the program, rather than about individual children's development
1.3C	Do not amend Regulation 74 but retrain authorised officers to regulate and assess OSHC services in a manner that better recognises the context of OSHC services

Regulation 74 requires approved providers to ensure that, for the purposes of the educational program, evaluations of a child's wellbeing, development and learning are documented (for children over preschool age). In preparing the documentation, the provider must consider the period of time the child is being educated and cared for by the service and how the documentation will be used by educators at the service.

Approved OSHC providers have reported that the requirements under Regulation 74 to document child assessments for children over preschool age and evaluations for delivery of the educational program can be burdensome, particularly in documenting evaluations for each individual child. This can be made more difficult due to the irregular and varying attendance pattern of some children in OSHC, in comparison to other types of services, for example some children may only attend once every few weeks or even months. Providers have also expressed concern that many authorised officers do not adequately understand the context of OSHC services, but rather see OSHC through a prism of long day care service provision.

The policy intent of Regulation 74 is to ensure that children's learning under the approved learning framework is appropriately assessed, in order to enhance further learning and development. OSHC services are designed to complement the school day, and the primary focus is on providing children with play and leisure opportunities which are meaningful (*My Time, Our Place*, page 5).

To help reduce this administrative burden for OSHC services, it is proposed that either:

- Regulation 74 is amended so that documentation for over preschool age children can focus on the program, rather than an individual child's development and this amendment be reflected in Quality Area 1 of the National Quality Standard – additional training of authorised officers to better understand the context of OSHC services; and/or
- the status quo is maintained but authorised officers are retrained to regulate and assess OSHC services in a manner which better recognises the context of OSHC services – for example, the assessment and rating instrument may be altered in relation to assessing documentation of programs in OSHC, noting this may not be necessarily dependent on revisions to the National Quality Standard (although evaluation of each child's wellbeing, learning and development and consideration of child attendance would still be required).

## Costs

If authorised officers were to be retrained to assess OSHC with a more appropriate lens which recognised the unique characteristics of OSHC, there would be an associated training cost. This training would likely be carried out by more senior officers and would be required to be completed by the 351 authorised officers in Australia (data request to the Australian Government Department of Education 2014). Assuming each authorised officer required one day to complete additional training, the total preliminary cost is estimated at around \$162,000. This preliminary cost represents time spent out of work and assumes an average wage of \$100,000 per authorised officer.<sup>1</sup>

## Benefits

Benefits from refining the assessment and rating process for OSHC services include:

- Reduced regulatory burden for providers. For example, there would be an overall lessening of the documentation expected for child assessments or evaluations for delivery of education programs. This would reduce the overall time providers are directing towards this activity. This would represent a preliminary cost saving for many services.
- Assessments being better tailored towards OSHC and its unique characteristics may result in higher levels of satisfaction among staff, children and families.
- Families would benefit from more accurate information as there would be greater understanding of OSHC among regulatory authorities and greater certainty about what constitutes appropriate standards and compliance requirements within the OSHC sector.

## Assessment of net benefit

There is likely to be a net benefit arising from amending Regulation 74 to reduce the amount of documentation required or regulating and assessing OSHC services in a manner which is more applicable to their context, as it would reduce the OSHC sector's administrative burden, with this benefit likely to outweigh any one-off training costs for government.

### 3.1.4 Proposal 1.4 – Significant Improvement Required rating

#### Options for Significant Improvement Required rating

Option number	Description
1.4A	No change
1.4B	Remove the Significant Improvement Required rating, with the quality assessment rating process ceasing where it is determined that there is an unacceptable risk to children's health, safety or wellbeing
1.4C	Retain the Significant Improvement Required rating but amend its definition so that it refers to a rating that may be applied if there is significant non-compliance, rather than where there is unacceptable risk to children

Currently, if a quality area or regulation is not met during a quality assessment and poses an unacceptable risk to the health, wellbeing or safety of children, a service is given a rating of Significant

<sup>1</sup> Note this figure is wages only and does not include on-costs etc.

Improvement Required for the quality area and the overall rating (ratings were summarised in Chapter 1). This usually indicates to services that urgent action is needed to address the problem.

However, a regulatory authority must conduct a full assessment of the service prior to determining the Significant Improvement Required rating. As a result, regulatory authorities may be diverting resources towards completing the assessment and rating report, rather than taking enforcement action to remove the unacceptable risk to children (noting that regulatory authorities are able to suspend an assessment, take enforcement action and then recommence the assessment). In addition, concerns have been expressed about the appropriateness of issuing a quality rating that states the service poses unacceptable risk to the health, wellbeing or safety of children.

It is therefore proposed that either:

- the Significant Improvement Required rating is removed, so the quality assessment rating process will cease where it is determined there is an unacceptable risk to children's health, safety or wellbeing
  - at this point, the regulatory authority would take immediate action in response to the unacceptable risk, for example through enforcement action, and the service would be required to display information to indicate this status to families (for example a notice stating "rating pending resolution of non-compliance"); or
- the Significant Improvement Required rating is retained, but its definition is amended so it refers to a rating that may be applied if there is significant non-compliance, rather than the concept of unacceptable risk to children.

## **Costs**

Changes to the Significant Improvement Required rating are unlikely to have significant costs, but may involve a one-off cost for regulatory authorities and services as they update policies and procedures, and retrain authorised officers for any changes. Given the nature and magnitude of the changes, however, these costs are not expected to be significant.

## **Benefits**

The key benefit of the proposed changes to the Significant Improvement Required rating is that there would be more timely and focused action to protect the health, safety and wellbeing of children in situations of unacceptable risk to children, rather than having regulatory authority resources diverted towards completing the assessment and rating process and any reviews that may follow.

## **Assessment of net benefit**

As a means of better addressing situations where there is unacceptable risk to children, and given that costs are not expected to be significant, there is likely to be a net benefit arising from either removing or modifying the Significant Improvement Required rating.

### 3.1.5 Proposal 1.5 – Exceeding the National Quality Standard rating

#### Options for Exceeding the National Quality Standard rating

Option number	Description
1.5A	No change
1.5B	To be rated Exceeding the National Quality Standard at the Quality Area level, all standards in the Quality Area need to be rated Exceeding the National Quality Standard <i>This option is linked to 1.1B</i>

Under the current system, to achieve a rating of Exceeding the National Quality Standard (Exceeding) for a Quality Area requires at least two standards to be rated as Exceeding, with no standards rated as Working Towards the National Quality Standard. This means:

- for Quality Areas 2, 3, 6 and 7, only two of three standards need to be rated Exceeding for the overall Quality Area to be rated as Exceeding
- for Quality Areas 1, 4 and 5 both standards need to be rated Exceeding.

As mentioned in 3.1.1 some providers have found the operation of the current assessment and rating to be complex and administratively burdensome. In the draft revised National Quality Standard presented at Appendix B, all Quality Areas have two standards excluding Quality Area 1 (educational program and practice) which has three standards. Having more standards for Quality Area 1 is considered appropriate given the breadth of service operations which are being assessed, and the importance of this Quality Area to children's outcomes.

On the basis that the draft revised National Quality Standard retains only those elements and standards essential to service quality, one option is to require all standards in a Quality Area to be rated as Exceeding the National Quality Standard for the Quality Area to be rated Exceeding. This option would simplify the calculation of the Quality Area rating for Exceeding. Other options have not been put forward on the basis that each of them is likely to add complexity to the process of determining a rating for Exceeding with no commensurate benefit. However, like all of the proposals put forward in this Consultation RIS, feedback and the provision of additional options for consideration is invited.

#### Costs

Requiring that all standards in a Quality Area must be rated as Exceeding the National Quality Standard for the Quality Area to be rated Exceeding is not likely to impose any significant costs. However, there may be an unintended consequence, whereby services that have not yet been assessed and rated may perceive that they are required to meet a higher standard to be rated as Exceeding for a Quality Area, compared to services that have already been assessed and rated.

#### Benefits

The main benefit of this proposal is that the calculation of the Exceeding rating for a Quality Area will be simpler, and in turn, easier for the sector and wider community to understand.

## Assessment of net benefit

It is unclear whether there will be a net benefit from requiring all standards in a Quality Area to be rated as Exceeding the National Quality Standard in order to receive an Exceeding rating for the Quality Area, as the benefits of simplification may or may not outweigh any unintended consequences of the proposal.

### 3.1.6 Proposal 1.6 – Excellent rating

#### Options for Excellent rating

Option number	Description
1.6A	No change
1.6B	Remove the Excellent rating

The Excellent rating administered by ACECQA recognises services that are leaders in the sector. It aims to drive sector-wide quality improvement and promote the aspirational features of the NQF. The 2014-15 application fee is \$209 for small services, \$418 for medium services and \$627 for large services. As of 30 September 2014, ACECQA has awarded the Excellent rating to 20 services. Services that have received an overall rating of Exceeding National Quality Standard are eligible to apply to ACECQA to be considered for the Excellent rating.

Sector feedback identified that the application process and fee discourages services from applying for the Excellent rating even where they are eligible. In addition, there is feedback that the resources required to manage this process would be better targeted at assisting services which do not currently meet the National Quality Standard to improve their service delivery.

Furthermore, there is perceived unfairness that some services can apply for and be awarded the Excellent rating, when other services have not yet been rated and are therefore not eligible to apply (although it should be noted that this may no longer be a relevant point by the time any changes to the NQF are made based on the outcomes of the RIS process, as most services may have been assessed and rated by that time).

To address these issues, there is an option for the Excellent rating to be removed, with services that achieve a level of quality above the National Quality Standard continuing to be recognised through achievement of an Exceeding National Quality Standard rating.

However, removing the Excellent rating may reduce the incentive for services to become sector leaders and it is noted that recognition of excellence is a feature of many quality systems. Therefore, there is also an option to retain the Excellent rating. Other options have not been explored on the basis that they are likely to add to the complexity to the process of determining a rating for Excellent or increase regulatory burden with no commensurate benefit. However, like all of the proposals put forward in this Consultation RIS, feedback and the provision of additional options for consideration is invited.

#### Costs

Removing the Excellent rating is unlikely to have significant costs, although it may reduce the incentive for services to strive for highest quality service delivery, due to the loss of national recognition

associated with being awarded an Excellent rating. Given the nature and magnitude of the changes, however, these costs are not expected to be significant.

## Benefits

The key benefit of removing the Excellent rating is that it would be less costly for services (i.e. it would eliminate the cost involved in applying for the rating) and the rating system would be simpler overall.

## Assessment of net benefit

It is unclear whether there would be a net benefit from removing the Excellent rating, given that a simpler and less costly system may or may not outweigh the reduced incentive for services to strive for excellence in service delivery.

### 3.1.7 Proposal 1.7 – Ensuring ratings accurately reflect service quality

#### Options for ensuring ratings accurately reflect service quality

Option number	Description
1.7A	No change
1.7B	Remove the overall rating and rely on the seven quality area ratings to indicate service quality
1.7C	Retain the current requirement that all elements must be met to achieve an overall rating of Meeting National Quality Standard, on the basis that clarifying or streamlining the National Quality Standard will result in ratings that are a more accurate reflection of service quality <i>This option is linked to 1.1B</i>
1.7D	Broaden the application of the current Minor Adjustments Policy <sup>2</sup> (but not extending to those areas of the National Quality Standard that are not able to be remedied quickly) <i>This option could be implemented together with 1.7B or 1.7C</i>

Under the current process for determining rating levels, a service that does not meet one or more of the 58 elements of the National Quality Standard is rated Working Towards National Quality Standard for the relevant quality area, *and* receives an overall rating of Working Towards National Quality Standard. As at 1 October 2014, approximately 27% of services with an overall rating of Working Towards National Quality Standard have failed to meet fewer than four out of 58 elements (ACECQA 2014).

Consultation with the sector indicates that this process is perceived as unfair, as it increases the effect of just one element assessed as 'not met'. The resulting overall rating is seen as not reflecting overall service quality.

Potential options for addressing this are to:

<sup>2</sup> The Minor Adjustments Policy allows the regulatory authority to consider any information about steps taken by the service to rectify matters identified during the rating assessment (Regulation 63(2)(b)), prior to finalising a service's assessment report and overall rating. The regulatory authority may give a provider a short time to make adjustments where they identify an issue that does not pose an unacceptable risk to the safety, health or wellbeing of children, has minimal impact on the quality of the service provided, can be quickly and easily rectified, is not one of numerous other minor matters, and may, if rectified, result in the service receiving a higher rating against a standard.

- remove the overall rating and rely on the seven quality area ratings to indicate service quality
  - while the overall rating was introduced to provide a simple indicator of service quality, it may mislead families as a service with just one element rated not met in one quality area will have an overall rating of Working Towards National Quality Standard, even if all other quality areas are rated as Meeting or Exceeding the National Quality Standard; or
- retain the current requirement that all elements must be met to achieve a Meeting National Quality Standard rating, on the basis that clarifying or streamlining the National Quality Standard will result in ratings that are a more accurate reflection of service quality, as there will be fewer elements, all of which are essential to overall service quality (*note that this option is contingent on the option of a simplified draft National Quality Standard being adopted*); and/or
- broaden the application of the current Minor Adjustments Policy, which allows services to make changes immediately following the service visit (noting that the policy would not be extended to areas of the National Quality Standard that are not able to be remedied quickly).

### Costs

These changes are unlikely to have significant costs, but may involve a one-off cost for regulatory authorities and services as they update policies and procedures, and retrain authorised officers for any changes. Given the nature and magnitude of the changes, however, these costs are not expected to be significant.

### Benefits

The key benefit of the proposed changes is a rating system that is more reflective of overall service quality and is simpler, easier to understand and easier to administer. It may also improve the fairness of the rating system. For example, if the Minor Adjustments Policy was broadened, this could allow more services to make changes immediately following the assessment visit. This could reduce the number of services rated as Working Towards National Quality Standard due to a very small number of elements not being met.

### Assessment of net benefit

As these changes would make the rating system easier to understand and improve the alignment between the rating and actual service quality, and given that the associated costs are not expected to be significant, there is likely to be a net benefit from either removing the overall rating, clarifying or streamlining the National Quality Standard so there will be fewer elements that are all essential to overall service quality or extending the current Minor Adjustments Policy. However, it is unclear at this stage which particular option would give the greatest net benefit.

### 3.1.8 Proposal 1.8 – Length of time between assessments

#### Options for length of time between assessments

Option number	Description
1.8A	No change
1.8B	Remove the three year rating cycle policy and commit to more frequent re-rating of lower quality rated services, with no specified maximum period between ratings
1.8C	Remove the three year rating cycle policy and commit to re-rate all services at least once every five years, with more frequent re-rating of lower quality rated services

The current assessment and rating cycle for individual services is an earned autonomy system, where the period between the assessment and rating process is determined by the service's current rating. That is, the higher the rating, the longer the timeframe between the assessment and rating process for that service. Generally, services rated Exceeding National Quality Standard would be assessed every three years, services rated Meeting National Quality Standard every two years, and services rated Working Towards National Quality Standard every year.

However, due to the longer than expected time involved in providing first ratings for all services, subsequent assessments are not being implemented as intended and there are concerns from governments and the sector about the length of time between quality assessments.

Policy proposals for the assessment and rating cycle are to:

- remove the three year rating cycle policy and commit to more frequent re-rating of lower quality rated services, with length of time between assessments based on ongoing assessment of risk and the principle of earned autonomy
  - this could be implemented once all existing services have a quality rating; or
- remove the three year rating cycle policy and commit to re-rate all services at least once every five years, with more frequent re-rating of lower quality rated services based on an ongoing assessment of risk and the principles of earned autonomy
  - this could also be implemented once all existing services have a quality rating.

#### Costs

Both options for change propose more frequent assessment and rating of lower quality services. Consequently, the number of services falling into this category and the frequency of re-rating will have a bearing on the cost of each option.

Using the Working Towards National Quality Standard rating as a proxy for lower quality services (noting not all services with this rating are in fact lower quality) would capture an estimated 2,000 services (39% of all services assessed up until 31 March 2014) (ACECQA 2014). Given the relatively small number of services, both options for change are unlikely to have a large impact on costs for regulatory authorities (noting the impact would vary across states and territories, depending on the number of lower quality services in a jurisdiction). However, the proposed changes may represent a large increase in costs for individual services that are considered to be low quality.

It should be noted that some risk may also be introduced, due to a reduced level of scrutiny for services that are not considered lower quality. However, regulatory authorities could rely on other

monitoring measures for services which had previously been assessed as being of high quality, for example announced or unannounced monitoring visits, or response to services' incident notifications to ensure quality is being maintained.

## Benefits

Changing the assessment and rating cycle from a three year to a five year cycle is expected to result in benefits in the form of reduced preliminary cost burden for both higher quality providers (i.e. those services not considered to be low quality) and regulatory authorities (due to less frequent re-rating of most services). This observation assumes that there will be an overall saving because the preliminary cost reduction from rating most providers less frequently will be greater than any preliminary cost increase from rating lower quality providers more frequently.

Concurrent with the achievement of preliminary cost savings, the changes reflect the principle of earned autonomy. This would mean that services rated Working Towards National Quality Standard remain a priority and other services receive less regulatory resources. This would be designed to ensure that quality was maintained or improved, whilst also reducing the preliminary cost. The overall intended benefit would be a more efficient and effective rating system. This approach reflects a more risk-based regulatory framework, which is consistent with best practice regulation principles.

## Assessment of net benefit

There is likely to be a net benefit, to the extent that increased quality of education and care across the sector (through a greater focus on supporting low quality services to improve) and the reduced frequency of the cycle for higher quality providers outweighs the preliminary cost of more frequent re-rating of low quality services.

## Consultation questions

### Consultation Questions – Refining the National Quality Standard and assessment and rating process

Are there aspects of the change options that you believe should not be under consideration? If so, why?

Is the proposed draft National Quality Standard clear and streamlined enough? Are there any other changes that would improve clarity while maintaining quality?

Do the preliminary costs and benefits as described here accord with your views regarding the likely impacts of these options? Are there other impacts that have not been identified here?  
*Please provide substantiating evidence wherever possible.*

Does the conclusion with respect to net benefit accord with your expectation regarding the overall impact of these change options?

What are the benefits and costs of the proposed options for change?

## 3.2 Removing supervisor certificate requirements

*Proposal 2.1 – Supervisor certificate requirements*

***Policy problems addressed: Areas of unnecessary regulatory and administrative burden.***

### 3.2.1 Proposal 2.1 – Removing supervisor certificates

#### Options for removing supervisor certificate requirements

Option number	Description
2.1A	No change
2.1B	Amend the National Law to remove the requirement for supervisor certificates

A supervisor certificate allows a person to consent to be either (1) the nominated supervisor of a service or (2) a certified supervisor placed in day to day charge of a service in the absence of the nominated supervisor and approved provider. The supervisor certificate concept was implemented as a mechanism to ensure consistency of skills and experience for nominated supervisors and persons placed in day to day charge.

Extensive consultation with the sector through the ACECQA forum, National Children's Services Forum and with regulatory authorities has identified that the supervisor certificate application process is considered burdensome and does not deliver the consistency intended. Assessments of applications rely on paper based evidence and does not guarantee a uniform measure of capability to manage a service. The application process also does not replace the need for providers to make their own assessment of a person's suitability to supervise a service, particularly given the diversity of size and types of services.

Prior to 1 June 2014, individuals were required to apply to the regulatory authority to receive a supervisor certificate (and pay a \$30 application fee). The regulatory authority assessed applications to ensure that minimum requirements for qualifications, experience and management capability were met, and that a person is fit and proper to supervise a service.

Following changes to the National Regulations on 1 June 2014, there are now three different types of supervisor certificates:

- ***Service supervisor certificates*** – these are not issued to a particular person but may apply to any person working at the service which has been identified by the approved provider as responsible for the day to day management of the service, exercising supervisory and leadership responsibilities for part of the service or a FDC coordinator.
  - This means most people no longer need to apply for an individual supervisor certificate and do not need to pay the \$30 application fee.
  - This change was introduced to minimise paperwork associated with supervisor certificates, while further measures were developed to reduce administrative burden for providers and educators.
  - Note that service supervisor certificates do not currently apply in Western Australia.

- **Individual supervisor certificates** – these are still valid and individuals are still able to apply to the regulatory authority if they wish (noting that individuals in Western Australia are still required to apply for an individual supervisor certificate).
- **Prescribed class supervisor certificates** – the regulatory authority may grant a supervisor certificate, without receiving an application, for certain classes of people as set out at Regulation 49, such as a school principal.

While these changes go some way to reducing the regulatory burden for services and staff, the supervisor certificate process is embedded in the National Law. Some states and territories have reported that they continue to receive applications for individual supervisor certificates, even though this is no longer required in the majority of cases due to the introduction of service supervisor certificates. The ability to apply is set out in the National Law and was not affected by changes to the National Regulations. It should be noted that new services still require a new nominated supervisor to apply for a supervisor certificate, due to requirements for lodging an application under Regulation 24.

It has therefore been proposed that supervisor certificate requirements be removed altogether, as the current supervisor certificate concept is not considered necessary to ensure that an appropriately skilled staff member to oversee the service is present (centre based service) or available (FDC service). It should be noted that the role of the nominated supervisor would still exist, but that responsibility to determine a person's suitability would rest with the approved provider.

Alternative options to removing the concept of Supervisor Certificates, for example further changes to process for issuing supervisors certificates were not put forward due to the overwhelming feedback on the inefficiency of the process and the ineffectiveness of it to support the underlying policy of ensuring consistency of skills and experience in the day-to-day management of services.

Appendix A includes further detail about other proposed changes to supervisors (see Proposals 8.3.1 to 8.3.8). These proposals should be read together to understand the full implications of the proposed changes.

## Costs

Given recent changes to expand the class of 'prescribed persons' such that the vast majority of people no longer need to apply to the regulatory authority for a supervisor certificate, the proposed change is largely removing an unnecessary requirement and as such there are unlikely to be material costs associated with it. Indeed, the requirement for ACECQA to maintain a national register of certified supervisors will be removed, further reducing costs.

The main cost is that streamlining of the regulation potentially introduces some risk, through a reduced level of regulatory authority scrutiny of the quality of supervisors of education and care services (noting that approved providers would have ongoing responsibility to assess the suitability of supervisors).

## Benefits

The key benefit relates to reduced administrative burden for regulatory authorities, noting that the compliance burden for the sector has already been reduced through the change in June 2014, whereby the majority of individuals are no longer required to apply for a supervisor certificate. Rather, service supervisor certificates are now issued, which cover those who have been identified by the approved provider as responsible for the day-to-day management of the service, exercising

supervisory or leadership responsibilities for part of the service or a FDC coordinator, and have provided their consent to be covered.

The average preliminary cost of issuing a supervisor certificate for regulatory authorities has been estimated to be around \$150 (Deloitte Access Economics 2014). Based on 10,460 supervisor certificates issued by regulatory authorities in 2013-14, this change would lead to a preliminary cost saving to regulatory authorities of around \$1.6 million (noting that applications are expected to fall from 2013-14 figures given the June 2014 changes).

### **Assessment of net benefit**

There is likely to be a net benefit from this change, given the significant reduction in administrative burden for regulatory authorities (and noting that there has already been a reduction in compliance burden for the sector).

### **Consultation questions**

#### Consultation Questions – Removing supervisor certificate requirements

Are there aspects of the change options that you believe should not be under consideration? If so, why?

Do the preliminary costs and benefits as described here accord with your views regarding the likely impacts of these options? Are there other impacts that have not been identified here? Please provide substantiating evidence wherever possible.

Does the conclusion with respect to net benefit accord with your expectation regarding the overall impact of these change options?

What are the benefits and costs of the proposed options for change?

### 3.3 Expanding the scope of the NQF

*Proposal 3.1 - Additional services to be included in the NQF*

*Proposal 3.2 - Application of assessment and rating processes to additional services*

***Policy problems addressed: Incomplete regulatory coverage.***

#### 3.3.1 Proposal 3.1 – Additional services to be included in the NQF

##### Options for additional services to be included in the NQF

Option number	Description
3.1A	No change
3.1B	Include BBF centre-based services, occasional care services (excluding those provided for parents attending conferences, sport and leisure activities or shopping), playschools and mobile services that are not currently regulated in the NQF
3.1C	Include BBF centre-based services, occasional care services (excluding those provided for parents attending conferences, sport and leisure activities or shopping), playschools and mobile services that are regulated under another children’s services law in the NQF
3.1D	Include all BBF centre-based services, occasional care services (excluding those provided for parents attending conferences, sport and leisure activities or shopping), playschools and mobile services in the NQF.

A range of education and care services are currently excluded from the NQF under Section 5 of the National Law and Regulation 5(2) of the National Regulations. The services that are currently excluded are described as ‘out of scope’ services. Under the NP NQA, while at the outset it was agreed that most long day care, family day care, OSHC and preschools would be covered by the NQF, it was always envisaged that some other ECEC service types may eventually be brought into the NQF to create a national system for ECEC services. However it was considered that progression to a more inclusive NQF would take a number of years to achieve. The 2009 RIS agreed to test the inclusion of other out of scope services in the future.

Some states and territories already regulate some, or all, of the out of scope services under state and territory legislation, although requirements and the service types regulated vary across jurisdictions.

An option to consider is to include those out of scope services that are currently unregulated to bring them into a regulatory framework. This would ensure that children and families utilise services that are operating under the minimum quality requirements as other similar services, and provide families with the same surety regarding high quality care (Option 3.1B)

Alternatively the NQF could be extended to include out of scope services that operate under a state or territory regulated environment, these services generally operate in a similar way to those already covered by the NQF (e.g. similar hours of operation, staffing requirements, qualification requirements or use an approved learning framework (or similar) to frame children’s learning and/or educational programs) (Option 3.1C).

Or both types could be included under the NQF (Option 3.1D).

The service types that could be considered for inclusion in the NQF are:

- BBF centre-based services that operate in a similar way to services covered by the NQF
- occasional care services, excluding those that are provided for parents attending conferences, sport and leisure activities or shopping
- playschools in the ACT
- mobile services that provide a service similar to those currently covered by the NQF or similar to other services proposed for inclusion.

The inclusion of additional services under the NQF would ensure children and families utilising these services have access to services that are operating under the same quality expectations and requirements as other similar services, and provide families with the same surety regarding high quality care. Many out of scope services that are not regulated do not benefit from the requirements of the NQF, that set out minimum standards to operate – for example space requirements, staff to child ratios and qualification requirements for educators. In cases where regulation does not mirror the National Law or there is no regulation, there is no formal mechanism for monitoring and no capacity to penalise poor practice. While there is variability across jurisdictions, monitoring in these cases often generally focuses on health and safety issues rather than child developmental outcomes that are the focus of the NQF.

Further, BBF services typically provide education and care to disadvantaged children, who particularly benefit from participation in quality education and care, in terms of improved educational and developmental outcomes.

## Costs

Preliminary estimates of the number of services proposed to be brought into the NQF, based on 2014 service numbers by service type, is provided in Table 3.1.

**Table 3.1: Estimated number of out of scope services proposed to be brought under the NQF (2014 service numbers)**

Service Type	Total	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
BBF services*	152	1	18	36	28	21	3	31	14
Occasional care services	519	1	67	0	12	94	28	301	16
ACT playschools	13	13	–	–	–	–	–	–	–
Mobile services	94	0	58	14	0‡	9	0	6	7

**Source:** Data request to the Australian Government and state and territory governments (2014). \*This includes the Commonwealth funded BBF services who operate similar to centre based services and are in receipt of, or contracted to receive, Quality Measure assistance to raise services to National Quality Standard levels (physical environment and workforce qualifications). ‡Mobile services are not regulated in Queensland and therefore the Qld RA cannot provide any figures for the number of services of this type.

Jurisdictions currently licence or regulate most of the out of scope services that are proposed to be brought into the NQF under state and territory legislation. Indeed, the only proposed services included in Table 3.1 that are currently *unregulated* by state and territory governments are BBF and mobile services in Queensland and BBF services in South Australia.

Any costs associated with the introduction of services to the NQF that are already licenced or regulated by state and territory governments must be considered relative to costs currently incurred.

As these services are already regulated, it is likely that an incremental increase in compliance costs would be incurred, but that this cost would be lessened by pre-existing regulatory compliance requirements. The major impact would be for those services that are not currently regulated at all.

### Cost to sector – regulatory compliance costs

In 2013, a Deloitte Access Economics report on the regulatory burden of the NQF estimated various preliminary costs to the sector of complying with the legislative and regulatory requirements of the NQF.

Findings in this report were based on data collected from a mix of small, medium and large service providers – comprising preschools, LDC, OSHC and FDC – in Victoria and Queensland (four of these services were in remote locations, three were in inner regional locations and the remainder were in metropolitan locations). These services were surveyed face-to-face (36 services in total).

The report was unable to estimate a total cost of NQF administrative requirements for services, given that different service sizes, management and approaches to administrative tasks were found to result in significant differences in administrative burden over a year.

However, it was possible to estimate a preliminary cost of undertaking specific activities for the services surveyed, as outlined in Table 3.2. It shows both the average hours and average cost for a range of NQF-related administrative activities, comparing centre-based and FDC services.

It is important to note that the costs in Table 3.2 do not represent the additional cost of the NQF to services. A proportion of these costs would still be incurred by services if the NQF did not exist – that is, under the regulatory regimes prior to the NQF, services were required to undertake regulatory compliance activities.

**Table 3.2 : Non-incremental NQF administrative burden impacts for centre-based and FDC services**

Selected activities	Average hours for centre-based	Average cost for centre-based	Average hours for FDC	Average cost for FDC
Initially establishing policies and procedures (once off)	124.2	\$3,490	203.6	\$5,720
Reviewing and updating policies and procedures (pa)	68.1	\$1,912	86.4	\$2,420
Initial design of NQF-compliant educational program (once off)	109.1	\$2,883	235.0	\$6,204
Documenting of programs and reflections (per room, pa)	230.9	\$7,205	134.1	\$4,184
Documenting assessments of children’s learning (per child, pa)	16.2	\$506	33.9	\$1,057
Documenting and designing initial QIP (once off)	78.9	\$2,110	222.8	\$5,960
Ongoing reviewing and revising the QIP (pa)	206.6	\$5,532	128.6	\$3,440
Provider approvals (per event)	2.1	\$64	1.8	\$60
Service approvals (per event)	1.7	\$54	0.6	\$16

Source: Deloitte Access Economics (2013). All costs outlined in this table are preliminary.

These preliminary cost estimates are the best currently available evidence on regulatory compliance costs for the sector under the NQF. Therefore, it could be assumed that services coming into the NQF under this option may incur costs of a similar magnitude in undertaking the various activities (again, noting that these are not incremental costs and therefore would not represent the increase in costs for services being brought under the NQF – the increase would be a portion of these preliminary costs).

More generally, smaller services may face a disproportionately larger compliance burden as a result of being included in the NQF. This is primarily due to small services not having the scope to employ additional staff dedicated to fulfilling administrative or regulatory obligations.

### **Cost to sector – costs associated with ratio and qualification requirements**

Costs will also be incurred by services – and, by extension parents – where the introduction of out of scope services to the NQF requires them to improve on educator to child ratios and educator qualification levels. These costs may also include service reconfiguration costs to comply with the ratios, related to floor space, outdoor areas, etc. Limited data exists to guide an assessment of this. In particular, little is known about the educator to child ratios at services that are not currently required to be licensed under state and territory legislation.

### **Cost to regulatory authorities**

On a per-service basis, the cost to regulatory authorities of regulating out of scope services is likely to be high relative to the other options put forward in this Consultation RIS. However, compared to many of the options under consideration, its scope of impact is considerably narrower. There are currently 778 out of scope services being considered for inclusion (see Table 3.1), while the NQF currently applies to 14,538 services, as at 31 March 2014 (ACECQA 2014).

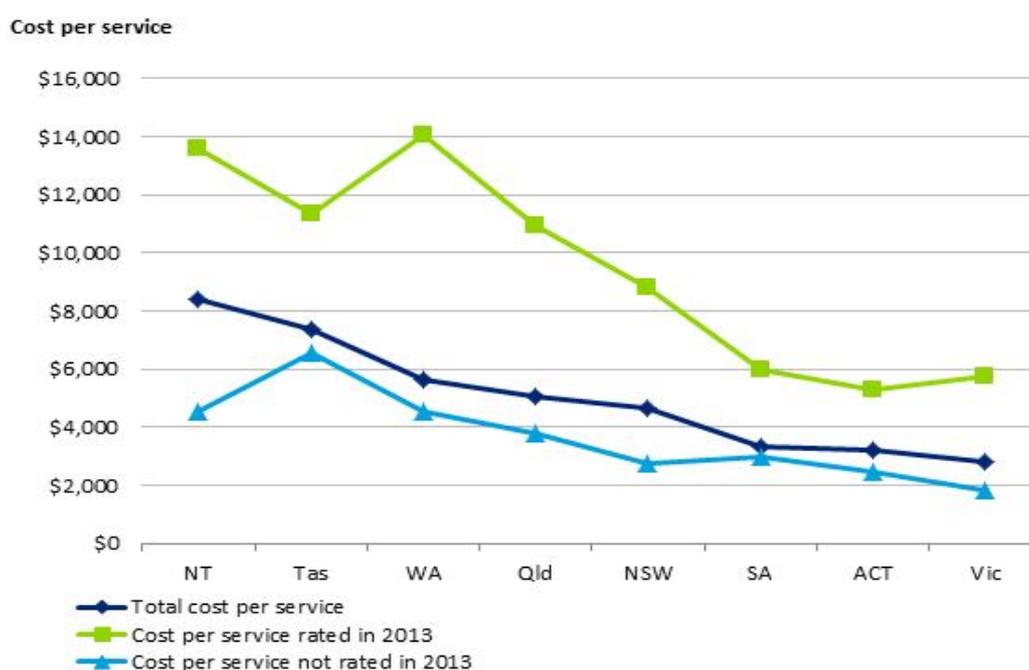
In 2013, preliminary estimates for the total regulatory cost per service of the NQF varied significantly between individual jurisdictions, from \$2,800 to \$8,400 (see dark blue line in Chart 3.1).<sup>3</sup> For services that were assessed and rated in 2013, the average regulatory cost per service also varied across jurisdictions, ranging from \$5,300 to \$13,600 (see green line in Chart 3.1). The estimated average regulatory cost for services that were not assessed and rated in 2013 was lower, ranging from \$1,800 to \$6,600 (see light blue line in Chart 3.1).<sup>4</sup>

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<sup>3</sup> Note that the actual cost per service will vary significantly depending on factors such as the size and quality of the service, the assistance the service may require, and whether it has an assessment and rating during the year.

<sup>4</sup> It should be noted these estimates are preliminary and do not reflect the cost of the system once fully matured, as some ratio and qualifications requirements are yet to take effect and processes are still relatively new.

**Chart 3.1: Per service regulatory cost under the NQF, 2013**



Source: Deloitte Access Economics (2014)

Therefore, based on best available preliminary estimates, the preliminary average regulatory cost to regulatory authorities on a per service basis, using the average for all services (rated and unrated in a given year), is likely to be in vicinity of \$2,800 to \$8,400. To the extent that certain service types are located in remote areas, such as BBF services and mobile services, the cost per service is likely to be closer to the upper range (noting that the Northern Territory has the highest per service regulatory cost).

However, as noted above, jurisdictions already generally have some degree of regulatory oversight of services not currently within the scope of the NQF. This means regulatory authorities may not incur significant additional cost due to the coverage of additional services. It should be noted these figures are preliminary and are based on a partially implemented system.

### Benefits

The inclusion of BBF centre based services, specified occasional care services, playschools and specified mobile services in the NQF would lead to a number of benefits. It would provide greater certainty regarding the quality expectations of services across a broader scope of ECEC providers.

By including services that are currently outside of the scope of the NQF, families and children can be assured that the same quality requirements apply to these services. This is considered appropriate given the similar nature of services being provided and the similar responsibilities for the care of children taken on by these providers.

For a number of years now the BBF Quality Measure has addressed historical differences between BBF services and NQF approved early childhood services. BBF centre based services are now more closely aligned to Child Care Benefit approved early childhood services.

Since 2010-11 the BBF Quality Measure has assisted around 130 centre-based, long day care type BBF services improve quality in three key areas:

- infrastructure improvements
- increased numbers of qualified staff
- improved governance and administrative capacity.

The benefits of being included in the NQF may be greater for some service types. BBF services typically provide education and care to disadvantaged children. The quality improvement expected to flow from participation in the NQF would be expected to result in a greater level of benefit for these children, based on research showing that disadvantaged children particularly benefit from participation in *quality* education and care.

For example, Heckman (2011) has concluded that investment in early education for disadvantaged children from birth to 5 years helps reduce the achievement gap, reduce the need for special education, increase the likelihood of healthier lifestyles, lower the crime rate and reduce overall social costs. Zaslow et al (2010) found that more sustained exposure to high quality care narrows the gap on measures of achievement between children of low and high income parents. The renowned Effective Preschool, Primary and Secondary Education longitudinal study in the United Kingdom also found that while disadvantaged children are more likely to have adverse social profiles at age three, high quality preschool between the ages of 3 and 5 can help to ameliorate the effects of social disadvantage (Sylva et al, 2004).

### **Assessment of net benefit**

Relative to some of the other changes put forward in this Consultation RIS, inclusion of out of scope services will likely have a high cost to individual out of scope services. However, this will vary based on the regulatory environment they currently fall within. Where services are currently regulated within a framework which bears similarity to the NQF, the costs will be more modest. Where services are currently regulated within a framework which is quite different to the NQF – or not regulated at all – there costs will be more significant. The magnitude of this cost cannot at this stage be quantified and, therefore, an assessment of net benefit cannot be conducted.

However, it is apparent that with this cost will come benefits in the form improved quality among currently out-of-scope services (to the extent that they currently fall below the standards of the NQF and/or the NQF drives quality improvement over time), improved education and care outcomes for children attending these services (including some of the community's most disadvantaged) and an assurance that, no matter what service a parent chooses for their child, the experience received will be of a consistent minimum standard.

### 3.3.2 Proposal 3.2 – Application of assessment and rating processes to additional services

#### Options for application of assessment and rating processes to additional services

Option number	Description
3.2A	Additional services included in the NQF are assessed and rated in the same way as others currently covered by the NQF <i>This option is linked to 3.1B, C &amp; D</i>
3.2B	Additional services included in the NQF are subject to compliance monitoring only, with assessment and rating processes to be considered further in the 2019 Review of the NP NQA <i>This option is linked to 3.1B, C &amp; D</i>

Services currently out of scope which are included as a result of options in 3.1 may need time to adapt to the new National Quality Framework and as such the assessment and rating process. Even if the National Quality Standard and the assessment and rating process is streamlined, this may still remain a significant adjustment to services with little experience of quality assessment. As such it may be appropriate to put in place appropriate transition arrangements for assessment and rating of new service types that are brought into the NQF.

There is no “no change” option as this proposal is only considered if a decision is made to bring out of scope service types into the NQF.

#### Cost to sector

The option of requiring out of scope services that are brought under the NQF to participate in assessment and rating will lead to additional costs for these services. Table 3.2 shows that the average preliminary cost of undertaking assessment and rating activities for centre-based services ranges from \$2,110 to document and design a Quality Improvement Plan, to \$5,532 per year to undertake ongoing review and revision of the Quality Improvement Plan. Depending on the implementation design of assessment and rating, this preliminary cost may vary.<sup>5</sup>

It should be noted however that the preliminary cost incurred by services coming in-scope is likely to be less than the figures noted above, as these figures do not represent the *additional* cost of the NQF to services i.e. the services would already be incurring some level of compliance costs.

An alternative option to full assessment and rating for out of scope services is a compliance assessment. It is anticipated that this would be similar to the current practices of state and territory regulatory authorities for those services which are not in scope of the NQF, and would impose less regulatory burden upon the sector. However, a compliance assessment may not lead to the same level of quality-related benefits as would a full assessment and quality rating. Further, if the intention is to reduce the perception of a two-tier system, a compliance assessment approach may continue to perpetuate this perception.

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<sup>5</sup> Note that one policy option put forward in this Consultation RIS is for a simplified draft National Quality Standard, which may also reduce the administrative burden for services.

## **Cost to regulatory authorities**

As shown in Chart 3.1, the preliminary cost for regulatory authorities to undertake an assessment and rating varied between jurisdictions. The average per service total regulatory cost for services that were assessed and rated in 2013 ranged from \$5,300 to \$13,600, which is higher than the cost range for services that were not assessed and rated in 2013. Assessment and rating also accounts for around 42% of total regulatory authority effort (Deloitte Access Economics, 2014). As assessment and rating is such a large contributor to cost, should a lower cost assessment and rating model be adopted (i.e. compliance assessments), costs would be lower on a service by service basis.

The cost to regulatory authorities of undertaking a compliance assessment is currently unclear, although it is expected that it would be lower than undertaking assessment and rating. For example, monitoring and compliance was found to account for, on average, 10% of total regulatory effort in 2013 (Deloitte Access Economics, 2014).

It should however be noted that, depending on the number of services in each state and territory that are brought under the NQF, there will likely be a material cost increase for regulatory authorities associated with assessing these services, regardless of whether they are assessed and rated or compliance assessed.

## **Benefits**

Active participation of services in quality improvement, through a formal assessment and rating process, means that services are required to critically reflect on the quality of education and care they provide and how this can be further improved. This ultimately leads to benefits for children and the broader community, through improved service delivery, which leads to higher quality education and care. It could also drive service improvement by making information available to families and therefore improving demand for high quality (where service choice exists).

## **Assessment of net benefit**

Although it is not likely to represent a large cost to the sector as a whole, requiring out of scope services that are brought under the NQF to participate in assessment and rating will likely have a high cost to individual services (noting that the cost would be net of any costs associated with existing compliance obligations). It is expected these preliminary costs would be lower if services were required to participate in compliance assessments only. However the costs should be weighed against the range of likely benefits, which include national consistency of quality service provision and improved educational and development outcomes for children.

## Consultation questions

### Consultation Questions – Expanding the scope of the NQF

Are there aspects of the change options that you believe should not be under consideration? If so, why?

Do the preliminary costs and benefits as described here accord with your views regarding the likely impacts of these options? Are there other impacts that have not been identified here?  
*Please provide substantiating evidence wherever possible.*

Does the conclusion with respect to net benefit accord with your expectation regarding the overall impact of these change options?

What are the benefits and costs of the proposed options for change?

Are there other comments with respect to out of scope services that should be taken into consideration?

## 3.4 Extending some liability to educators

*Proposal 4.1 – Extension of some liability to educators*

***Policy problems addressed: Incomplete regulatory coverage.***

### 3.4.1 Proposal 4.1 – Extending some liability to educators

#### Options for extending some liability to educators

Option number	Description
4.1A	No change
4.1B	Liability under Sections 165 and 167 of the National Law to be extended to all educators, for not adequately supervising children under their care or not taking every reasonable precaution to protect the children from harm or hazard that is likely to cause injury, in addition to approved providers, nominated supervisors and FDC educators

Under Sections 165 and 167 of the National Law, the approved provider, nominated supervisor or FDC educator may be liable for failing to adequately supervise children under their care or where they have not taken every reasonable precaution to protect the children from harm or hazard that is likely to cause injury.

The current penalty under these clauses is up to \$10,000 for individuals and \$50,000 in any other case.

In some states, there have been instances where staff members at a service have breached Section 167 but the regulatory authority has not been able to prosecute or discipline these staff members as they did not fall under a liable category, even though they were directly responsible for the breach.

An option has been put forward for liability under Sections 165 and 167 to be extended to all educators, as services have provided commentary that without any potential liability or penalty some educators do not take their responsibilities seriously and do not provide adequate supervision of the

children in care. This would mean that educators could also be prosecuted for not adequately supervising children under their care or not taking every reasonable precaution to protect the children from harm or hazard that is likely to cause injury, in addition to approved providers, nominated supervisors and FDC educators.

Additional options were not put forward as this proposal addresses a specific issue with respect to educators. Guidance material and other educative approaches have already been utilised and have not proved sufficiently effective in all cases. Some educators continue to provide inadequate supervision on the basis that they are not liable for any consequences if harm or accidents that could have been prevented had there been adequate supervision.

### **Costs**

There may be costs associated with this change, if the introduction of the penalty deters educators from working in the sector. That is, should the prospect of greater levels of personal liability cause material numbers of workers to shy away from the sector, it is possible that labour shortages could emerge and wages may be pushed up (with flow on impacts for fees). It is not possible to determine how likely these impacts are or how significant they would be but the consultation process will be utilised to explore them in greater depth.

### **Benefits**

The main benefit is that educators would be further encouraged to ensure they take care in educating and caring for children, in terms of adequately supervising them and taking every reasonable precaution to protect children from harm and hazards – that is, there would be greater safety and protection for children attending education and care services.

### **Assessment of net benefit**

The benefit of increased safety of children is likely to outweigh any costs related to educators being deterred from working in the sector.

### **Consultation questions**

#### **Consultation Questions – Extending some liability to educators**

Are there aspects of the change options that you believe should not be under consideration? If so, why?

Do the preliminary costs and benefits as described here accord with your views regarding the likely impacts of these options? Are there other impacts that have not been identified here? Please provide substantiating evidence wherever possible.

Does the conclusion with respect to net benefit accord with your expectation regarding the overall impact of these change options?

What are the benefits and costs of the proposed options for change?

## 3.5 Changes to prescribed fees

*Proposal 5.1 – Introduce fee for extension of temporary waiver*

*Proposal 5.2 – Increase in provider approval fee*

*Proposal 5.3 - Increase in service approval fee*

*Proposal 5.4 - Increase in annual fees for approved services*

***Policy problems addressed: Insufficient consistency and clarity.***

Total fee revenue for regulatory authorities under the NQF is currently approximately 7% of preliminary system costs, and therefore does not enable cost recovery at the amount modelled to support regulatory activity (10 – 15 per cent). It is proposed that there is some scope for greater levels of cost recovery for regulatory authorities in specific areas, to help increase the financial sustainability of the NQF and ensure that positive behaviour by providers is encouraged and negative behaviour is discouraged. It should be noted that there is no intention to move to a ‘full cost recovery model’ now or incrementally over time given the significant impact this would have on services and flow on effects to families. However, appropriate fee adjustments would enable more effective regulatory activities with minimal impact on the cost to families utilised NQF approved services.

Fee changes require consideration of the economic costs they may impose (noting that the cost to services in payment of the fee represents a transfer from services to regulators, rather than a resource cost to the economy). The main economic costs to consider are:

- Any compliance burden associated with the fee transaction.
- Any costs – or benefits – generated by behavioural change. These may be quantifiable, but consideration of the mechanisms is required.
- Will the fees serve to encourage or discourage efficient behaviour?
- Are there flow on effects (i.e. will the fees be passed through to parents)?

### 3.5.1 Proposal 5.1 – Introduce fee for extension of temporary waiver

#### Options for introducing fee for extension of temporary waiver

Option number	Description
5.1A	No change
5.1B	Introduce a fee for the extension of a temporary waiver

The National Law provides for extensions and further extensions of temporary waivers for up to 12 months each time upon application of the approved provider. The process for an extension mirrors for the provider and regulator the process of the original application. While there is a prescribed fee for an initial waiver application, there is currently no prescribed fee for an application to extend a temporary waiver. This means that services that have not addressed the underlying temporary issue, can seek an extension without any cost. Introducing a fee for extensions would provide additional incentive for providers of services to address the underlying issues the subject of the first waiver in the time requested in the initial application.

It is therefore proposed that the current fee be charged to services who are applying for an extension to temporary waivers (\$104 in 2014-15). Regulatory authorities in each jurisdiction will have discretion to either discount or waive the fee depending on the services' circumstances (i.e. (i.e. regulatory authorities could choose to waive a fee if a service is affected by an unforeseen natural disaster).

Across Australia, there were 712 temporary waiver applications made in 2013-14, which was a combination of once off temporary waiver applications and extensions of temporary waiver applications. Some jurisdictions have reported up to 10% of waiver applications being waiver extension applications; however, this data is not readily available. Note that in Victoria and Queensland, each application is treated as a new waiver. The total number of temporary waiver applications in these jurisdictions is 336<sup>6</sup>, these have been omitted from the illustrative calculations below.

Assuming 10% of total temporary waiver applications (excluding Victoria and Queensland) are related to temporary waiver extension applications, and an application fee of \$104, this would result in additional total annual fee revenue to regulatory authorities of \$3,952.

If instead of 10%, 20% of total temporary waiver applications (excluding Victoria and Queensland) are related to temporary waiver extensions, the additional total annual fee revenue to regulatory authorities would be \$7,904.

This amount would likely decrease over time, as services better adjust to the requirements of the NQF and therefore less frequently require temporary waivers.

Feedback is sought on what the fee for an extension to a waiver should be.

## **Costs**

Should this preliminary cost be passed through to parents, the impact on a per-child basis is likely to be marginal, given the small fee amount. Compliance burden is also likely to be minimal.

## **Benefits**

Appropriate pricing of temporary waiver extension applications will establish a price signal that should lead to greater discretion in temporary waiver applications and more efficient use of temporary waivers, reducing the administrative cost for regulatory authorities in processing the applications and ultimately leading to greater compliance with the NQF without the need for waivers.

## **Assessment of net benefit**

There is likely to be a net benefit, given the costs are expected to be minimal and likely to be outweighed by the benefits associated with more prudent applications for extensions of temporary waivers.

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<sup>6</sup> Of these 275 applications were from Queensland and 61 applications were from Victoria.

## 3.5.2 Proposal 5.2 – Increase in provider approval fee

### Options for increasing the provider approval fee

Option number	Description
5.2A	No change
5.2B	Increase the provider approval fee by 100%
5.2C	Increase the provider approval fee by 50%

The 2014-15 application fee for provider approval for centre-based and FDC services is \$209. It is proposed that this fee be increased by either 100% or 50%.

In 2013-14, there were 494 applications for provider approval (ACECQA 2014). Assuming the same number of applications in 2014-15 and a fee increase of 100%, this would result in a total annual increase in fee revenue for regulatory authorities of approximately \$103,000. A 50% fee increase would result in a total annual increase in fee revenue for regulatory authorities of approximately \$51,500.

### Costs

There may be costs to the extent that increased fees contribute to slowing of growth in the sector in an undesirable way. For example, the increase may deter potential providers from entering the market or current providers from establishing new services. Should a provider be discouraged from opening a new service in a currently under-serviced area, this would represent a cost. However, diligent applicants should understand the viability benefits of operating in an under-serviced area, so it is likely this cost would be minimised.

Where the cost of any fee increase is passed on by services through increased fees charged to parents, this reduction in affordability for families would also represent a cost. Research shows that, on average, a 10% change in costs to parents can be expected to produce a 2% change in participation (Gong and Breunig, 2012). Low income households have also been shown to have a higher degree of price sensitivity, as do households with multiple young children, single parents, or parents without tertiary qualifications.

This suggests that, on average, fee changes will only modestly impact participation decisions, although there may be a greater impact for the most vulnerable families. Given the relatively small fee increases being proposed, there would also be minimal impact if the pass through of preliminary costs was spread across all children attending the service – that is, on a per child basis, the impact would be minor.

It is expected that any compliance burden associated with these increased fees would be minimal.

*This discussion also applies to Proposal 5.3 and Proposal 5.4 below.*

### Benefits

By creating a price signal through an increase in fees for applications for provider and service approvals, this should encourage an improvement in efficient behaviour. That is, those who are

dedicated to entering the industry as a quality provider after undertaking sufficient due diligence are more likely to pay the fee, while others who are less suitable are more likely to be discouraged.

There will also be (modest) improved recovery of the cost incurred by regulatory authorities in processing applications for provider and service approvals and regulating FDC services. This will positively contribute to the sustainability of the NQF, from a regulatory perspective.

*This discussion also applies to Proposal 5.3 and Proposal 5.4 below.*

### Assessment of net benefit

The net impact largely depends on whether the behavioural change that the fee changes generate takes the system closer to, or further from, efficiency. On balance, it is likely there would be a net benefit, as a measured increase in these specific fees would help improve the financial sustainability of the NQF, through a modest increase in cost recovery for regulatory authorities. These changes should also help curb inefficient behaviour by services, with new providers entering the market and services expanding based on genuine grounds.

*This discussion also applies to Proposal 5.3 and Proposal 5.4 below.*

### 3.5.3 Proposal 5.3 – Increase in service approval fee

#### Options for increasing the service approval fee

Option number	Description
5.3A	No change
5.3B	Increase the service approval fee by 100%
5.3C	Increase the service approval fee by 50%

The 2014-15 application fees for service approval, which vary depending on the size of the service, are outlined in the table below.

**Table 3.3: Application fees for service approval, 2014-15**

	Centre-based service	FDC
Small	\$418	\$627
Medium	\$627	\$627
Large	\$837	\$627

**Source:** ACECOA, 2014

Assuming the number of applications for service approvals across the sector increases at 6% per annum, based on the growth in services over the past five years, there would be 818 applications for centre-based service approvals and 49 applications for family day care service approvals in 2014-15. Assuming that the fee for service approval is increased by 100%, this would result in a total annual increase in fee revenue for regulatory authorities of approximately \$560,000. A 50% fee increase would result in a total annual increase in fee revenue for regulatory authorities of approximately \$280,000.

*See discussion under Proposal 5.2 for costs, benefits and the assessment of net benefit.*

### 3.5.4 Proposal 5.4 – Increase in annual fee for approved services

#### Options for increasing the annual fee for approved services

Option number	Description
5.4A	No change
5.4B	Increase the annual fee for approved services by 100%
5.4C	Increase the annual fee for approved services by 50%

The 2014-15 annual fees for approved services, which vary depending on the size of the service (but do not vary based on service type), are:

- Small service - \$192
- Medium service - \$287
- Large service - \$381.

It is proposed that these fees be increased by either 100% or 50%.

In 2013-14, annual fees were paid by:

- 13,633 centre based services, of which it is estimated:
  - 7% were for small centre based services (less than 25 places)
  - 77% were for medium centre based services (25 to 80 places)
  - 16% were for large centre based services<sup>7</sup> (more than 80 places).
- 802 family day care services of which it is assumed all are large<sup>8</sup>.

Assuming the same number of annual fees in 2014-15 and a fee increase of 100%, this would result in a total annual increase in fee revenue for regulatory authorities of approximately \$4.3 million (ACECQA 2014). A 50% fee increase would result in a total annual increase in fee revenue for regulatory authorities of approximately \$2.2 million.

It should also be noted that, should Proposal 7.1 be adopted (which would require approved FDC providers to hold a service approval in each jurisdiction in which they operate and pay all relevant fees in each jurisdiction in which they operate an FDC service), the increase in fee revenue would be higher than the above preliminary estimates.

*See discussion under Proposal 5.2 for costs, benefits and the assessment of net benefit.*

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<sup>7</sup> The breakdown of service size for centre based services is based on a breakdown of long day care services from 2013 CCMS data.

<sup>8</sup> Available data suggests that at least 48% of family day care services are large; however, specific data on the breakdown of service sizes is at this point unavailable. Therefore, a conservative assumption has been made that all family day care services are large.

## Consultation questions

### Consultation Questions – Changes to prescribed fees

Are there aspects of the change options that you believe should not be under consideration? If so, why?

Do the preliminary costs and benefits as described here accord with your views regarding the likely impacts of these options? Are there other impacts that have not been identified here? Please provide substantiating evidence wherever possible.

Does the conclusion with respect to net benefit accord with your expectation regarding the overall impact of these change options?

What are the benefits and costs of the proposed options for change?

## 3.6 National educator to child ratio for OSHC services

*Proposal 6.1 – National educator to child ratio for OSHC services*

**Policy problems addressed: Insufficient consistency and clarity.**

### 3.6.1 Proposal 6.1 – National educator to child ratio for OSHC services

#### Options for a national educator to child ratio for OSHC services

Option number	Description
6.1A	No change
6.1B	Introduce a national educator to child ratio for OSHC services

At the time of introducing the NQF there was little available research to support national qualification requirements and/or national educator to child ratios for OSHC and so none were specified in the regulations. States and territories that regulated OSHC services included savings provisions under National Regulations (Chapter 7 Jurisdiction specific, transitional and savings provisions). Services operating in jurisdictions that did not regulate OSHC therefore have no specified ratios or qualifications. Some jurisdictions that did regulate OSHC did not have specified ratios or qualifications requirements. While no ratio requirements are currently formally imposed for some services, these services report operating under the broad principles agreed by states and territory governments in 1995, which included a recommended ratio of 1:15.

While services are currently required to provide adequate supervision at all times the lack of any ratio requirement has led to some uncertainty within the sector even after significant guidance material has been developed and made available. In addition, where inadequate supervision is identified as an issue by the regulator, the lack of prescribed ratios makes it more difficult to enforce compliance.

A national standard for OSHC has been raised in feedback from state and territory stakeholder networks, the Productivity Commission's draft report on the Inquiry into Childcare and Early Childhood Learning, the Woolcott Research public consultation report and the Australian Government Department of Education's consultation report on OSHC conducted by Deloitte Access Economics. For

example, the Productivity Commission stated that as there is mandated educator to child ratios in place for children younger than school age, there is no rationale for not having a national ratio in place for school age children to ensure national consistency.

The option of introducing a national educator-to-child ratio for OSHC services educating and caring for children over preschool age from 1 January 2016 has been proposed. If adopted, depending on the ratio agreed, some states and territories may require savings and transitional provisions to preserve existing higher standards or allow sufficient time to introduce this requirement.

This option is to test what the appropriate national educator to child ratio should be. There is no strong evidence of what ratio would deliver the best outcomes for children, however the majority of states and territories currently impose an educator to child ratio of 1:15.

## Costs

Table 3.4 shows the educator to child ratios currently imposed across the states and territories. As can be observed, with the exception of New South Wales, all states and territories currently impose a ratio of 1:15 or higher (less children per educator).

**Table 3.4: Jurisdiction comparison: OSHC ratio requirements**

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Educator to children over preschool age	1:11	None	1:15	1:15	1:15	1:15	1:15	Generally 1:13 or under*

**Source:** Productivity Commission 2014 p. 279. \*Different ratio requirements depending on number of children attending a session.

Whereas Table 3.4 above shows the educator to child ratios that are imposed by regulators, Table 3.5 below estimates the actual ratio that services operate at, on average, in each jurisdiction. On this basis the data suggest that, on average, the sector already operates at a ratio of around 1:11 based on data collected through the 2013 Early Childhood Education and Care Workforce Census and Child Care Management System (CCMS) data sets (see Table 3.5) 9. This would suggest that the introduction of a national ratio up to 1:11 (be that 1:17, 1:15 or 1: 11) would result in a relatively modest overall cost.

**Table 3.5 OSHC educator to child ratio estimates**

	Aus	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Educators (staff)	16,272	722	4,729	239	3,570	1,633	428	4,104	847
Average hours worked per week	12.9	10.0	14.0	20.0	14.0	10.0	15.0	11.0	17.0
Children	211,514	8,263	62,361	2,641	47,251	20,364	4,527	55,885	10,221
Hours of OSHC per week	11.1	10.1	11.8	15.5	12.5	10.1	9.0	9.1	12.9
E:C ratio estimate	11.1	11.6	11.1	8.6	11.8	12.6	6.3	11.3	9.2

**Source:** National Workforce Census 2013, CCMS, Childcare and Early Learning - Management Information Summary Data Report 2012-13. Note: CCMS data is used from 2013 to match the 2013 National Workforce Census.

<sup>9</sup> Calculated by dividing the total number of hours of care attended by children by the total number of hours worked by OSHC educators.

Of course, these averages disguise the fact that some services operate at lower educator to child ratios and, depending on the national ratio considered, could experience additional staffing costs as a result of this proposal. In particular, given that NSW does not currently have a mandated ratio, it may be the case that some services operate at ratios below those imposed by a potential national ratio. For these services, the main cost that would take the form of a higher staffing cost per child.

Given data is not available in relation to individual services operating ratios, the preliminary cost of an additional educator may be used as a guide for possible cost increases for OSHC services in NSW, noting that services could respond to a higher ratio in a myriad of ways including increasing or decreasing enrolments, increasing or reducing staff hours or increasing or reducing the number of employees). In 2013-14, an estimated preliminary cost of \$38,000 is assumed based on a Certificate III wage level.

## **Benefits**

The introduction of a nationally consistent ratio would provide a clear indication of the ratio at which it is expected a quality OSHC service could be delivered and provide national assurance regarding the level of supervision and the quality experience children will receive. It would also bring OSHC in line with other service types which are required to meet nationally consistent ratios. This would avoid the perception among parents and within the sector that different types of services are treated differently without strong justification.

Given that most states already exceed the standard required by the ratio, however, the incremental change derived from introducing a mandated ratio at a national level would not be high.

However, for those services that do not currently meet the ratio, the key benefit relates to an improvement in the quality of the service, with the main beneficiaries being the children that attend the OSHC service. Research literature examining the benefits of structural quality has found that improved educator to child ratios are linked to better outcomes for children, with more attention, affection, responsiveness and stimulation from educators. It should be noted however that lower ratios have been found to be a stronger predictor of quality for younger children (infants and toddlers), compared to older children (Department of Community Services 2008).

## **Assessment of net benefit**

Given that it is not currently possible to estimate the preliminary cost of this proposal, given the lack of data on the number of services that do not currently meet a ratio the net benefit is unclear. However, to the extent that a mandated ratio improves the quality of OSHC service delivery in those services that currently operate below the ratio, there would be clear benefits.

## Consultation questions

### Consultation Questions – National educator to child ratio for OSHC services

Are there aspects of the change options that you believe should not be under consideration? If so, why?

Do the preliminary costs and benefits as described here accord with your views regarding the likely impacts of these options? Are there other impacts that have not been identified here? Please provide substantiating evidence wherever possible.

Does the conclusion with respect to net benefit accord with your expectation regarding the overall impact of these change options?

What are the benefits and costs of the proposed options for change?

## 3.7 Improved oversight of and support within FDC services

*Proposal 7.1 – Approval of FDC services across jurisdictions*

*Proposal 7.2 – Limiting the number of FDC educators in a service*

*Proposal 7.3 – Mandating a ratio of FDC co-ordinators to educators*

*Proposal 7.4 – Mandating a minimum Certificate III for FDC educators*

*Proposal 7.5 – FDC educator assistants' activities*

*Proposal 7.6 – Principal office notifications*

*Proposal 7.7 – Powers of entry to FDC residences*

**Policy problems addressed: Insufficient consistency and clarity.**

Under the National Law, approved FDC providers have primary responsibility for ensuring compliance by FDC educators. Regulatory authorities primarily work with approved providers to secure compliance with the National Law. However, regulatory authorities' current experience with providers of FDC services indicates that the regulatory model needs strengthening to achieve better compliance and improve the quality of service provision.

There has been unprecedented growth in the FDC sector, particularly the number of new providers and services, with 45% growth in approved services in 2013. Currently FDC services experience higher rates of non-compliance with the NQF, compared to centre-based services. This growth is creating significant challenges for regulatory authorities using the current legislation to monitor compliance and quality in FDC services and ensure quality outcomes for children. Current regulatory powers and operations did not adequately foresee the extent of FDC services operating over multiple jurisdictions. For example, while providers under current arrangements can have educators in all states and territories, regulators can only regulate within their own borders. This limits regulators ability to monitor that adequate support is provided to all educators and that appropriate quality education and care is provided by all educators operating within a FDC service.

### 3.7.1 Proposal 7.1 – Approval of FDC services across jurisdictions

#### Options for approval of FDC services across jurisdictions

Option number	Description
7.1A	No change
7.1B	Approved FDC providers be required to hold a service approval in each jurisdiction in which they operate (including paying all relevant fees in each jurisdiction in which they operate an FDC service)

Approved providers are able to operate across jurisdictions with one approval, which can make it difficult for jurisdictionally based regulatory authorities to monitor the support provided to individual educators and compliance by the service to ensure all educators comply with the NQF.

In addition, the NQF has no centralised list of FDC educators, limiting knowledge about the extent of services operating across jurisdictions. Regulatory authorities may request a register of FDC educators from an approved provider with information about each of the FDC educators engaged or registered by the service – however, the mobility of educators means that once compliance action is taken, educators may simply move to a new service making them difficult to trace.

There is concern that providers operating low quality FDC services may intentionally seek to exploit any weakness in the regulatory model by, for example, an educator joining a service across a state border to avoid monitoring.

Given that regulatory authorities must be able to take appropriate regulatory action to ensure the health, safety and wellbeing of children, it is proposed that an approved provider be required to hold a service approval in each jurisdiction in which they operate, similar to the centre-based approval process.

The effect of this change is that approved providers would need to pay all relevant fees in each jurisdiction in which they operate an FDC service. However, it is also proposed that there be special arrangements in the new regulatory scheme where a service straddles adjacent jurisdictions (e.g. one jurisdiction may allow the same principal office for both service approvals). There would also need to be a transitional period to allow FDC services currently operating across jurisdictions sufficient time to apply for service approvals.

In 2013-14, there were a total of 759 FDC services across Australia. As shown in Table 3.6, 60 FDC providers in Australia had educators operating interstate. FDC providers currently pay a \$627 application fee for FDC service approval, and an annual fee for each service, which ranges between \$192 and \$381 depending on service size. As part of a service approval, an approved family day care provider must also associate its service with a principal office.

**Table 3.6: FDC providers with educators operating interstate**

ACT	NSW	NT	QLD	SA	TAS	VIC	WA
4	25	–	3	2	1	22	3

**Source:** Data request to Australian Government Department of Education (2014)

Prior to contemplating this option a concerted effort by all jurisdictions and the Commonwealth was undertaken to improve knowledge of the FDC providers responsibilities and requirements under the

NQF and associated Family Assistance Law which governs support for families with fees. This included, strengthening guidance material and a number of consultation and information sessions. This approach had little impact on compliance rates. As a result only one option has been put forward for consideration as options that fall short of a requirement to have a separate approval in each jurisdiction an FDC provider operates is unlikely to address underlying concerns. Options that imposed additional requirements beyond separate jurisdictional approval were not put forward due to the significant increase in regulatory burden without sufficient return on improved compliance and quality service delivery.

However, like all of the proposals put forward in this Consultation RIS, feedback and the provision of additional options for consideration is invited.

### Costs

The main preliminary cost associated with this proposed change is the compliance burden for affected FDC providers in having to establish and operate a principal office in each jurisdiction for which they hold a service approval (noting that the cost to providers of paying the fee is not an economic cost).

There are 60 FDC providers currently operating interstate – however, it is unclear how many of these providers would be required to establish additional principal offices (and how many principal offices would be need to be established i.e. how many states each provider operates in). Therefore, the extent of the likely preliminary costs is unclear, but they are not expected to be significant in terms of the proportion of the sector affected.

Introducing a requirement for FDC approved providers to have a service approval for each jurisdiction in which its educators operate is expected to encourage higher quality FDC service provision. There will be a decreased risk of a prohibited educator operating, with regulatory authorities having higher visibility of FDC services and educators, in turn enhancing the health, safety and wellbeing of children.

### Assessment of net benefit

Noting that the extent of any preliminary costs is somewhat unclear, they are not expected to be significant in terms of the impact on the broader sector. It could therefore be assumed that the benefits are likely to outweigh the preliminary costs, given the potential risk to children where FDC services are operating without regulatory authority oversight.

## 3.7.2 Proposal 7.2 – Limiting the number of FDC educators in a service

### Options for limiting the number of FDC educators in a service

Option number	Description
7.2A	No change
7.2B	Amend the National Law so that a regulatory authority may impose a maximum number of educators approved to be engaged or registered by a FDC service and include this on the service approval

Unlike centre-based services, FDC services are not licensed for a maximum number of places, which means that growth of an FDC service is solely at the discretion of the approved provider with no oversight by regulatory authorities. However, a FDC service must engage FDC co-ordinators to support, monitor and train FDC educators.

As part of the application process for service approval, the regulatory authority must have regard to the NQF objectives and may have regard to the management capability of the applicant. However, it has proven difficult to adequately assess the likely future operation of a FDC service when the size of the service is unknown. In order to assess these factors, regulatory authorities generally need to have some sense of the maximum number of educators the service may engage and therefore the capacity of the coordinator to provide appropriate monitoring, support and training for FDC educators operating under the FDC service.<sup>10</sup> Currently a number of jurisdictions are imposing conditions on the service approval to limit the number of educators to ensure appropriate oversight and quality service delivery.

To address these concerns, it is proposed that the National Law is amended to make it clear that a regulatory authority *may* impose on a case by case basis a maximum number of educators approved to be engaged or registered by a FDC service and include this on the service approval. This could take into account the history of the approved provider compliance with the NQF.

Limiting the number of FDC educators in a service would help ensure that a new FDC service grows at an appropriate pace e.g. that it has appropriate policies and procedures in place before it expands, and that it does not grow beyond its management capability.

Information from the Australian Government Department of Education has shown that there has been considerable growth in FDC services especially in the last year and that non-compliant services often had significant increased numbers of educators.

The option to remain at status quo would mean that state and territories continue their current practices for limiting the number of educators per service which will vary from state to state.

Only two options were considered as this was an either or scenario.

## Costs

Specifying a maximum number of educators for individual services may result in foregone revenue for some individual services. Such a change may in the short term reduce the number of FDC places available; however, as a whole, the sector is likely to compensate for this in the long run with a higher number of services (that is, rather than fewer large services, the sector would be characterised by a larger number of smaller services). To the extent that larger services are more efficient (i.e. generate economies of scale), a reduction in the number of educators per service could see a modest increase in unit costs. Given the cost of FDC service provision is predominated by the cost of the educator, any inefficiencies resulting from lost economies of scale are anticipated to be minor.

It is likely that the majority of FDC services will not be affected by this change as the intent of the change is to prevent the operation of FDC services which engage an excessive number of FDC educators (i.e. this is not a blanket measure but would be adopted by regulatory authorities on a case by case basis). Table 3.7 gives an indication as to the size of FDC services.

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<sup>10</sup> An application for FDC service approval must include the number of FDC educators expected to be engaged within 6 months, but there is no obligation for the provider to notify the regulatory authority of new educators once they have gained service approval, unless they are operating at an FDC venue.

**Table 3.7: FDC service size measured by number of educators**

Number of educators	% of FDC services
Less than 50 educators	52.6
Between 50 and 100 educators	26.9
Between 100 and 200 educators	14.2
Between 200 and 300 educators	4.4
Between 300 and 400 educators	1.4
Between 400 and 500 educators	0.4

**Source:** Data request to the Australian Government Department of Education (2014)

### **Benefits**

Similar to benefits derived from a FDC coordinator to educator ratio, this proposed change is geared towards ensuring that FDC educators are better supported in their role. Some large FDC services have demonstrated they are not likely to be able to provide adequate support for FDC educators, as the principal office support staff may be too limited in resources to pay sufficient attention to all educators. Increased support for educators would result in a higher quality of service and education, ultimately translating to improved safety and quality outcomes for children.

### **Assessment of net benefit**

The net impact of this change cannot be determined at this stage. Depending on where the limit is set, the long run costs are likely to be modest (although there will be additional costs associated with transition). Whether the benefits will offset these and produce a net positive impact overall, cannot be reliably gauged at this point.

### 3.7.3 Proposal 7.3 – Mandating a ratio of FDC co-ordinators to educators

#### Options for mandating a ratio of FDC co-ordinators to educators

Option number	Description
7.3A	No change
7.3B	Introduce a 1:10 ratio of FDC co-ordinators to educators
7.3C	Amend the National Law on conditions on service approval to include a duty for the approved provider to ensure that FDC educators are adequately supported, monitored and trained
7.3D	Introduce a 1:15 ratio of FDC co-ordinators to educators AND/OR Amend the National Law on conditions on service approval to include a duty for the approved provider to ensure that FDC educators are adequately supported, monitored and trained
7.3E	Introduce a 1:20 ratio of FDC co-ordinators to educators AND/OR Amend the National Law on conditions on service approval to include a duty for the approved provider to ensure that FDC educators are adequately supported, monitored and trained

The National Law uses an outcomes-based approach to requiring the approved provider to ensure there are sufficient FDC co-ordinators to monitor, support and train FDC educators and ensure that each FDC educator is adequately monitored and supported by a co-ordinator. Approved providers must also ensure that at all times one or more co-ordinators are engaged to support and monitor the FDC educators of that service. The requirement to provide training to FDC educators was managed through Guidance Material and this change now makes it a requirement as there was little or no evidence of training occurring and the adequacy of support was open to individual provider interpretation.

As mentioned, information from the Australian Government Department of Education has shown that there has been considerable growth in FDC services especially in the last year. The Australian Government Department of Education made the observation that the non-compliant services grew in size substantially – usually through increased numbers of educators. This raised concerns about the capacity of services to adequately monitor the quality of care provided by these educators.

As the current approach does not prescribe the number of FDC co-ordinators or detail the type of support they must provide, it is suggested that uncertainty around what constitutes sufficient monitoring and support and increased clarity of when this is not provided could be addressed through legislative change as follows:

- a ratio of FDC co-ordinators to educators be introduced, being mindful of service viability and staff qualifications
  - options for the ratio are 1:10, 1:15 and 1:20 and
- amend Section 51(2)(b) of the National Law, concerning conditions on service approval, to include a duty for the approved provider to ensure that FDC educators are adequately supported,

monitored and trained, having regard to the knowledge, experience and qualifications of the FDC educator and the education and care needs of the children attending the service.

## Costs

The proposed change to mandate a minimum co-ordinator to educator ratio of 1:10, 1:15 or 1:20 may increase compliance costs for FDC services that do not currently meet the required ratios.

Current ratios can be estimated using data on the number of FDC co-ordinators and educators currently employed, as outlined in Table 3.8. It should be noted that these estimated ratios are averages only, and it may be the case that actual ratios vary significantly from provider to provider.

**Table 3.8: Estimated FDC co-ordinator to educator ratios, 2013**

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Number of FDC co-ordinators	20		18	281		35	725	
Number of FDC educators	373	12,412	220*	3,727	927	550	15,289	1,041*
Estimated ratio	1:19		1:12	1:13		1:16	1:21	

**Source:** National Workforce Census 2013; Data request to the Australian Government Department of Education (2014); where data is left blank, it is an indication that the data is unavailable. \*These data items are from 2013. [DoE reference is workforce census]

Although this may be a material cost for those providers who are affected, in per child terms, the cost is likely to be modest (that is, once the cost is distributed across all children).

As data on co-ordinator numbers is only collected in selected jurisdictions, a preliminary estimate of indicative average costs of co-ordinator to educator ratios in family day care is provided in Table 3.9, for those states and territories that have co-ordinator data.

These preliminary estimates assume an average wage cost of \$46,000 per co-ordinator per annum (based on an average wages of diploma level child care workers). The costs vary significantly across jurisdictions and depending on the ratio under consideration.

**Table 3.9: Indicative average preliminary costs of co-ordinator to educator ratios**

	ACT	NSW*	NT	QLD	SA*	TAS	VIC	WA*
Estimate of current ratio	1:19		1:12	1:13		1:16	1:21	
Additional staff								
New ratio 1:10	18		4	92		20	804	
New ratio 1:15	5		0	0		2	295	
New ratio 1:20	0		0	0		0	40	
Additional costs								
New ratio 1:10	\$835,000		\$198,000	\$4,153,000		\$945,000	\$36,552,000	
New ratio 1:15	\$232,000		No cost	No cost		\$95,000	\$13,411,000	
New ratio 1:20	No cost		No cost	No cost		No cost	\$1,818,000	

	ACT	NSW*	NT	QLD	SA*	TAS	VIC	WA*
Additional cost per educator								
New ratio 1:10	\$2,200		\$900	\$1,100		\$1,700	\$2,400	
New ratio 1:15	\$600		No cost	No cost		\$200	\$900	
New ratio 1:20	No cost		No cost	No cost		No cost	\$100	

**Source:** Deloitte Access Economics analysis. Note: wage costs are based off average wage costs of diploma level child care staff in each jurisdiction. \*Coordinator data not available for these states.

## Benefits

This proposed change is geared towards ensuring that FDC educators are better supported in their role, for example through increased contact time with the FDC coordinator. Adequate support for FDC educators is particularly important, given they do not work in a centre-based service and are therefore less exposed to other educators, with subsequent impacts on professional development. Increased support from a co-ordinator would result in greater levels of supervision, a higher quality of service and education, ultimately translating to improved safety and quality outcomes for children.

## Assessment of net benefit

It is indeterminable as to whether there would be a net benefit from this change, as the likely costs to the sector are unclear and it cannot be robustly determined as to whether the extent of benefits related to higher quality FDC service provision would outweigh these preliminary costs.

### 3.7.4 Proposal 7.4 – Mandating a minimum Certificate III for FDC educators

#### Options for mandating a minimum Certificate III for FDC educators

Option number	Description
7.4A	No change
7.4B	Require all FDC educators to have an approved Certificate III (or equivalent) before being permitted to educate and care for children, rather than working towards the qualification, which is currently the requirement

FDC educators have similar qualification requirements to centre-based educators where they are currently only required to be actively working towards the Certificate III qualification. However, unlike educators in centre-based services who are working towards a Certificate III qualification, FDC educators work without direct supervision or daily staff contact. This could be considered a cause for concern for the wellbeing of children in FDCs and the quality of service delivery by educators who are not fully qualified.

It is proposed that there could be a requirement for all FDC educators to have a Certificate III (or equivalent) before being permitted to educate and care for children, rather than working towards the qualification, which is currently the requirement. It should be noted, in South Australia there is already a requirement for FDC educators to have a Certificate III before educating or caring for children. To date, there has not been sufficient assessment and rating visits conducted to provide adequate evidence regarding the potential benefits of a higher or lower qualification.

A transitional provision would be needed to give time for approved providers and FDC educators to comply with the new requirements. Consideration could also be given to FDC educators being taken to meet this requirement if they have completed a specified proportion of the Certificate III course.

## Costs

Most FDC educators currently have at least a Certificate III qualification in a relevant field (see 3.10).

**Table 3.10: FDC educators working towards a qualification by state, 2013**

Qualification	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
Educators	10,784	14,302	3,727	1,165	1,910	559	326	186
Teacher	2%	2%	3%	1%	3%	3%	2%	2%
Diploma	25%	24%	27%	24%	32%	34%	17%	20%
Certificate III	53%	56%	37%	63%	48%	52%	59%	70%
Unqualified (including those working towards a qualification)	20%	19%	33%	11%	17%	10%	23%	7%

**Source:** Deloitte Access Economics (2014). Qualifications are based on the highest level of qualification related to ECEC attained, therefore, persons working towards a qualification are considered unqualified.

Preliminary costs associated with requiring FDC educators to have attained a Certificate III before being commencing employment are likely to be minimal, given that educators must already be working towards this qualification, a relatively small proportion of the current workforce would be affected and there would be an appropriate transition period for these educators.

For potential entrants to the FDC educator workforce, some training costs may be incurred and there could potentially be some workforce gaps in the short term. However, such costs are expected to be relatively minor.

## Benefits

The main benefit of this proposed change is increased quality of education and care for children attending FDC services, by ensuring that FDC educators are fully and appropriately qualified before educating and caring for children. This is especially important in a FDC environment, where the FDC educator is generally without daily contact or support from other educators (in comparison to centre-based services).

## Assessment of net benefit

A preliminary assessment suggests that benefits are likely to outweigh any costs, given the importance of ensuring quality FDC educators and the minimal costs that would arise given that a transition period would be applied for educators currently employed and working towards a Certificate III.

### 3.7.5 Proposal 7.5 – FDC educator assistants’ activities

#### Options for FDC educator assistants’ activities

Option number	Description
7.5A	No change
7.5B	Create an offence (with attached penalty) that an approved provider must ensure the assistant’s activities are limited to the circumstances set out in Regulation 144(2) (as amended), with the penalty set at \$2,000

Regulation 144 provides for circumstances in which an approved FDC educator assistant may, with the written consent of a parent of each child, assist the FDC educator, including attending an appointment (other than a regular appointment).

The meaning of the term ‘regular appointment’ is unclear and is currently being construed by some service providers as allowing them to leave children with an assistant while they undertake personal tasks. This potentially leaves the children in the care of someone who does not have any training in children’s education and care for more time than is necessary, impacting on the quality of the education and care.

It is therefore proposed to create an offence (with attached penalty) that an approved provider must ensure the assistant’s activities are limited to the circumstances set out in Regulation 144(2) (as amended). The penalty would be set at \$2,000, consistent with other approved provider regulation offences.

*It should be noted that this proposal links to proposed clarification of the term ‘regular appointment’ in Regulation 144(2)(c) concerning the assistance of FDC educator assistants. The proposed clarification aims to ensure that children would not be left with a FDC educator assistant during such regular appointments. The suggested clarification is:*

*‘a regular appointment is an appointment where the time and place of the appointment is reasonably predictable from one appointment to the next’ or*

*‘a regular appointment is an appointment where the circumstances of the appointment are largely the same from one appointment to the next’*

*This would include attendance at a course of study or language class.*

#### Costs

The proposed change is not likely to result in any increased costs as it does not alter the intent of the National Law in any way; it merely represents the addition of an enforcement tool.

#### Benefits

The main anticipated benefit is that FDC providers would be further encouraged to ensure that assistants limit their activities to the scope of the NQF, likely resulting in improvements in the safety and quality of FDC services.

## Assessment of net benefit

The benefit of increased safety and quality of FDC services is likely to outweigh any costs related to the introduction of an offence.

### 3.7.6 Proposal 7.6 – Principal office notifications

#### Options for principal office notifications

Option number	Description
7.6A	No change
7.6B	A FDC service must notify the regulatory authority of changes to the principal office at least 14 days before the change AND The regulatory authority must amend or refuse to amend a new service approval within 14 days of the above notification and, if the principal office is also to be a venue or a residence, then the amended service approval must be issued before the commencement of any care at the venue or residence

It is proposed that regulatory authorities are notified at least 14 days in advance prior to a change in a FDC service's principal office, as a change in the principal office (especially if the principal office is moved to a different jurisdiction) may potentially impact the ability of the approved provider to adequately co-ordinate its educators, ultimately affecting the well-being of the children under its care. The recommendations seek to improve compliance with the National Law and National Regulations by widening a regulatory authority's powers of assessing and monitoring the suitability of FDC principal offices.

It is proposed that:

- a FDC service must notify the regulatory authority of changes to the principal office at least 14 days before the change, with the FDC approved provider providing proof of address for the new principal office (e.g. contract or rental agreement); and
- the regulatory authority must amend or refuse to amend a new service approval within 14 days of the above notification (with regulatory authorities able to exercise discretion to increase the length of this period) and, if the principal office is also to be a venue or a residence, then the amended service approval must be issued before the commencement of any care at the venue or residence.

#### Costs

Requiring prior notification of relocation of a principal office may bring about minor delay costs and restrict flexibility of FDC providers. There may also be some minor costs to regulatory authorities as they are required to respond to the notification within 14 days. These preliminary costs are not likely to be significant as FDC providers are already required to notify the regulatory authority of any relocations in principal office.

#### Benefits

By providing prior notification of principal office relocation, regulatory authorities will have better oversight of FDC services improving their ability to enforce the National Law and National Regulations.

## Assessment of net benefit

As preliminary costs are expected to be insignificant, benefits associated with increasing the regulatory authorities' oversight of FDC providers will likely outweigh any costs associated with this proposed change.

### 3.7.7 Proposal 7.7 – Powers of entry to FDC residences

#### Options for powers of entry to FDC residences

Option number	Description
7.7A	No change
7.7B	Amend the National Law to allow authorised officers to enter FDC residences where the authorised officer <i>reasonably believes</i> that a service is operating at the residence at the time of entry

Section 199 of the National Law provides authorised officers with powers of entry for investigating an approved education and care service when the authorised officer reasonably suspects an offence has been committed against the National Law. This power of entry does not require a search warrant. However, Section 199(4) does not permit this entry to FDC residences unless the service *is operating* at the time of the visit or where the occupier of the residence has given consent. Problems arise where an authorised officer cannot determine whether the service is operating at the time of the visit to then be able to enter.

It is proposed that Section 199(4)(a) of the National Law be amended to allow authorised officers to enter FDC residences where the authorised officer *reasonably believes* that a service is operating at the residence at the time of entry.

#### Costs

Changes to the permissibility of entry of authorised officers into FDC residences is unlikely to bring about a significant cost increase as it represents an increase in flexibility of current practices for regulatory authorities.

#### Benefits

This change is likely to bring about an increase in the flexibility of authorised officers in enforcement of the National Law and National Regulations. There may also be benefits stemming from a reduction in delay costs, however, this has not been quantified. The main benefit relates to enhanced safety of children.

## Assessment of net benefit

There is likely to be a net benefit, given the preliminary costs are minimal and likely to be outweighed by the benefits associated with more flexibility in entry of FDC residences by authorised officers and improved safety of children in FDC services.

## Consultation questions

### Consultation Questions – Improved oversight of and support within FDC services

Are there aspects of the change options that you believe should not be under consideration? If so, why?

Do the preliminary costs and benefits as described here accord with your views regarding the likely impacts of these options? Are there other impacts that have not been identified here? Please provide substantiating evidence wherever possible.

Does the conclusion with respect to net benefit accord with your expectation regarding the overall impact of these change options?

What are the benefits and costs of the proposed options for change?

## 3.8 Other changes which will have a regulatory impact

A range of other options for change, which are expected to have a regulatory impact, have been identified. Further information about these changes is provided in Appendix A.

### **Approvals**

*Proposal 8.1.1 - Approvals – assessment of capability*

*Proposal 8.1.2 - Approvals – assessment of capability*

*Proposal 8.1.3 - Approvals – assessment of capability*

*Proposal 8.1.4 - Approvals – maximum children numbers as service approval condition*

### **Waivers**

*Proposal 8.2.1 - Revocation of waivers*

### **Supervisors**

*Proposal 8.3.1 - Selecting a nominated supervisor/ person in day to day charge (PIDTDC)*

*Proposal 8.3.2 - Powers of the regulatory authority*

*Proposal 8.3.3 - Job sharing*

*Proposal 8.3.4 - Consenting to the role*

*Proposal 8.3.5 – Notifications*

*Proposal 8.3.6 - Record keeping*

*Proposal 8.3.7 – Terminology*

*Proposal 8.3.8 - Child protection and Nominated Supervisors*

### **Operational issues**

*Proposal 8.4.1 - 12 Weeks ECT Leave Provision - Extending the scope to include resignation*

*Proposal 8.4.2 - Educator Breaks*

*Proposal 8.4.3 - First Aid Qualifications*

### **Compliance, review, monitoring and enforcement**

*Proposal 8.5.1 - Undertakings – expansion of scope*

*Proposal 8.5.2 - Undertakings – time within which proceedings for alleged offence must be commenced*

*Proposal 8.5.3 - Drafting issues – definition of ‘unauthorised person’*

*Proposal 8.5.4 - Extension of liability – definition of ‘person with management and control’*

### ***Information sharing***

*Proposal 8.6.1 - Compliance and Enforcement Information*

*Proposal 8.6.2 - Sharing of Information within and between other state or territory government agencies*

*Proposal 8.6.3 - Publication of Information*

### ***Administrative requirements***

*Proposal 8.7.1 - Notifying the regulatory authority of a complaint*

*Proposal 8.7.2 - Regulations – Medical conditions policy*

*Proposal 8.7.3 - Regulations – Evidence of insurance*

### ***Transitional and savings provisions***

*Proposal 8.8.1 - Qualification requirements for supervisors of volunteers (Victoria specific requirement)*

***Policy problems addressed: Areas of unnecessary regulatory and administrative burden; Insufficient consistency and clarity.***

## **3.8.1 Proposals of particular interest to the sector**

It should be noted that some of these proposals are likely to be of particular interest to the sector – for example, proposals that relate to educator leave and breaks.

The proposals expected to be of interest to the sector are outlined below.

### ***Child protection training (Proposal 8.3.8)***

- It is proposed that the National Law and National Regulations be amended to provide that nominated supervisors and persons in day to day charge of an education and care service must have undertaken child protection training.

### ***Educator leave (Proposal 8.4.1)***

- Regulation 135 states that if an early childhood teacher is absent because of short-term illness or leave (defined as less than 12 weeks), a person who holds an approved diploma level education and care qualification or a primary teaching qualification is taken to be an early childhood teacher during that period.
- To provide further flexibility to providers, it is proposed that Regulation 135 is amended to allow providers to also use this provision after the resignation of an early childhood teacher. This would also apply to services that engage a full time or full time equivalent early childhood teacher.
- However, this proposal would clarify that the leave is able to be taken accumulatively, up to a total of 12 weeks within a year.
- It is also proposed that a savings provision for NSW be included so that this change would not apply.

### ***Educator breaks (Proposal 8.4.2)***

- It is proposed that guidance on educator breaks is amended to make clear that service providers must comply with their legal obligations and must meet prescribed ratio requirements at all times, subject to jurisdiction-specific transitional arrangements.

### ***Further information for assessment of capability for approvals (Proposal 8.1.2)***

- It is proposed that Section 14 of the National Law be expanded to allow regulatory authorities to seek further information with respect to an applicant's capability to operate an education and care service in accordance with the National Law when assessing applications for provider approval.

### ***Reassessment of capability to operate a service (Proposal 8.1.3)***

- Section 21 of the National Law enables regulatory authorities to, at any time, reassess the fitness and propriety of an approved provider or person with management or control to be involved in the provision of an education and care service.
- It is proposed that Section 21 be expanded to encompass the reassessment of an approved provider's capability to operate an education and care service in accordance with the National Law.

### ***Extension of liability – definition of 'person with management and control' (Proposal 8.5.4)***

- It is proposed that the definition of "person with management or control" (Section 5) in the National Law be amended by providing that a person in the relevant position (for example, an officer of the body corporate in subsection (a)) would always be a person with management or control.
- This will require the deletion of the words "who is responsible for managing the delivery of the education and care service" from subsections (a)-(d).
- Selecting a nominated supervisor/ person in day to day charge (PIDTDC) (Proposal 8.3.1)
- It is proposed that the National Law and National Regulations be amended to designate the approved provider as the body responsible for appointing a suitably skilled educator who is prescribed by law to be 18 years or older.
- It is also proposed that, in support of the approved provider's role, guidelines be published of appropriate types of qualifications, skills or experience and evidence of fitness and propriety in determining who would be suitably skilled. The guidance would also emphasise the importance of making sure providers are aware of any changes affecting the fitness and propriety of a nominated supervisor/PIDTDC.
- Finally, it is proposed that further changes are made to the National Law to signal to providers the importance of making considered decisions in appointing the nominated supervisor/PIDTDC, such as amending Section 161 to provide that each service must have a nominated supervisor 'who is fit and proper, and has appropriate skills, to supervise the service.'

### ***Powers to restrict a person from being the nominated supervisor/PIDTDC (Proposal 8.3.2)***

- It is proposed that the National Law is amended to give the regulatory authority a mechanism to restrict a person from being the nominated supervisor/PIDTDC either entirely or subject to certain conditions, with an appropriate offence and penalty regime.

### ***Publication of information (Proposal 8.6.3)***

- It is proposed that Section 270(6) of the National Law is repealed to remove restriction on disclosure of information that the regulatory authority publishes about enforcement actions, so as to allow publication of enforcement actions that identify or lead to the identification of an individual where it furthers the objective of the National Law.
- It is also proposed that Section 270(5) of the National Law is replaced with a provision drafted in similar terms to Section 45A of the Child Care Services Act 2007 (WA) to provide the regulatory

authority with a broad power to publicise enforcement actions, constrained only by a requirement that it must further the objective of the National Law.

*An assessment of the likely impact of all other changes which are expected to have a regulatory impact (Proposal 8.1 to 8.8) is outlined in Appendix C.*

## Options for other changes which will have a regulatory impact

- Approvals – assessment of capability (Proposal 8.1.1)
  - 8.1.1A No Change
  - 8.1.1B Adopt proposed change
- Approvals – assessment of capability (Proposal 8.1.2)
  - 8.1.2A No change
  - 8.1.2B Adopt proposed change
- Approvals – assessment of capability (Proposal 8.1.3)
  - 8.1.3A No change
  - 8.1.3B Adopt proposed change
- Approvals – maximum children numbers as service approval condition (Proposal 8.1.4)
  - 8.1.4A No change
  - 8.1.4B Adopt proposed change
- Revocation of waivers (Proposal 8.2.1)
  - 8.2.1A No change
  - 8.2.1B Adopt proposed change
- Selecting a nominated supervisor/PIDTDC (Proposal 8.3.1)
  - 8.3.1A No change
  - 8.3.1B Adopt proposed change
- Adopt proposed change Powers of the regulatory authority (Proposal 8.3.2)
  - 8.3.2A No change
  - 8.3.2B Adopt proposed change
- Job sharing (Proposal 8.3.3)
  - 8.3.3A No change
  - 8.3.3B Adopt proposed change
- Consenting to the role (Proposal 8.3.4)
  - 8.3.4A No change
  - 8.3.4B Adopt proposed change
- Notifications (Proposal 8.3.5)
  - 8.3.5A No change
  - 8.3.5B Adopt proposed change
- Record keeping (Proposal 8.3.6)
  - 8.3.6A No change
  - 8.3.6B Adopt proposed change
- Terminology (Proposal 8.3.7)
  - 8.3.7A No change
  - 8.3.7B Adopt proposed change
- Child protection and nominated supervisors (Proposal 8.3.8)
  - 8.3.8A No change
  - 8.3.8B Adopt proposed change
- 12 Weeks ECT Leave Provision - Extending the scope to include resignation (Proposal 8.4.1)
  - 8.4.1A No change
  - 8.4.1B Adopt proposed change

- Educator breaks (Proposal 8.4.2)
  - 8.4.2A No change
  - 8.4.2B Adopt proposed change
- First Aid Qualifications (Proposal 8.4.3)
  - 8.4.3A No change
  - 8.4.3B Adopt proposed change
- Undertakings – expansion of scope (Proposal 8.5.1)
  - 8.5.1A No change
  - 8.5.1B Adopt proposed change
- Undertakings – time within which proceedings for alleged offence must be commenced (Proposal 8.5.2)
  - 8.5.2A No change
  - 8.5.2B Adopt proposed change
- Drafting issues – definition of ‘unauthorised person’ (Proposal 8.5.3)
  - 8.5.3A No change
  - 8.5.3B Adopt proposed change
- Extension of liability – definition of ‘person with management and control’ (Proposal 8.5.4)
  - 8.5.4A No change
  - 8.5.4B Adopt proposed change
- Compliance and Enforcement Information (Proposal 8.6.1)
  - 8.6.1A No change
  - 8.6.1B Adopt proposed change
- Sharing of Information within and between other state or territory government agencies (Proposal 8.6.2)
  - 8.6.2A No change
  - 8.6.2B Adopt proposed change
- Publication of information (Proposal 8.6.3)
  - 8.6.3A No change
  - 8.6.3B Adopt proposed change
- Notifying the regulatory authority of a complaint (Proposal 8.7.1)
  - 8.7.1A No change
  - 8.7.1B Adopt proposed change
- Regulations – Medical conditions policy (Proposal 8.7.2)
  - 8.7.2A No change
  - 8.7.2B Adopt proposed change
- Regulations – Evidence of insurance (Proposal 8.7.3)
  - 8.7.3A No change
  - 8.7.3B Adopt proposed change
- Qualification requirements for supervisors of volunteers (Victoria specific requirement) (Proposal 8.8.1)
  - 8.8.1A No change
  - 8.8.1B Adopt proposed change

## Consultation questions

### Consultation Questions – Other changes which will have a regulatory impact

Are there aspects of the change options that you believe should not be under consideration? If so, why?

Does the description of the impact of these changes in Appendix C accord with your views regarding the likely impacts of these options? Are there other impacts that have not been identified here? Please provide substantiating evidence wherever possible.

Are any of the proposals that are considered to be of particular interest to the sector likely to have a larger than expected impact? Please provide substantiating evidence wherever possible.

What are the benefits and costs of each of the proposals for change?

## 4 Consultations

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### *Consultations to date*

As part of the 2014 Review of the NP NOA, a public consultation process was undertaken to enable the sector and parents and families to provide feedback on the implementation and operation of the NQF, including how it may be improved.

Woolcott Research was engaged to facilitate and manage the consultation process on behalf of all governments.

A consultation paper was released at the commencement of the consultation period to inform and/or prompt responses from those participating in the consultation process.

Public consultation sessions were held in each state and territory from 26 May to 19 June 2014. A separate consultation session for peak organisations was also held in each capital city.

In addition to face to face consultation sessions, Woolcott Research hosted a dedicated website, with the online lodgement of comments or completion of a survey for services or families. Formal submissions were also invited from interested stakeholders. The closing date for written feedback was 4 July 2014.

As well as seeking feedback on the individual components of the NQF, including the National Law and National Regulations, the National Quality Standard and the assessment and rating system, broad feedback was also sought about the:

- strengths of the NQF and what is working well
- opportunities for streamlining, reducing regulatory burden and improving the NQF
- cultural or behavioural changes that may have emerged as a result of the implementation of the NQF.

Feedback was provided from a wide range of stakeholders, with:

- 1,335 people attending 55 consultation sessions;
- 638 responses to the online survey;
- 280 online comments; and,
- 187 formal submissions.

### *Additional targeted family-focused consultations*

Woolcott Research was also engaged to host face to face family focus groups in some states and territories. These groups were targeted to help improve public knowledge about the NQF and assist families' understanding of quality early childhood education and care. The focus groups captured views from families who use a range of services including long day care, family day care, preschool, outside school hours care and Budget Based Funded services.

A total of 92 people attended the family focus groups.

### ***Additional targeted Outside School Hours Care consultations***

Deloitte Access Economics was engaged to examine how OSHC services operate under the NQF and identify options for alternative approaches or changes to requirements that recognise the significant differences between OSHC and other education and care services covered by the NQF.

Targeted consultation sessions were held in most states and territories, in metropolitan, regional and remote locations. Views were obtained from a sample of OSHC services (before and after school care and vacation care), representing the different settings in which OSHC is delivered such as school based, stand alone and services offered with long day care. Peak bodies representing the OSHC sector were also consulted.

A total of 26 OSHC providers and five peak bodies were consulted covering each of the different types of OSHC services.

### ***Consultation on RIS options***

Further public consultation will be conducted to seek feedback on the options presented in this Consultation RIS.

### ***Format of sessions***

Public consultation sessions will be held in each state and territory, in capital cities and a selection of regional areas. There will be two sessions in each location of approximately two hours to cater for the availability of different service types, one during the day and one in the evening.

Evening sessions will generally not be held in more remote locations where participants would have to travel a great distance to attend, except where an evening session has been specifically requested by a state or territory.

Consultation sessions will include a joint presentation by the Australian Government and state and territory government, with questions after each section.

The presentation will focus on the proposed options for change in the RIS as endorsed by the Education Council which may affect the sector and/or families.

The consultation sessions will be complemented by an online web presence with the capacity for online comments. Separate surveys will be developed for both the sector and families to seek targeted feedback about the RIS proposals which can then be used for further analysis of the options.

### ***Consultation timeframe***

Public consultation will be carried out for a minimum of four weeks in November – December 2014. In addition to the face to face sessions, submissions and surveys can be lodged throughout the period and for a further five weeks following the public consultation sessions. This 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.

## 5 Identifying best options

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The purpose of this Consultation RIS is to outline potential options for policy reform, and serve as a basis for a consultation process as discussed in Chapter 5. The aim of these consultations will be to elicit feedback from the sector on the options. This feedback will be an important input to identifying the most appropriate options to pursue.

As such, at this stage, it is not possible to definitively identify the best options. However, following the analysis of the net benefits of each option, as well as previous consultation, the advantages and disadvantages of each set of options can be outlined at a high level.

In some cases, there is enough evidence available to suggest that some options may be more beneficial than others. However, the consultation process will be used to collect more detailed views about the options and inform the identification of preferred options.

### 5.1 Refining the National Quality Standard and assessment and rating process

#### ***Reducing the complexity of the National Quality Standard, streamlining of quality assessments and reduction in documentation of child assessments or evaluations in OSHC services***

*Documentation of child assessments or evaluations in OSHC services has previously been outlined in 3.1.3.*

Streamlining, consolidating and clarifying the National Quality Standard will also retain its benefit as a driver of service quality improvement, ensure clarity in the information provided to families and may reduce administrative costs for providers and regulatory authorities. For example, a streamlined National Quality Standard can save time for providers preparing and reviewing Quality Improvement Plans, while regulatory authorities should require less time to complete each service quality report.

It is also expected a refined National Quality Standard will clarify requirements for providers and educators and improve the transparency and consistency of the system. It is anticipated this will result in increased quality in the assessment and rating processes and a National Quality Standard which is more consistently understood by the sector and families.

The proposed revised draft National Quality Standard:

- focuses on continuous quality improvement, retaining the benefits of the current National Quality Standard and quality rating system
- describes all aspects of a quality service and can be used by all service types
- retains the seven Quality Areas and the concepts within the current National Quality Standard, but streamlines standards and elements
- clarifies the concepts in each element and standard, reducing duplication and overlap
- uses language that can be more readily and consistently understood, is accessible and straightforward
- consists of fewer standards and elements – 15 standards instead of 18, and 40 elements instead of 58, with standards that are more equally balanced.

The benefit of making changes to the assessment and rating process which improved their efficiency would be a decreased burden on services and regulatory authorities. It could also improve national consistency in assessment and rating of services.

There would be some costs associated with implementing changes designed to improve efficiency of quality assessments (for example, costs of re-training regulatory authorities). However, these are not likely to be significant.

### ***Rating categories***

Clarifying or streamlining the rating categories could have the benefit of lessening burden (for example, the cost associated with applying for an Excellent rating) and improving information and ease of understanding about quality.

The disadvantages of changes to ratings may include a one-off cost for regulatory authorities and services as they update policies and procedures, and retrain authorised officers for any changes. Removing the Excellent rating may also reduce the incentive for services to strive for highest quality service delivery.

### ***Assessment and rating cycle***

Changing the assessment and rating cycle from a three year to a five year cycle, or removing the three year assessment cycle policy, is expected to result in benefits in the form of reduced cost for higher quality providers and regulatory authorities (due to less frequent re-rating for high quality services). It could also have benefits of improving quality of low-quality services by providing more frequent feedback via the assessment process.

The disadvantage is that these changes could introduce more risk, because regulatory authorities would rely on other monitoring measures for services which had previously been assessed as being of high quality.

## **5.2 Removing supervisor certificate requirements**

The major benefit of removing supervisor certificate requirements is that it would reduce administrative burden for regulatory authorities (noting that the compliance burden on the sector has already been reduced by removing the requirement to apply for supervisor certificates). Registers also no longer need to be maintained.

There do not appear to be any major disadvantages or costs associated with this option.

As such, it appears that this option is likely to be preferred over no change to supervisor certificates.

## **5.3 Expanding the scope of the NQF**

Broadly, the benefit of expanding the scope of the NQF is that it would provide families who have children enrolled in currently out-of-scope services with the same surety regarding high quality care and increase national consistency.

However, it will also be associated with increases in cost. Specifically, services which are newly included under the scope of the NQF would be expected to experience an increase in administrative costs and burden. Regulators will also face an increase in burden.

## 5.4 Extending some liability to educators

The benefit of extending liability to educators is that it would help to ensure safety of children because educators would face more consequences if they did not meet their obligations.

The disadvantage of this is that it might discourage educators from participating in the sector, because they are concerned about liability.

## 5.5 Changes to prescribed fees

The benefit of increases in fees is that it would be expected to positively contribute to the sustainability of the NQF. In some cases, fee changes may also establish stronger price signals that support desirable improvements.

The disadvantage of changes to fees is that they pose an increased direct cost on providers, which may be partially or fully passed on to families in the form of higher fees.

## 5.6 National educator to child ratio for OSHC services

The benefit of introducing national mandatory minimum educator to child ratios for OSHC services is that in jurisdictions where the new national ratio is of a higher standard than current operating ratios (i.e. more staff are needed for the same number of children), there may be an improvement in the quality of education and care provided. It would also improve consistency across jurisdictions.

The disadvantage of this option is that, in centres where the new national ratio is of a higher standard than current practice (i.e. more staff are needed for the same number of children), there will be an increase in operating costs to services. This could be passed through to families in the form of higher fees. There is also the possibility that where services currently have a ratio of a higher standard than the proposed national ratio, the number of staff to children may reduce over time (although some jurisdictions may adopt savings and transitional provisions to preserve existing higher standards or allow sufficient time to introduce this requirement).

## 5.7 Improved oversight of and support within FDC services

### *Approval of FDC services across jurisdictions*

The benefit of options surrounding changes to approval of FDC services operating across jurisdictions is that it would allow for better oversight of these services by the regulatory authority, thus mitigating risks of non-compliance or low quality.

The disadvantage of this option is that it would increase administrative burden on the services who are affected, as they would need to have a head office in each jurisdiction.

### ***Limiting the number of FDC educators in a service***

Limiting the number of FDC educators in a service would have the advantage of greater support of FDC educators, noting this is not a blanket measure affecting all FDC services but would be applied on a case by case basis.

The disadvantage of this measure would be the impact of foregone revenue for services.

### ***Mandating a ratio of FDC co-ordinators to educators***

Mandating a ratio of FDC co-ordinators to educators would have the advantage of helping to ensure that FDC educators receive sufficient support and guidance. This will contribute to the delivery of high quality education and care.

This option could impose additional costs on FDC services which currently operate at a lower ratio of co-ordinators to educators than mandated by the ratio. It may discourage new providers from establishing FDC services, and could lead to an increase in costs of care for families.

### ***Mandating a minimum Certificate III for FDC educators***

As above, the benefit of establishing a minimum Certificate III qualification for FDC educators is that it would help to support the provision of high quality care to children who attend FDC services.

However, it may mean that there is a reduction in the number of FDC educators, as some current educators may be unwilling to undergo a training and qualification process. Similarly, it may discourage those interested in becoming educators from joining the industry. It may also result in higher fees.

### ***FDC educator assistants' activities***

The advantage of establishing a penalty will be to deter educators from inappropriately leaving children in the care of an untrained person.

The disadvantage of this measure is it may reduce the flexibility of services in determining the most appropriate arrangements for supervision of children.

### ***Principal office notifications***

Principal office notifications would have the benefit of providing regulatory authorities with greater oversight of FDC services.

The disadvantage would be minor delay costs and restricting the flexibility of FDC providers.

### ***Powers of entry to FDC residences***

The advantage of powers of entry to FDC residences is improved safety of children in FDC services.

The disadvantage of powers of entry may be inconvenience caused to services who subsequently are shown to be meeting the required standards.

## 6 Implementation and evaluation plan

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Following the public consultation process on this Consultation RIS, further analysis of the options will be undertaken and a Decision RIS will be released which outlines the preferred options for implementation.

### **Implementation**

The proposed date for the introduction of all potential legislative changes is 1 January 2016.

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* (National Law) 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 2016.

To meet this timeframe, governments will first need to decide which options are to be implemented, following the publication of the Decision RIS.

It should be noted that, even where the changes are enacted by 1 January 2016, or mid-late 2016 in Western Australia, some of these changes are likely to involve a transition period for the sector e.g. if a decision is made to expand the scope of the NQF to include new service types, with these services to be quality assessed and rated as per services currently under the NQF, this would likely involve a phased implementation for these services from 2016 onwards, to enable them to prepare for the change.

### **Evaluation**

To ensure that regulation 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 NQF Snapshots that are also publicly available. ACECQA also regularly reports to the Education Council on the implementation and administration of the NQF.

The next scheduled review of the NP NQA is in 2019, which will provide a further opportunity to evaluate the success of the implemented changes and consider other changes, as required.

## Appendix A Detailed overview of proposed options for changes to the NQF

This appendix provides a detailed overview of the proposed options for changes to the NQF. The proposals are numbered, to enable cross-referencing throughout the RIS.

Proposed guidance and clarifications of the National Law and National Regulations are also included. As they are not considered to involve any material regulatory change, but rather seek to provide further detail on the operation of existing regulations, they are set out below for information only.

Please note that for each of the proposed options for change below, there is an option of ‘no change’ – that is, the status quo could be maintained and the given proposal does not proceed.

### 1. Refining the National Quality Standard and assessment and rating process

The table below outlines the proposals for refining the National Quality Standard and assessment and rating process.

**Table A1: Refining the National Quality Standard and the assessment and rating process**

No.	Proposal	Description
1.1	<i>Reducing the complexity of the National Quality Standard</i>	A draft revised National Quality Standard is included at Appendix B. It contains 15 standards and 40 elements and incorporates learning from administering the current National Quality Standard and feedback from a cross-section of sector experts.
1.2	<i>Streamlining of quality assessments</i>	<p>It is recommended that the national approach to assessment and rating comprise processes that:</p> <ul style="list-style-type: none"> <li>• meet the requirements of the National Law</li> <li>• meet the minimum requirements of all jurisdictions</li> <li>• default to the most streamlined approach first</li> <li>• can be supplemented as needed by jurisdictions to mitigate any ‘local’ characteristics and risks while maintaining the validity and reliability of quality ratings.</li> </ul> <p>It is recommended that the following steps be noted as comprising the basic elements of a structured approach to assessment and rating:</p> <ul style="list-style-type: none"> <li>• Stage 1 – pre-visit review of the Quality Improvement Plan <ul style="list-style-type: none"> <li>– Desktop assessment of provider and service</li> </ul> </li> <li>• Stage 2 – assessment of practice at service by observation, discussion with staff and sighting of documentation <ul style="list-style-type: none"> <li>– Clarification of anomalies and minor adjustments</li> </ul> </li> <li>• Stage 3 – Post visit review of evidence against requirements of the National Quality Standard <ul style="list-style-type: none"> <li>– Consideration of feedback</li> <li>– Determination of rating</li> </ul> </li> </ul> <p>These steps are to be clearly defined through supporting templates and documents and rigorous training of authorised officers. They may also be supplemented as needed by jurisdictions, while maintaining the validity and reliability of quality ratings.</p>

No.	Proposal	Description
1.3	<i>Reduction in documentation of child assessments or evaluations for delivery of educational program in OSHC services</i>	<ul style="list-style-type: none"> <li>Amend Regulation 74 to require that documentation for over preschool age children to focus on the program, rather than an individual child's development to evidence Working Towards the National Quality Standard; OR</li> <li>Maintain the status quo but retrain authorised officers to regulate and assess OSHC services with a better understanding of the OSHC context.</li> </ul>
1.4	<i>Significant Improvement Required rating</i>	<ul style="list-style-type: none"> <li>Remove the Significant Improvement Required rating - so that the quality assessment rating process will cease where it is determined that there is an unacceptable risk to children's health, safety or wellbeing; OR</li> <li>Retain the Significant Improvement Required rating, but amend its definition so that it refers to a rating a regulatory authority may determine if there is significant non-compliance, rather than the concept of unacceptable risk to children.</li> </ul>
1.5	<i>Exceeding the National Quality Standard rating</i>	Require all standards in a Quality Area to be rated as Exceeding the National Quality Standard for the Quality Area to be rated Exceeding, given the proposed National Quality Standard retains only those elements and standards essential to service quality
1.6	<i>Excellent rating</i>	Remove the Excellent rating
1.7	<i>Ensuring ratings accurately reflect service quality</i>	<ul style="list-style-type: none"> <li>Remove the overall rating and rely on the seven quality area ratings to indicate service quality; OR</li> <li>Retain the current requirement that all elements must be met to achieve a Meeting National Quality Standard rating on the basis that clarifying or streamlining</li> <li>The National Quality Standard will result in ratings that are a more accurate reflection of service quality; AND/OR</li> <li>Reviewing the Minor Adjustment Policy once the draft National Quality Standard is finalised with the intent of broadening its application across all Standards and better supporting decision making for services with only a very small number of elements not met.</li> </ul>
1.8	<i>Length of time until services are re-assessed</i>	<ul style="list-style-type: none"> <li>Remove the three year rating cycle policy, and instead commit in principle to more frequent re-rating of lower quality rated services that takes into account assessment of risk and principles of earned autonomy; OR</li> <li>Remove the three year rating cycle policy and commit to re-rate all services at least every five years, with more frequent re-rating of lower quality rated services based on an assessment of risk and principles of earned autonomy.</li> </ul>

## Proposed guidance/clarification of the National Law and National Regulations – Refining the assessment and rating process

### ***Outcome of review by regulatory authority***

Section 143(1) of the National Law to be amended to explicitly allow the regulatory authority at first tier review to not just confirm or amend the rating, but also to set aside specific rating levels, or the overall rating, and decide whether to conduct a reassessment. This will mean that a possible outcome at first tier review is a decision to reassess and rerate specific rating levels or the overall rating.

**Rationale:** Where a regulatory authority decides to reassess and re-rate a service after a first tier review, this may mean the application for internal review has not been finally determined. Therefore, the regulatory authority could be seen as not having appropriately exercised its power in processing an application for first tier review.

**Decision on review by Ratings Review Panel**

A similar amendment to Section 151(1) of the National Law will be made. Section 151(1) of the National Law concerns the decision on review by the Ratings Review Panel. These amendments allow the Ratings Review Panel to recommend at second tier review that the regulatory authority reassess and/or rerate particular elements, quality areas or standards.

**Rationale:** Given the similar issues that arise with second tier review, a similar amendment could be considered to allow the Ratings Review Panel to recommend at second tier review that the regulatory authority reassess and re-rate a service.

## 2. Removing supervisor certificate requirements

The table below outlines the proposals for removing supervisor certificate requirements.

**Table A2: Removing supervisor certificate requirements**

No.	Proposal	Description
2.1	<i>Supervisor certificate requirements</i>	Remove the supervisor certificate requirements from the National Law and National Regulations, to allow decisions regarding the responsible person to be made at the provider/service level.

## 3. Expanding the scope of the NQF

The table below outlines the proposals for expanding the scope of the NQF.

**Table A3: Expanding the scope of the NQF**

No.	Proposal	Description
3.1	<i>Additional services to be included in NQF</i>	Inclusion of either regulated, unregulated or all of the following services in the NQF, including an appropriate transition period: <ul style="list-style-type: none"> <li>(a) BBF Centre Based Services that operate in a similar way to services covered by the NQF</li> <li>(b) Occasional Care Services [not while attending conferences, sport and leisure activities or shopping]</li> <li>(c) Playschools, and</li> <li>(d) Mobile Services that provide a service similar to those currently covered by the NQF or similar to other services proposed for inclusion.</li> </ul>
3.2	<i>Application of assessment and rating processes to additional services</i>	Services endorsed for inclusion should be subject to the assessment and rating process as for other services covered by the NQF, or subject to compliance monitoring, with assessment and rating to be considered further in the 2019 NP NOA Review.

## 4. Extending some liability to educators

The table below outlines the proposals for extending some liability to educators.

**Table A4: Extending some liability to educators**

No.	Proposal	Description
4.1	<i>Extension of some liability to educators</i>	Amend the National Law to extend the scope of Sections 165 and 167 to include educators to be liable for not adequately supervising children under their care or where they did not take every reasonable precaution to protect children from harm or hazard that is likely to cause injury.

## 5. Changes to prescribed fees

The table below outlines the proposals for changes to prescribed fees.

**Table A5: Changes to prescribed fees**

No.	Proposal	Description
5.1	<i>Introduce fee for extension of temporary waiver</i>	Amend the National Law to introduce a prescribed fee for an application to extend a temporary waiver.
5.2	<i>Increase in provider approval fee</i>	Increase fees for applications for provider approvals by 50% or 100%.
5.3	<i>Increase in service approval fee</i>	Increase fees for applications for service approvals by 50% or 100%.
5.4	<i>Increase in annual fees for approved services</i>	Increase annual fees for approved services by 50% or 100%.

## 6. National educator to child ratio for OSHC services

The table below outlines the proposals for introducing a national educator to child ratio for OSHC services.

**Table A6: Introducing a national educator to child ratio for OSHC services**

No.	Proposal	Description
6.1	<i>National educator to child ratio</i>	Introduction of a national educator-to-child ratio for outside of school hours care services educating and caring for children over preschool age from 1 January 2016.  Note that if pursued, some jurisdictions may require savings and transitional provisions to preserve existing higher standards or allow sufficient time to introduce this requirement.

### Proposed guidance/clarification of the National Law and National Regulations – Other operational issues for OSHC services

#### ***Reduction in prescribed information in applications for OSHC service applications***

Regulation 25(2) will be amended so that a regulatory authority may determine that the information set out in Regulation 25(1)(d) and 25(1)(e) may not be required to be provided by services located on a school site, noting that this issue may be resolved as part of a broader range of changes being considered.

**Rationale:** A soil assessment (Regulation 25(1) (d)) and a planning permit (Regulation 25(1) (e)) are required to be provided to the regulatory authority, even where other requirements are waived because the approved provider is seeking to locate on a school site.

As the soil assessment and planning permit requirements may have already been assessed under building and development of the school site, there is scope to consider broadening Regulation 25(2) to reduce regulatory burden for the OSHC sector.

**Definition of a 4 week or less vacation care service**

Regulation 5(2)(i) concerning the exclusion of certain school holiday services will be amended to clarify that this provision means not more than 20 business days (4 weeks) can be taken either consecutively or non-consecutively within a calendar year, consistent with the agreed position for Regulation 135.

**Rationale:** As currently worded, there is a lack of clarity for regulatory authorities on whether the service must provide education and care for more than four weeks consecutively to be included under the NQF or whether a service can operate for more than four weeks non-consecutively over the calendar year to be in-scope.

## 7. Improved oversight of and support within FDC services

The table below outlines the proposals for improved oversight of and support within FDC services.

**Table A7: Improved oversight of and support within FDC services**

No.	Proposal	Description
7.1	<i>Approval of FDC services across jurisdictions</i>	An approved provider would need to hold a service approval in each jurisdiction where the FDC educators operate. There would be special arrangements in the new licensing scheme where a service straddles adjacent jurisdictions (e.g. Albury/Wodonga), for instance, one jurisdiction may allow the same principal office for both service approvals. A FDC principal office would be associated with each service approval and be recorded on the service approval, as currently required under the National Law.  There would also need to be a transitional period to allow FDC services currently operating across jurisdictions sufficient time to apply for service approvals.
7.2	<i>Limiting the number of FDC educators in a service</i>	Amend the National Law so that a regulatory authority may impose a maximum number of educators approved to be engaged or registered by a family day care service and include this on the service approval.
7.3	<i>Mandating a ratio of FDC co-ordinators to educators</i>	Introduce a ratio of FDC co-ordinators to educators of either 1:10, 1:15 or 1:20, mindful of viability, qualifications and support of educators; and Amend Section 51(2)(b) of the National Law, concerning conditions on service approval, to include a duty for the approved provider to ensure that FDC educators are adequately supported, monitored and trained, having regard to the knowledge, experience and qualifications of the FDC educator and the education and care needs of the children attending the service.
7.4	<i>Mandating a minimum Certificate III for FDC educators</i>	FDC educators are required to have a Certificate III (or equivalent) before being permitted to educate and care for children.  The need for any transitional provisions for approved providers and FDC educators to support them in meeting a minimum mandated requirement over time would need to be considered, as would the completion of a determined proportion of the Certificate III qualification being taken to meet the minimum mandated requirement.
7.5	<i>FDC educator assistants' activities</i>	Create an offence (with attached penalty) that an approved provider must ensure the assistant's activities are limited to the circumstances set out in Regulation 144(2) (as amended). Penalty to be set at \$2000 consistent with other approved provider regulation offences.
7.6	<i>Principal office notifications</i>	A FDC service must notify the regulatory authority of changes to the principal office at least 14 days before the change. The FDC approved

No.	Proposal	Description
		<p>provider must provide proof of address for the new principal office (e.g. contract or rental agreement); and</p> <p>The regulatory authority must amend or refuse to amend a new service approval within 14 days of the above notification (with regulatory authorities able to exercise discretion to increase the length of this period) and, if the principal office is also to be a venue or a residence, then the amended service approval must be issued before the commencement of any care at the venue or residence.</p>
7.7	<i>Powers of entry to FDC residences</i>	Amend Section 199(4) (a) of the National Law to allow authorised officers to enter a family day care residence where the authorised officer reasonably believes that a service is operating at the residence at the time of entry.

## Proposed guidance/clarification of the National Law and National Regulations – FDC services

### ***FDC venues, principal offices and display of information***

Section 51(2) of the National Law concerning conditions on service approval will be amended, to require that any FDC service is not able to provide education and care in a new venue until the regulatory authority amends the service approval through condition on the service approval.

**Rationale:** It is unclear as to whether it is the regulatory authority or the approved provider that is responsible for approving FDC venues. Some regulatory authorities are concerned that providers of an approved FDC service may exploit provisions relating to FDC venues to avoid requirements applying to centre-based services. There is also concern that some FDC venues (assessed by the approved provider) are being used to educate and care for children that are not appropriate venues and may pose risks to children.

### ***Display of information at FDC offices***

Guidance will be developed around display of information requirements for FDC services. This proposal would require legislative amendment to provide exemptions for FDC offices so that they are not unreasonably burdened by requirements of displaying certain irrelevant information.

**Rationale:** Sub-regulation 173(2) (c) states that the position of the responsible person in charge of the education and care service at any given time is not required to be displayed in FDC residences and FDC venues. FDC offices are not included in this exception. It should be noted that an FDC office that also functions as a residence or venue should be regarded under this provision as a FDC residence or venue.

### ***FDC educator assistants***

An example will be included in Regulation 144(2)(c) concerning the assistance of FDC educator assistants, to clarify the term 'regular appointment'; such as:

- 'a regular appointment is an appointment where the time and place of the appointment is reasonably predictable from one appointment to the next' or
- 'a regular appointment is an appointment where the circumstances of the appointment are largely the same from one appointment to the next'
- This would include attendance at a course of study, language, or gym class.

**Rationale:** Regulation 144 provides for circumstances, in which an approved FDC educator assistant may, with the written consent of a parent of each child, assist the FDC educator, including attending an appointment (other than a regular appointment).

The meaning of the term 'regular appointment' is unclear and is currently being construed by some service providers as allowing them to leave children with an assistant while they undertake personal tasks.. This potentially leaves the children in the care of someone who does not have any early childhood training or qualifications for more time than is necessary, impacting on the quality of the education and care.

### ***Provision of information to the approved provider***

Guidance will be developed that clarifies requirements for FDC approved providers and educators in the flow of information about changes in circumstances at the residence which could seriously endanger the health, safety and wellbeing of children. This would leave FDC educators to use their own judgement in what they notified to the approved provider in the first instance. (Note that such guidance materials will not have legal effect.)

The National Law will also be amended to create a duty for the FDC educator to notify the approved provider of prescribed changes in circumstances at the residence/venue. This would give the approved provider sufficient information to perform an adequate risk assessment (note this is subject to jurisdictions seeking advice from their relevant justice-related departments).

**Rationale:** Some jurisdictions have encountered instances where FDC educators have not notified their approved provider of changes in the home which may pose a risk to children's health, safety and wellbeing, such as a new person 18 years or over residing at the residence without a working with children check having first been undertaken.

### ***Risk assessments for excursions***

An example will be added after Regulation 100(4) concerning risk assessments before excursions, to clarify that routine outings relevant to FDC do require a risk assessment at least once every 12 months.

**Rationale:** There is some confusion in the sector as to whether the routine outings FDC educators undertake (such as drop offs and pickups of children from other services including schools and preschools; visits to the park or library etc.), require a risk assessment under Regulations 99-102.

## **8. Other changes which will have a regulatory impact**

The table below describes all other changes which are expected to have a regulatory impact.

*Proposals that are shaded grey or marked with an asterisk are expected to be of particular interest to the sector.*

**Table A8: Other changes which will have a regulatory impact**

### **Approvals**

<b>No.</b>	<b>Proposal</b>	<b>Description</b>
8.1.1	<i>Approvals – assessment of capability</i>	Amend the National Law to specify that an applicant's capability to operate an education and care service in accordance with the National Law is an express consideration in determining applications for provider approval.
8.1.2*	<i>Approvals – assessment of capability</i>	Expand Section 14 of the National Law to allow regulatory authorities to seek further information with respect to an applicant's capability to operate an education and care service in accordance with the National Law when assessing applications for provider approval.
8.1.3*	<i>Approvals – assessment of capability</i>	Expand Section 21 of the National Law to encompass the reassessment of an approved provider's capability to operate an education and care service in accordance with the National Law.
8.1.4	<i>Approvals – maximum children numbers as service approval condition</i>	Amend Section 51 of the National Law to specify that the maximum number of children specified on a service approval forms part of the conditions of the service approval.

### **Waivers**

<b>No.</b>	<b>Proposal</b>	<b>Description</b>
8.2.1	<i>Revocation of waivers</i>	Amend Regulation 43(1) to provide for the revocation of a service waiver to take effect 14 days after notifying the approved provider, or another period by agreement.

## Supervisors

No.	Proposal	Description
8.3.1*	<i>Selecting a nominated supervisor/ person in day-to-day charge</i>	<p>(a) Amend the National Law and National Regulations to designate the approved provider as the body responsible for appointing a suitably skilled educator who is prescribed by law to be 18 years or older;</p> <p>(b) In support of the approved provider's role, publish guidelines of appropriate types of qualifications, skills or experience and evidence of fitness and propriety in determining who would be suitably skilled. The guidance would also emphasise the importance of making sure providers are aware of any changes affecting the fitness and propriety of a nominated supervisor/PIDTDC; and</p> <p>(c) Make further changes to the National Law to signal to providers the importance of making considered decisions in appointing the nominated supervisor/PIDTDC such as amending Section 161 to provide that each service must have a nominated supervisor 'who is fit and proper, and has appropriate skills, to supervise the service.'</p>
8.3.2*	<i>Powers of the regulatory authority</i>	Amend the National Law to give the regulatory authority a mechanism to restrict a person from being the nominated supervisor/PIDTDC either entirely or subject to certain conditions, with an appropriate offence and penalty regime.
8.3.3	<i>Job sharing</i>	Amend the National Law to remove the limit on the number of nominated supervisors that may be appointed at one time for each service on the basis that they are jointly responsible for the service.
8.3.4	<i>Consenting to the role</i>	Amend the National Law to remove requirement for written consent if the approved provider, including a person with management or control, is to fulfil the role of nominated supervisor or PIDTDC.
8.3.5	<i>Notifications</i>	<p>Amend the National Law to:</p> <p>(a) designate the approved provider with responsibility for notifying the regulatory authority if the nominated supervisor changes or if there is a change in a nominated supervisor's name or contact details. In amending the National Law, remove duplication between existing notification provisions, which are currently set out in two different parts of the National Law; and</p> <p>(b) remove the existing notification requirements to regulatory authorities re fitness and propriety.</p>
8.3.6	<i>Record keeping</i>	<p>(a) Amend the National Law and National Regulations to expand current record-keeping requirements for nominated supervisors and PIDTDC to include FDC services.</p> <p>(b) A consequential amendment is required for removal of the reference to the application process and certificate number.</p>
8.3.7	<i>Terminology</i>	Amend the National Law to remove references to supervisor certificates and certified supervisors and adopt a new term for people who have been deemed suitable to supervise a service and who may be appointed as nominated supervisor or placed in day to day charge (e.g. acting supervisor, supervisor, duty supervisor).
8.3.8*	<i>Child protection and Nominated Supervisors</i>	Amend the National Law and National Regulations to provide that nominated supervisors and persons in day to day charge of an education and care service must have undertaken child protection training.

## Operational issues

No.	Proposal	Description
8.4.1*	<i>12 Weeks ECT Leave Provision - Extending the scope to include resignation</i>	<p>(a) Amend Regulation 135 to allow providers to also utilise this provision after the resignation of an ECT. This would also apply to services that engage a full time (FT) or full time equivalent (FTE) ECT. Adopting this change provides further flexibility to providers without compromising the objectives of the National Law or the overall policy intent of Regulation 135.</p> <p>(b) It is recommended that a savings provision for NSW is included in the amendments so this change does not apply.</p>
8.4.2*	<i>Educator Breaks</i>	It is proposed that guidance on educator breaks is amended to make clear that service providers must comply with their legal obligations and must meet prescribed ratio requirements at all times, subject to jurisdiction-specific transitional arrangements.
8.4.3	<i>First Aid Qualifications</i>	Amend Regulation 136 to allow a 'staff member' and not just an 'educator' to be the person immediately available who holds the necessary first aid, anaphylaxis and emergency asthma training.

## Compliance, review, monitoring and enforcement

No.	Proposal	Description
8.5.1	<i>Undertakings – expansion of scope</i>	Expand the current scope for undertakings to enable Regulatory Authorities to consider undertakings in circumstances where a regulatory authority might otherwise issue a prohibition or suspension notice under the National Law.
8.5.2	<i>Undertakings – time within which proceedings for alleged offence must be commenced</i>	Amend Section 284 to provide that where the contravention of the law that might otherwise have been prosecuted was instead the subject of an undertaking under Section 180, and where the relevant Court or Tribunal has determined the person has failed to comply within a term of the undertaking, the proceedings for an offence must be commenced within 6 months of the date of the relevant court or tribunal's determination when the determination was given after 2 years of the date of the alleged offence.
8.5.3	<i>Drafting issues – definition of 'unauthorised person'</i>	Consider whether redrafting the definition of "unauthorised person" in Section 170 by removing the double negative (for example, defining who is an "authorised person") would simplify the current definition and make the scope of Section 170 clearer.
8.5.4*	<i>Extension of liability – definition of 'person with management and control'</i>	<p>Amend the definition of "person with management or control" (Section 5) in the National Law by providing that a person in the relevant position (for example, an officer of the body corporate in subsection (a)) would always be a person with management or control. This will require the deletion of the words "who is responsible for managing the delivery of the education and care service" from subsections (a)-(d).</p> <p>This would ensure the regulatory authority will always be able to prosecute the relevant person even in circumstances where he or she argues they have delegated the responsibility of managing the delivery of the education and care service.</p>

## Information Sharing

No.	Proposal	Description
8.6.1	<i>Compliance and Enforcement Information</i>	Amend sub-regulation 227(3) (b) (iii) of the National Regulations concerning the publication of compliance information to allow the regulatory authority to publish the service approval number for a family day care service.
8.6.2	<i>Sharing of Information within and between other state or territory government agencies</i>	(a) Amend the National Law to clarify that disclosures can be made within Departments and to other state or territory government agencies where it is for a purpose related to the funding of education and care services
8.6.3	<i>Publication of Information</i>	(a) Repeal Sections 270(6) of the National Law to remove restriction on disclosure of information that the regulatory authority publishes about enforcement actions so as to allow publication of enforcement actions that identify or lead to the identification of an individual where it furthers the objective of the National Law. This option gives effect to academic research that publicity of enforcement actions is a key tool for modifying behaviour of regulatees; and  (b) Replace Section 270(5) of the National Law with a provision drafted in similar terms to Section 45A of the <i>Child Care Services Act 2007</i> (WA) to provide the regulatory authority with a broad power to publicise enforcement actions constrained only by a requirement that it must further the objective of the National Law. This option gives effect to academic research that suggests publicity about enforcement actions may be better left to media or third party groups than being actively promoted by a regulator where that regulatory is not overly restricted from providing full details.

## Administrative requirements

8.7.1	<i>Notifying the regulatory authority of a complaint</i>	Amend the National Law so that providers are only required to notify the regulatory authority of a complaint that alleges: <ul style="list-style-type: none"> <li>• A serious risk to a child's health, safety or wellbeing (NOTE: the term serious risk will need to be defined), or</li> <li>• A breach of the National Law or National Regulations.</li> </ul>
8.7.2	<i>Regulations – Medical conditions policy</i>	<ul style="list-style-type: none"> <li>• Amend Regulation 90 so that requirements for approved providers in obtaining a medical management plan, and developing a risk minimisation plan and communication plan, are more clearly expressed.</li> <li>• Strengthen requirements for obtaining a medical management plan before education and care is provided to a child with a health care need.</li> <li>• Amend Regulation 90 to specify that the medical conditions policy applies to children with a diagnosed medical condition.</li> </ul>
8.7.3	<i>Regulations – Evidence of insurance</i>	Remove the administrative requirement at Regulation 180, so that providers are no longer required to keep evidence of insurance at the service premises/principal office, noting the regulatory authority could still require the provider to supply evidence of their insurance, when needed, under its existing monitoring powers.

## Transitional and savings provisions

8.8.1	<i>Qualification requirements for supervisors of volunteers (Victoria specific requirement)</i>	To enable more persons under the age of 18 years, who are unable to have a working with children check issued because of their age, work as volunteers at an education and care service, remove the requirement for the supervisors of such volunteers to hold or be actively working towards a diploma level qualification from Regulation 358(3) (b) concerning working with children check requirements.
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## Proposed guidance/clarification of the National Law and National Regulations – Approvals

### Proposed guidance/clarification of the National Law and National Regulations – Approvals

#### **Assessment of capability**

Guidance on assessing an applicant’s capability to operate an education and care service will be developed for inclusion in the Operational Policy Manual to promote consistency in assessing the capability criteria.

**Rationale:** Currently there is a lack of guidance as to the consideration of an applicant’s capability to operate an education and care service. It is considered that operational capability of the service provider is an important determinant of the safety and quality of a service and, as such, the inclusion of such a consideration in the operational policy manual is likely to be beneficial to the assessment process.

#### **Responsibility for service operation**

Guidance for providers will be developed on their obligations when subcontracting arrangements are entered into for the day to day management of approved services.

**Rationale:** Clarity has been sought about whether subcontracting arrangements are currently permitted under the National Law and, if so, where the legal responsibility for obligations relating to the operation of a service would rest. It should be noted that the liability of providers remains unchanged i.e. while providers may be able to subcontract, responsibility remains with the approved provider.

#### **Discretion regarding prescribed information**

The National Regulations will be amended to allow regulatory authorities to determine that any or all of the information set out in Regulations 24 and 25 may not be required to be provided in exceptional circumstances.

**Rationale:** The National Law and National Regulations currently prescribe information that must be provided with various applications such as applications for provider approval, service approval and amendments to those approvals. In each case the legislation provides that a regulatory authority may seek further information for the purposes of determining such applications however, there is currently little scope for regulators to waive the need for applicants to provide all the prescribed information for any given application.

## Proposed guidance/clarification of the National Law and National Regulations – Waivers

### **Conditions on grant of waivers**

Sections 91 and 98 of the National Law will be amended to allow regulatory authorities the power to impose conditions on the grant of a waiver, and require these to be displayed with the details of the waiver.

In amending the National Law, these conditions will be referred to as “terms of the waiver” or an alternative term, to distinguish from the use of other conditions in the Law.

**Rationale:** Under the National Regulations, a waiver application must include details of the measures being taken by the provider to protect the wellbeing of children while the waiver is in effect. There is currently no avenue under the National Law to enforce any measures as a ‘condition’ of the waiver’s approval. Additionally, a waiver exempts the service from meeting the entirety of the relevant regulation/ element, and is in effect at all times.

### ***Decision timeframes***

Section 89 and Section 96 of the National Law will be amended to provide that the time taken to request and receive further information is not included in the decision timeframe under Section 91 and Section 98.

**Rationale:** Unlike other applications under the National Law, any time taken to request and receive further information is not excluded from the maximum timeframe for making a decision.

### ***Emergencies/exceptional circumstances***

It will be clarified that a written application for a waiver in all circumstances will be required, noting a file note can be used. No legislative change is required.

**Rationale:** In situations where there is a significant emergency (such as natural disaster), it may not be timely or practicable for a provider to submit a written application.

## **Proposed guidance/clarification of the National Law and National Regulations – Supervisors**

### ***Transitional arrangements***

The National Law will be amended so that ACECQA is no longer required to maintain a register of certified supervisors.

**Rationale:** The introduction of recent amendments to the National Regulations expanding the classes of prescribed persons who may be granted a supervisor certificate without assessment encompasses most people and makes supervisor certificates largely redundant.

## **Proposed guidance/clarification of the National Law and National Regulations – Operational issues**

### ***12 Weeks ECT Leave Provision - Limiting the 12 weeks ECT leave to within 12 months***

Sub-regulation 135 (2) will be amended to clarify that sub-regulation (1) does not apply in case of a period of leave exceeding 12 weeks in any manner within 12 months. To avoid ambiguity, the wording could indicate that this is to be calculated as not more than 60 business days (12 weeks) that can be taken consecutively or non-consecutively in the 12 month period.

**Rationale:** The operation of Regulation 135 has created ambiguity for providers and regulatory authorities due to the wording of the provision. This is because even though the provision applies to a period not exceeding 12 weeks, in theory, providers are able to use the provision for an unlimited number of periods of up to 12 weeks each time. Despite the fact that there may not be evidence of misuse of the provision, there is concern across jurisdictions that there is confusion in the sector about interpretation of the provision.

### ***12 Weeks ECT Leave Provision - Diploma qualified education requirements***

Flexibility in meeting the requirement for a diploma qualified educator to services that employ a FT or FTE ECT will be expanded. Where possible, drafting of Regulation 135 and its interaction with 126 will be simplified.

**Rationale:** A service with a FT or FTE ECT is not required to backfill the ECT with another qualified educator but in practice, the ECT would be counted towards the requirement for a diploma qualified educator. This effectively means that a service would need to roster another educator who holds or is actively working towards an approved diploma qualification while the ECT is on leave. The interaction between Regulation 126 and 135 is difficult to understand and creates inconsistent requirements.

### ***Educator breaks***

All services will be required to meet prescribed ratios, subject to either:

- there being an applicable jurisdiction specific transitional provision or
- a temporary waiver being obtained by the service.

The National Law will also be amended to require all services to meet prescribed ratios, subject to temporary waiver of the ratio requirements:

- because of a prescribed trigger event (such as a flood or loss of an early childhood teacher in a rural area) or
- where the service is a single teacher service.

The issue of educator breaks will be revisited as part of the 2019 Review of the NP NOA, at completion of the transitional phase of the National Law.

**Rationale:** The current situation undermines the policy intent of prescribing minimum baseline standards for educator-child ratios to be in place at all times and also creates inconsistencies between jurisdictions. In addition, the guidance materials are a technical breach of the law.

## Proposed guidance/clarification of the National Law and National Regulations – Compliance, review, monitoring and enforcement

### ***Powers of entry – by consent and issue of warrants***

The National Law will be amended to clarify that it is acceptable for an authorised officer (under Section 201) to enter premises at any reasonable time with the consent of the occupier for determining whether a service is operating with a service approval. (Note that this is a clarification only, and does not change the policy intent of the National Law.)

Jurisdictions will also be enabled to allow any relevant court or tribunal or Justice of the Peace to consider applications and issue search warrants for the purposes of entering premises to determine whether a service is operating.

**Rationale:** It is currently technically acceptable for an authorised officer to enter premises at any reasonable time without a search warrant, but with the consent of the premises' occupier, for the purposes of determining whether a service is operating with an approval. It is proposed the legislation be clarified to reflect this.

### ***Extension of liability – suspension of approved provider or person with management or control of approved provider***

The National Law will be amended to introduce a new form of notice suspending or disqualifying an individual from being an approved provider or a person with management or control of an approved provider.

**Rationale:** The National Law does not provide much in the way of civil or administrative sanctions directed at persons with management and control of approved providers who contravene the National Law. Currently, a provider approval may be refused or cancelled on the basis of failing to have fitness and propriety of one or more of its persons with management or control, however this would require proof Sections 285 or 286 was breached, and most likely multiple breaches.

### ***Definition of "serious detrimental action"***

The current definition of "serious detrimental action" in Section 296 will be redrafted to clarify the protection against reprisal for a protected disclosure is not restricted solely to employees.

**Rationale:** The current definition of "serious detrimental action" as drafted, if interpreted strictly, would limit the protection from reprisal against this action to only employees who assist the regulatory authority. This potentially limits the protection of other individuals such as contractors, parents or family day care educators from reprisal. Therefore it is proposed that the definition be extended to cover this class of other individuals.

## Proposed guidance/clarification of the National Law and National Regulations – Information sharing

### ***Disclosure of information to other authorities***

Section 271(1) of the National Law concerning disclosure of information to authorities will be amended to alter the grounds for information sharing by amending the definition of 'for the purposes of this Law' such that the disclosing entity must be satisfied that the disclosure is reasonably necessary to promote the objectives of the National Law and is for the purposes of enabling or assisting the other relevant body to perform or exercise any

of their functions or powers for the purposes of the National Law.

Section 271 of the National Law will make explicit that the National Authority may share information with regulatory authorities and may disclose information to the Australian Government.

Subsection 271(7) of the National Law will be repealed to enable information provided under the section to include information that could identify or lead to the identification of an individual where it furthers the objectives of the National Law.

Guidance materials around the use of NOA ITS data and the sharing of certain contact details will be developed. No additional legislative amendment necessary.

**Rationale:** The National Law currently limits the ability of participating jurisdictions of the NP NOA to share information in furtherance of the objectives of the National Law, which includes ensuring the safety, health and wellbeing of children.

#### ***Prohibition notices***

The National Law will be amended to allow ACECQA to disclose to approved providers, upon request, information regarding persons subject to prohibition notices. This amendment should be worded to ensure that only relevant information is disclosed to providers with a genuine need to know.

Section 187 of the National Law will be amended to make it an offence for a person to make a false declaration in regard to a prohibition notice, and guidance materials for approved providers will be developed with regard to asking potential employees during the recruitment process whether the potential employees are the subject of a prohibition. This will enable the approved provider to discharge their obligation under Section 188 of the National Law, which makes it an offence for an approved provider to engage a person to whom a prohibition notice applies.

**Rationale:** Limits on information sharing currently prevent the disclosure of such information. By allowing ACECQA to appropriately disclose this information, approved providers would be able to make more informed choices when recruiting employees, so as to ensure the safety, health and wellbeing of children.

## **Proposed guidance/clarification of the National Law and National Regulations – Administrative requirements**

### ***Notifying the regulatory authority of serious incidents – amend references to illness***

Section 174 and Regulation 12 will be clarified to require an approved provider to only notify the regulatory authority of a serious illness for which the child attended, or should have attended, a hospital. This would mean that services would not notify the regulatory authority of instances where a child only saw a general practitioner and was not hospitalised.

**Rationale:** This option would allow the regulatory authority to check that the service responded appropriately to a child suffering from a serious illness.

### ***Notifying the regulatory authority of serious incidents – definitional issues***

The definition of serious incidents in Regulation 12(c), which refers to attendance of emergency services, will be clarified. The term 'emergency' is already defined in the National Regulations as 'any situation or event that poses an imminent or severe risk to the persons at the education and care service premises' (Regulation 4).

Sub-regulation 12 (c) may be amended to specify that notification only needs to be given to regulatory authorities where emergency services attended the service as a result of a serious incident, and not, for example, as a result of any precautionary measures.

**Rationale:** These amendments would reduce administrative burden for providers, by making clear that the regulatory authority does not need to be notified of the attendance of emergency services if this does not occur in the context of an emergency.

## Proposed guidance/clarification of the National Law and National Regulations – Overlaps with Family Assistance Law (FAL)

### *Opportunities for streamlining*

It is recommended jurisdictions and ACECQA:

- develop nationally consistent business rules for entering data and storing documents in the NOA ITS
- develop options to streamline National Quality Framework and FAL approval processes, including through development of a single paper-based application form, as a first step towards a combined online application process.

**Rationale:** There is an intent of minimising duplication in the approval processes and it has been agreed that work should be undertaken to further develop streamlining options, including potentially trialling and evaluating a paper-based application form with a view to determining further information exchange requirements.

## Appendix B Draft revised National Quality Standard

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Proposal 1.1.1 is to reduce the complexity of the National Quality Standard. A draft revised National Quality Standard, prepared by governments, is included at Table B1.

To date, the refined draft of the National Quality Standard has the following streamlining features:

- it encompasses all important aspects of service quality and retains applicability across all service types
- it consists of fewer standards and elements – 15 standards instead of 18, and 40 elements instead of 58
- the standards are more equally balanced in the number of elements they contain
- it clarifies the quality concept in each element and standard, reducing duplication and overlap
- it uses language that can be more readily and consistently understood, accessible and straightforward, with more clearly defined concepts
- it uses wording for each element that is distinct from the standard under which it sits
- it will support a more streamlined system of descriptors to make it easier for regulatory authorities to assess quality accurately and consistently
- it is transparent, efficient and effective for services, regulatory authorities and families.

**Table B1: Draft revised National Quality Standard**

Proposed	Current	Concept	Descriptor
<b>QA1</b>			<b>Educational program and practice</b>
<b>1.A</b>	<b>1.1</b>	<b>Program</b>	<b>The educational program enhances each child's learning and development.</b>
1.A.i	1.1.1	Approved learning framework	Curriculum decision making contributes to each child's outcomes in relation to their identity, connection with community, wellbeing, confidence as learners and effectiveness as communicators.
1.A.ii	1.1.2	Child-centred	Each child's current knowledge, strengths, ideas, culture, abilities and interests are the foundation of the program.
1.A.iii	1.1.3	Program learning opportunities	All aspects of the program, including routines, are organised in ways that maximise opportunities for each child's learning.
<b>1.B</b>	<b>1.1, 1.2</b>	<b>Practice</b>	<b>Educators actively facilitate each child's learning and development.</b>
1.B.i	1.2.2	Intentional teaching	Educators are deliberate, purposeful, and thoughtful in their decisions and actions.
1.B.ii	1.1.6	Educator practice supports child directed learning	Each child's agency is promoted, enabling them to make choices and decisions that influence events and their world.
1.B.iii	1.2.2	Scaffolding	Educators anticipate and extend children's learning through open-ended questions, interactions and feedback.
<b>1.C</b>	<b>1.1, 1.2</b>	<b>Assessment and Planning</b>	<b>Educators and co-ordinators are active and reflective in planning and implementing the program for each child.</b>
1.C.i	1.2.1	Assessment and planning cycle	Each child's learning and development is assessed or evaluated as part of an ongoing cycle of collecting information, analysing learning, planning, implementation and reflection.
1.C.ii	1.1.4	Information for families	Families are informed about the program and their child's progress.
1.C.iii	1.2.3	Critical reflection	Critical reflection on children's learning and development, both as individuals and in groups, drives program planning and implementation.
<b>QA2</b>			<b>Children's health and safety</b>
<b>2.A</b>	<b>2.1, 2.2, 2.1.1</b>	<b>Health</b>	<b>Each child's health and physical development is monitored, supported, and promoted.</b>
2.A.i	2.1.2	Wellbeing and comfort	Each child's wellbeing and comfort is provided for, including appropriate opportunities to meet each child's need for sleep, rest and relaxation.
2.A.ii	2.1.4, 2.1.3	Health practices and procedures	Effective illness and injury management and hygiene practices are promoted and implemented.

QA2		Children's health and safety	
2.A.iii	2.2.1, 2.2.2	Healthy lifestyle	Healthy eating and physical activity are promoted and appropriate for each child.
2.B	2.3	Safety	Each child is protected.
2.B.i	2.3.1, 2.3.2	Supervision	At all times, reasonable precautions and adequate supervision ensure children are protected from harm and hazard.
2.B.ii	2.3.3	Incident and emergency management	Plans to effectively manage incidents and emergencies are developed in consultation with relevant authorities, practised and implemented.
2.B.iii	2.3.4	Child protection	Management, educators and staff are aware of their roles and responsibilities and respond to every child at risk of abuse or neglect.

QA3		Physical environment	
3.A	3.1	Design	The design of the facilities is appropriate for the operation of a service.
3.A.i	3.1.1, 3.1.3	Fit for purpose	Outdoor and indoor spaces, buildings, fixtures and fittings are suitable for their purpose, including supporting the access of every child.
3.A.ii	3.1.2	Upkeep	Premises, furniture and equipment are safe, clean and well maintained.
3.B	3.2, 3.3	Use	The service environment is inclusive, promotes competence and supports exploration and play-based learning.
3.B.i	3.2.1, 3.1.3	Inclusive environment	Outdoor and indoor spaces are organised and adapted to support each child's participation and to engage every child in quality experiences in both built and natural environments.
3.B.ii	3.2.2	Resources support play-based learning	Resources, materials and equipment allow for multiple uses, are sufficient in number, and enable every child to engage in play based learning.
3.B.iii	3.3.2, 3.3.1, 3.3	Environmentally responsible	The service takes an active role in caring for the environment and supports children to become environmentally responsible.

QA4		Staffing arrangements	
4.A	4.1	Staffing arrangements	Staffing arrangements enhance children's learning and development.
4.A.i	4.1.1	Effective deployment of educators	Educators are deployed across the service to support children's learning and development.
4.A.ii	7.1.3	Continuity of staff	Every effort is made for children to experience continuity of educators at the service.
4.B	4.2	Professional collaboration	Management, educators and staff are collaborative, respectful and ethical.

QA4			Staffing arrangements
4.B.i	4.2.2, 4.2.1	Staff collaboration	Management, educators and staff work collaboratively and interactions convey mutual respect, equity and recognition of each other's strengths and skills.
4.B.ii	4.2.1	Professional standards	Professional standards guide practice, interactions and relationships.

QA5			Relationships with children
5.A	5.1	Relationship between educators and children	Respectful and equitable relationships are developed with each child.
5.A.i	5.1.1, 1.2.2, 5.1.2, 5.1.3	Positive educator to child interactions	Responsive and meaningful interactions build trusting relationships which engage and support every child to feel secure, confident and included.
5.A.ii	5.2.3	Dignity and rights of the child	Educators promote the dignity and rights of each child.
5.B	5.2	Relationships between children	Each child is supported to build and maintain sensitive and responsive relationships.
5.B.i	5.2.1	Collaborative learning	Children are supported to collaborate, learn from and help each other.
5.B.ii	5.2.2	Self-regulation	Each child is supported to regulate their own behaviour, respond appropriately to the behaviour of others and communicate effectively to resolve conflicts.

QA6			Collaborative partnerships with families and communities
6.A	6.1, 6.2	Supportive relationships with families	Respectful relationships with families are developed and maintained and families are supported in their parenting role.
6.A.i	6.1.1, 6.1.2	Engagement with the service	Families are supported from enrolment to be involved in the service and contribute to service decisions.
6.A.ii	6.2.1, 6.2	Parent views are respected	The expertise, values and beliefs of families are respected and families share in decision-making about their child's learning and well-being.
6.A.iii	6.2.2, 6.3.1	Families are supported	Current information is available to families about the service and relevant community services and resources to support parenting and family wellbeing.
6.B	6.3, 6.3.3	Collaborative partnerships	Collaborative partnerships enhance children's inclusion, learning and well-being.
6.B.i	6.3.2	Transitions	Continuity of learning and transitions for each child are supported by sharing information and clarifying responsibilities.
6.B.ii	6.3.3	Access and participation	Effective partnerships support children's access and participation in the program.

6.B.iii	6.3.4	Community engagement	The service builds relationships and engages with its community.
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QA7		Leadership and governance	
7.A	7.1.1, 7.2, 7.3	Good governance	Appropriate governance and risk management support quality outcomes for each child.
7.A.i	7.2.1	Service philosophy and purpose	A statement of philosophy is developed and guides all aspects of the service's operations.
7.A.ii	7.3, 7.3.1, 7.3.2, 7.3.4, 7.3.5, 7.1.5	Decision making and systems	Decision making and systems enable the effective management and operation of a quality service.
7.A.iii	7.2.3, 7.2	Continuous improvement	There is an effective self-assessment and quality improvement process in place to support continuous improvement.
7.B	7.1	Positive organisational culture	Effective leadership promotes a positive organisational culture and builds a professional learning community.
7.B.i	7.1.2	Clear responsibilities	Management, educators and staff have clearly defined responsibilities and are inducted into those roles.
7.B.ii	7.1.4	Educational leader	The educational leader is supported to establish clear goals for teaching and learning, guide the development of the educational program and assessment and planning cycle, and facilitate critical reflection.
7.B.iii	7.2.2	Performance development	Performance is regularly evaluated and individual development plans support performance improvement.

## **Appendix C    Assessment of other changes which will have a regulatory impact**

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This appendix presents an assessment of the likely impact of the other changes which are expected to have a regulatory impact.

For each of the changes, impacts have been identified as well as the number of people affected, the frequency of the impacts and the magnitude of impacts (see Table C1). This gives an indication as to the extent of the impact of these changes.

**Table C1: Impact of other proposed changes which will have a regulatory impact**

**Approvals**

	Description of change	Impacts	Number affected	Frequency of impact	Magnitude of impact	Year/Source
8.1.1	An applicant's capability to operate an ECEC service is a consideration in the assessment of provider approvals.	Increased certainty of the regulatory authority in provider assessment	8,886 providers (2014 Q2 snapshot)	Low	Low	2013/ACECOA (2014)
8.1.2	Allow regulatory authorities to seek further information pertaining to an applicant's capability to operate an ECEC service.	Increased provider assessment timeframe, increased ability for the regulatory authority to properly assess applicants	8,886 provider (2014 Q2 snapshot)	Low	Low	2013/ACECOA (2014)
8.1.3	Incorporate consideration of an applicant's capability to operate an ECEC service into reassessment of provider approvals	Increase certainty of the regulatory authority in provider reassessment	8,886 providers	Low	Low	2013/ACECOA (2014)
8.1.4	Specify that the maximum number of children specified on a service approval forms part of the conditions of the service approval.	Decreased flexibility	14,358 services	Low	Moderate	2013/ACECOA (2014)

**Waivers**

	Description of change	Impacts	Number affected	Frequency of impact	Magnitude of impact	Year/Source
8.2.1	Provide for the revocation of a service waiver to take effect 14 days after notifying the approved provider	More timely enforcement of legislative requirements		Low	Moderate	2013/ACECOA (2014)

**Supervisors**

	Description of change	Impacts	Number affected	Frequency of impact	Magnitude of impact	Year/Source
8.3.1	Allow services to make decisions regarding nominated supervisors	Increase flexibility for services	14,358 services	Low	Low	2014/Data request to Australian Government Department of Education

8.3.2	Allow regulatory authorities to restrict a person from being the nominated supervisor/PIDTDC	Increased safety and quality of services	9 surrenders of supervisor certificates	Low	Low	2013/ACECOA (2014)
8.3.3	Allow the appointment of multiple nominated supervisors at once, on the basis that they are jointly responsible for the service	Increase the flexibility of the sector in meeting regulatory requirements, increase monitoring costs for regulatory authorities	14,358 services	Low	Low	2013/ACECOA (2014)
8.3.4	Remove the requirement for written consent if the approved provider is to fulfil the role of nominated supervisor or PIDTDC	Decreased regulatory burden	14,303 nominated supervisors	Low	Medium	2014/Data request to Australian Government Department of Education
8.3.5	Remove existing requirements of notifications to regulatory authorities regarding fitness and propriety and designate the approved provider with responsibility for notifying the regulatory authority if the nominated supervisor changes or there is a change in the nominated supervisor's details	Both a decrease in regulatory burden and an increase in regulatory burden	7 changes relevant to fitness and propriety requirements	Medium	Low	2013/ACECOA (2014)
8.3.6	Expand record keeping requirements for nominated supervisors and PIDTDC to include FDC services	Increased regulatory burden	14,303 nominated supervisors	Medium	Medium	2014/Data request to Australian Government Department of Education
8.3.7	Remove references to supervisor certificates in the National Law and adopt a new term for people who are deemed suitable to supervise a service.	Improved clarity of regulations for both sector and regulatory authorities	Sector wide	Low	Low	
8.3.8	Require nominated supervisors and PIDTDC to have undertaken Child Protection training	Improved safety outcomes for children, increased cost for sector	94,703 certified supervisors	Unclear	Unclear	2014/ ACECOA (2014)

## Operational issues

	Description of change	Impacts	Number affected	Frequency of impact	Magnitude of impact	Year/Source
8.4.1	Amend National Regulations to allow the 12 week ECT leave provision to apply in the case of resignation. This would not apply for NSW.	Improved flexibility, decreased reliance on waivers in case of ECT resignation	19,200 ECT teachers	Low	Medium	2013/Data request to Australian Government Department of Education (2013)

8.4.2	Amend guidance on educator breaks to ensure service providers comply with legal obligations and meet prescribed ratio requirements at all times, subject to jurisdiction-specific transitional arrangements.	Improved clarity	136,574 Educators	Unclear	Unclear	2013/Data request to Australian Government Department of Education (2013)
8.4.3	Allow 'staff member' and not just an 'educator' to be the person immediately available who holds the necessary first aid, anaphylaxis and emergency asthma training.	Improved flexibility, increased safety outcomes for children	14,358 services	Low	Low	2013/ACECOA (2014)

### Compliance, review, monitoring and enforcement

	Description of change	Impacts	Number affected	Frequency of impact	Magnitude of impact	Year/Source
8.5.1	Expand the current scope for undertakings	Decreased cost of prosecuting	5 prosecutions	Low	High	
8.5.2	Ensure that a failed undertaking does not prevent a prosecution from going forward	Ensured enforceability of regulations	0 failed undertakings reported in 2013/14	Low	Low	Data request to Australian Government Department of Education (2014)
8.5.3	Clarify the definition of 'unauthorised person'	Better clarity	–	Low	Low	
8.5.4	Amend the definition of "person with management or control" (Section 5) in the National Law by providing that a person in the relevant position (for example, an officer of the body corporate in subsection (a)) would always be a person with management or control	Ensured extension of liability to persons who have actual responsibility for managing the service delivery	Sector wide	Unclear	Medium	

### Information Sharing

	Description of change	Impacts	Number affected	Frequency of impact	Magnitude of impact	Year/Source
8.6.1	Allow the regulatory authority to publish the service approval number for a FDC service, where the service has contravened the National Law or National Regulations	Improved transparency, better enforceability of regulations	55 services which have contravened the law	Low	Low	2013/ACECOA (2014)

8.6.2	Clarify that disclosures can be made within Departments and to other state or territory governments where it is related to the funding of education and care services.	Increased certainty, increased safety and quality outcomes	–	Low	Low
8.6.3	Remove restrictions on the publication of enforcement actions	Better enforceability of regulations	Data not available	Low	Medium

### Administrative requirements

	Description of change	Impacts	Number affected	Frequency of impact	Magnitude of impact	Year/Source
8.7.1	Only require providers to notify the regulatory authority of a complaint that alleges a serious risk to a child's health, safety or wellbeing; or breaches the National Law or National Regulations	Reduced administrative burden	10,262 notifications to RA	High	Low	2013/ACECOA (2014)
8.7.2	Strengthen requirements for obtaining a medical management plan, and risk minimisation plan.	Increase safety outcomes for children	Data not available	Low	Medium	
8.7.3	Remove requirement to keep evidence of insurance at premises/principal office	Reduce administrative burden for sector	14,358 services	Low	Low	2013/ACECOA (2014)

### Transitional and savings provisions

	Description of change	Impacts	Number affected	Frequency of impact	Magnitude of impact	Year/Source
8.8.1	Remove requirement for supervisors of volunteers who are under the age of 18 to have a diploma level qualification (Victoria specific provision) or be working towards a diploma-level qualification	Increased flexibility, increased supply of volunteers	Data not available	Low	Low	

This Consultation Regulation Impact Statement has been prepared  
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