



NQF REVIEW
2019

**DECISION
REGULATION IMPACT
STATEMENT**

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Acronyms

Acronym	Meaning
ACECQA	Australian Children’s Education & Care Quality Authority
AEDC	Australian Early Development Census
BBF	Budget Based Funded
CBA	Cost-benefit analysis
CCS	Child Care Subsidy
COAG	Council of Australian Governments
CRIS	Consultation Regulation Impact Statement
DRIS	Decision Regulation Impact Statement
ECPG	Early Childhood Policy Group
ECT	Early childhood teacher
EYLF	Early Years Learning Framework
FAL	Family Assistance Law
FDC	Family day care
FTE	Full-time equivalent
LDC	Long day care
MYTOP	My Time, Our Place
NP NQA	National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care
NPV	Net Present Value
NQA	National Quality Agenda
NQA ITS	National Quality Agenda Information Technology System
NQF	National Quality Framework
NQS	National Quality Standard
OSHC	Outside school hours care
PIDTDC	Person in day-to-day charge
PRODA	Provider Digital Access (Australian Government system for claiming Child Care Subsidy)
QIP	Quality Improvement Plan
RA	Regulatory authority

Acronym	Meaning
RIS	Regulation Impact Statement
ROGS	Report on Government Services
WWVP	Working with Vulnerable People Check
WWWC	Working with Children Check

Glossary

Term	Description
Administrative costs	Costs incurred in complying with a regulation that relate to record keeping, reporting or other administrative processes or systems.
Business	Any organisation engaged in commercial, industrial or professional activities operating under Australian law for the purpose of making a profit.
Burden	The cumulative effect of government regulation on business, community organisations or individuals.
Business-as-usual costs	Costs incurred as part of normal business practices that would be undertaken regardless of regulatory change.
Community organisation	Any organisation engaged in charitable or other community-based activity operating under Australian law and not established for the purpose of making a profit. In the 2019 NQF Review DRIS, community organisations are assumed to be not-for-profit, community and government providers of education and care services.
Compliance costs	The direct costs incurred by a regulated entity to comply with regulation. Compliance costs can be further categorised into <i>administrative</i> , <i>substantive</i> , or <i>financial</i> compliance costs.
Consultation	The practice of advising stakeholders of an intention to regulate which involves information sharing, dialogue and genuine consideration of feedback received.
Financial costs	The fees and charges attached to a regulation that are payable to government.
Highly prescriptive legislative approach	A policy option that employs purely legislative change to address identified policy problems.
Impact	A positive or negative effect caused by regulation.
Individual	Any person subject to Australian law who interacts with government or is impacted by regulation, and whose activities have an impact in Australia. In the 2019 NQF Review DRIS, individuals are assumed to be educators and staff in early childhood services.

Term	Description
Legislative change	A change that involves formal amendments to existing legislation and regulations.
Minor change	Changes that do not substantially alter the existing regulatory arrangements.
Mixed approach	A policy option that employs both legislative and non-legislative change to address identified policy problems.
Non-compliant	Failure to produce an adequate RIS as assessed by the OBPR.
Non-compliance costs	Costs associated with a failure by a business, community organisation or individual to comply with regulation. Examples include fines and court fees.
Non-legislative change	A change that does not involve formal amendments to existing legislation and regulations but is nonetheless intended to regulate the sector. An example is the development of communications and guidance to improve stakeholder awareness and knowledge of legislative and regulatory requirements and to enable compliance.
Office of Best Practice Regulation (OBPR)	The Division within the Department of the Prime Minister and Cabinet responsible for providing advice to Portfolios on whether a RIS is required, assessing estimates of regulatory costs and offsets, and vetting the adequacy of RIS drafts.
Regulator behaviour	Any aspect of the way regulation is applied or administered which has the effect of altering its impact, positively or negatively.
Regulation	Any rule endorsed by government where there is an expectation of compliance. This includes legislation, regulations, quasi-regulations and any other aspect of regulator behaviour which can influence or compel specific behaviour by business, community organisations or individuals. This includes red tape burden imposed by the Commonwealth's procurement, grants and cost recovery frameworks.

Term	Description
Regulation Impact Statement (RIS)	A statement Commonwealth agencies must produce as part of the policy-making process when a decision is likely to have a regulatory impact on business, community organisations or individuals.
Regulatory Impact Analysis (RIA)	The process of examining the likely impacts of regulatory proposals and the range of alternative options.
Status quo option	A policy option in which all current policy settings remain as they are as the alternative to regulating; as distinct from the No regulation option. A RIS must analyse the net benefit of either or both the No regulation and Status quo options as a benchmark against which other options can be assessed.
Substantive costs	Any costs (not including financial or administrative) arising as a consequence of new regulation. They may take many forms, including the need for new plant or equipment, building modifications or training courses.
Sunsetting	The practice of specifying a date at which a given regulation will cease to have effect.

EXECUTIVE SUMMARY

The 2019 National Quality Framework (NQF) Review has involved a national review process with governments from each State and Territory, the Australian Government and the Australian Children’s Education & Care Quality Authority (ACECQA). Importantly, the 2019 NQF Review has involved two rounds of national public consultation on the issues directly raised within this Review.

The NQF was introduced in 2012 and first reviewed in 2014. This 2019 NQF Review is intended to build on the 2014 Review of the National Quality Agenda (NQA), which led to the successful implementation of significant improvements to the NQF that were well received by the education and care sector¹. Regular review is required to ensure the NQF is current, fit for purpose and implemented through best practice regulation.

This Decision Regulation Impact Statement (DRIS) represents a culmination of the work within this Review. It makes recommendations about ways to improve the NQF, including strengthening existing National Law and Regulations, providing additional guidance and other policy changes.

Chapter 1: *Background* provides an overview of the NQF system, including a description of how the NQF functions, how the NQF is currently governed, detail regarding the education and care sector profile, outcomes for children and past Reviews.

The DRIS also examines the overarching policy problems of accessibility of information, reducing administrative and regulatory burden and reducing hazard and risk to children attending education and care services within Chapter 2: *What are the problems to be solved?*.

Government action seeks to address the overarching themes raised in Chapter 2. Detail regarding how government action seeks to do this is included within Chapter 3: *Why is government action needed?*.

Three potential options have been proposed within this DRIS. These include:

- Option 1: Retain the status quo – continue current regulatory and policy settings for the NQF system
- Option 2: A mixed approach –use both legislative and non-legislative tools to resolve the identified policy problems
- Option 3: A highly prescriptive legislative approach –primarily use changes to the National Law and Regulations to address identified policy problems.

These options are outlined in Chapter 4: *What policy options are you considering?*

The 2019 NQF Review process involved comprehensive national consultation with a range of stakeholders including education and care providers, services and their



educators, families and the community and peak organisations. Chapter 5: *Who did you consult?* outlines the approach taken to consultation throughout the Review, and highlights findings from the consultation on the Consultation Regulation Impact Statement (CRIS) that occurred during 2021.

Analysis of the impacts from the proposed change options is undertaken in Chapter 6: *Impact analysis*. This involves consideration of:

- The direct regulatory costs to businesses, community and individuals measured through a Regulatory Burden Estimate (RBE).
- A qualitative breakdown of impacts for each type of stakeholder.
- A cost-benefit analysis table for each option, including a breakdown of the Net Present Value (NPV) of each option, by jurisdiction over 10 years.

A separate cost-benefit analysis summary report has been compiled for the 2019 NQF Review and can be found in the supplementary document: NQF Review Cost-Benefit Analysis.

Given the consultation feedback received on the CRIS, alongside the analysis of impacts undertaken for the CRIS policy proposals contained within Appendix 1: *Summary of CRIS Issues and Recommendations*, this DRIS recommends that Option 2: A mixed approach is pursued. This involves a range of changes to the NQF, including changes to the National Law and Regulations, associated guidance and policy material. Chapter 7: *What is the best option from those considered?* outlines the proposed recommendation.

Finally, the DRIS provides detail on the processes for implementing the changes recommended through this review process, and opportunities for future review of the NQF system in Chapter 8: *Implementation and opportunities for future review*.

Appendix 1 contains a summary table of all the recommended changes that have been made through the 2019 NQF Review.

Appendix 2 contains the policy papers for each regulatory issue in the 2019 NQF Review. These papers include an overview of the issue, an analysis of each option for change, an overview of consultation feedback, implementation requirements and reasoning for the recommended option/s for change.

Supplementary document: NQF Review Cost-Benefit Analysis (CBA) contains a cost-benefit analysis of proposed options for change put forward in the CRIS.

The NQF system is one that strives for continual improvement for the benefit of all Australian children. Quality education and care is paramount, alongside ensuring the safety, health and wellbeing of children attending education and care in Australia. The recommendations from this Review also seek to ensure that the NQF continues to meet the objectives laid out in Section 3 of the National Law.

GUIDE TO THE DECISION REGULATION IMPACT STATEMENT (DRIS)

According to the Office of Best Practice Regulation (OBPR), conducting a Regulatory Impact Analysis (RIA) helps to ensure that “policy and decisions are supported by the best possible evidence and analysis.”²

This RIA traditionally includes the development of a Consultation Regulation Impact Statement (CRIS) to guide public consultation with a broad range of stakeholders, as well as a Decision Regulation Impact Statement (DRIS) to inform policymakers of recommendations for change.

The CRIS was published in February 2021 and discussed 21 individual regulatory issues within the NQF.³ These issues were explored with regard to three overarching problems which have formed the structure of this DRIS. These three overarching problems in the NQF are:

1. Accessibility of information
2. Administrative or regulatory burden
3. Unacceptable hazard or risk to children.

These three problems are described in detail in Chapter 2: *What are the problems to be solved?* of this DRIS.

For each of the 21 issues identified in the CRIS, a range of options were explored. These options included status quo, non-legislative and legislative options. For each issue, the costs and benefits of these options were explored.

Drawing on a previous Issues Paper, the CRIS, two rounds of national consultation, and jurisdictional discussions on the options for each issues in the CRIS, this DRIS considers the three overarching problems in the NQF and gives three cumulative options for change for consideration by governments. These three options are:

Option 1: Retain the status quo.

Option 2: A mixed approach (legislative and non-legislative changes).

Option 3: A highly prescriptive legislative approach.

These three options take into account the cumulative effect of the options analysis against the 21 issues. These options, including the underlying regulatory changes, are described in greater detail within Chapter 4: *What policy options are you considering?* of this DRIS.



When considering the preferred cumulative option for change, the DRIS discusses the impacts of the three options, both from the costs on services and considering broader social and economic impacts on the sector, such as workforce dynamics and increasing or decreasing access to education and care and the likelihood of achieving the desired outcome.

The impacts of the three options are highlighted in Chapter 6: *Impact analysis of this DRIS*.

Taking into account the national consultation data, assumed economic and social impacts and available policy evidence to justify change, the DRIS then recommends a preferred option to governments.

The preferred option for change is outlined in Chapter 7: *What is the best option from those considered?* of this DRIS.

1 BACKGROUND

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

1.1 Origins of the NQF

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

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

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

The 2009 COAG Decision Regulation Impact Statement (DRIS) for the NQA⁴ found that the potential benefits from the NQF fell into two broad categories:

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



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

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

1.2 Description of the NQF

The NQF aims to raise quality and drive continuous improvement and national consistency in children's education and care services through:

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

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

- ensure the safety, health and wellbeing of children attending education and care services
- improve the educational and developmental outcomes for children attending education and care services
- promote continuous improvement in the provision of quality education and care services



- establish a system of national integration and shared responsibility between participating jurisdictions and the Commonwealth in the administration of the NCF
- improve public knowledge, and access to information, about the quality of education and care services
- reduce the regulatory and administrative burden for education and care services by enabling information to be shared between participating jurisdictions and the Commonwealth.

The National Quality Framework

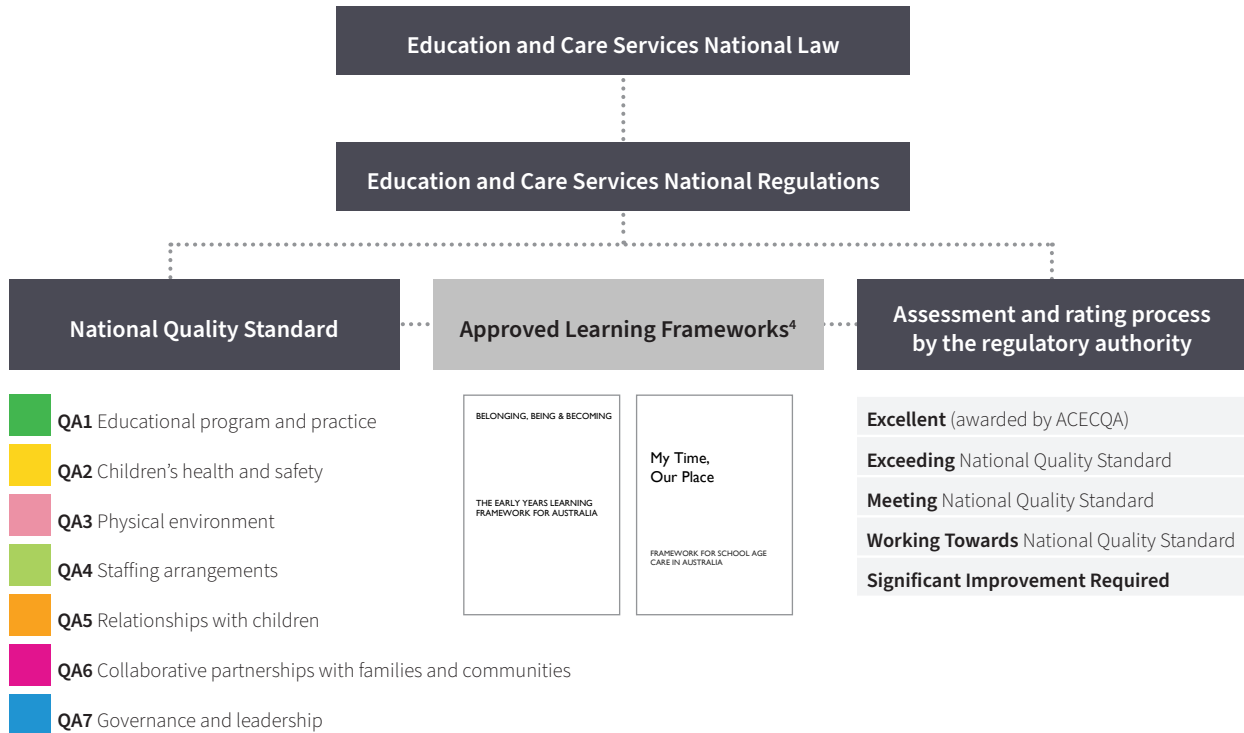


Figure 1: Key components of the NQF⁵

The National Law and National Regulations detail the operational and legal requirements for providers of approved education and care services and apply to most long day care (LDC), family day care (FDC), preschool (kindergarten) and outside school hours care (OSHC) services in Australia.

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

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

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

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

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

There is also an approved jurisdiction-specific learning framework for Victoria.⁶

1.3 Governance of the NQF

Under the NQF, the Australian, State and Territory governments have different but complementary roles. The Australian Government's role and responsibility is to contribute to national policy and fund the national body, ACECQA.

ACECQA is an independent national body which guides and monitors the administration of the NQF to promote consistency across all States and Territories. ACECQA's role includes:

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

State and Territory governments' roles and responsibilities include:

- granting approvals under the National Law and National Regulations, including provider and service approvals

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

The Education Ministers Meeting (EMM) comprises Australian, State and Territory government ministers who are responsible for early childhood education and care matters. Their responsibilities include:

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

The Ministerial Council, formerly called the Education Council, is now known as the Education Ministers Meeting.

1.4 Education and care sector profile

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

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

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

1.5 Attendance rates and service types

In 2019, it was estimated that there were 1,304,002 children (around 31.5% of all children) aged 0–12 years in attendance, which is a 17% increase since 2014.⁷ This is the age group that is able to attend most education and care services, and is also the age group for which families may be eligible to receive the Australian Government’s Child Care Subsidy (CCS).

Of the attendees, over half (58.8%) attended LDC, 36.6% attended OSHC services, and 9.5% attended FDC.⁸ Around 64.7% of all attendees were aged 0–5 years.⁹

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

As at the June quarter of 2019, approximately 1.3 million children (of nearly one million families) attended a CCS-approved education and care service.¹⁰

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

Table 1: Number of children attending a CCS-approved service whose CCS-eligibility was assessed¹¹

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

^Excludes In Home Care.

As at the period ending 30 September 2021, there were 16,516 education and care services approved to operate under the NQF, which were operated by 7,268 approved providers. Of these approved providers, 81% operate a single service.¹² A total of 93% (15,431) of the approved services had received a quality rating.¹³ The distribution of these services was as follows:

	Family day care	Long day care	Preschool/ Kindergarten	Outside school hours care	Other	Total
ACT	7	174	88	100	1	370
NSW	150	3323	759	1448	0	5680
NT	3	89	74	57	1	224
QLD	118	1719	494	767	0	3098
SA	13	433	407	376	0	1229
TAS	11	130	0	87	0	228
VIC	145	1757	1186	1306	0	4394
WA	38	751	22	481	1	1293
TOTAL	485	8376	3030	4622	3	16,516

Table 2: Number of approved services by service type and jurisdiction¹⁴

1.6 Education and care market structure

As at 30 September 2021, the majority (81%) of the 7,268 education and care providers were small single service operators, while approximately 19% were classified as medium-sized providers (2 to 24 services) and 1%¹⁵ large providers (25 or more services).¹⁶ The operation of these 16,516 services was mostly evenly split amongst small (35%), medium (31%) and large (34%) providers.¹⁷

Provider management type	Number of services	Proportion of services
Private for-profit	8254	50%
Private not-for-profit community managed	3401	21%
Private not-for-profit other organisation	2248	14%
State/Territory and Local Government managed	1207	7%
State/Territory government schools	683	4%
Independent schools	492	3%
Catholic schools	215	1%
Not stated/other	16	0%
TOTAL	16,516	100%

Table 3: Number and distribution of services by provider management type¹⁸

Since 2011, market analysis shows a shift in classification of ‘child care’ from a barely profitable, mature, low-growth sector with significant regulatory burden to a ‘blue chip’ investment in 2017, with projected revenue growth of 4.2%.¹⁹ The distribution of provider management types is trending towards large providers holding responsibility for a larger proportion of services across the sector, potentially having more complex ownership and management structures, as well as continued growth of for-profit providers.²⁰

1.7 The cost of education and care

Since at least 2007, the real cost of education and care for families has continued to increase for reasons not solely attributable to shifts in regulatory standards such as those introduced by the NQF.²¹ Additionally, as service fees are heavily subsidised by the CCS and state-based funding programs, the out-of-pocket expenses paid by families are not always indicative of costs of education and care provision.

Overall, costs are highly variable based on a range of factors, including but not limited to location, service type and the age of the child in care.²²

The 2009 COAG DRIS estimated that the increased costs attributable to implementing the NQA would vary significantly depending on jurisdiction and service type, averaging \$4.43 for LDC and \$3.19 for preschool per child per day by the end of 2019.²³ This analysis took into account the impacts of the NQF on service costs, but excluded the costs which were assumed to be borne by individuals or governments, such as the cost of training for early childhood educators.

The 2019 Household, Income and Labour Dynamics in Australia Survey (HILDA) reports that the median weekly expenditure²⁴ on formal care²⁵ for children not yet at school in 2016 and 2017 was \$152.60, an increase of 145% since 2002 (on commencement of HILDA surveys).²⁶ However, there has also been an increase in the median weekly expenditure towards nannies (informal care) for children not yet of school age, which has reached parity with formal care at \$152.60 (an increase of 136% since 2002). This indicates that the introduction of the NQF has had a minimal effect on the increasing cost of education and care as there is no longer a significant difference in the cost between regulated and unregulated care types.

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

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

As part of the 2021–22 Budget, the Australian Government announced higher CCS for families who currently pay the most—those with multiple children aged five or under in care.²⁷ From 7 March 2022, families with two or more children aged five years or under in care will have their CCS rate increased by 30 percentage points for their second child and any younger children, up to a maximum subsidy rate of 95 per cent.²⁸ From 10 December 2021, the \$10,655 annual CCS cap for families earning over \$190,015 will be removed for the entire 2021–22 financial year onwards.²⁹ Around 250,000 Australian families (2022–23) will benefit from these changes to the CCS. On average, these families will be more than \$2,200 a year better off.³⁰

1.8 Return on investment in early childhood education and care

Since the commencement of the NQF in 2012, there has been significant investment from the Australian and State and Territory governments, in the form of subsidies and other financial support, to the education and care sector. Total Australian, State and Territory government expenditure on early childhood education and care services was at \$9.8 billion in the 2018/19 financial year. Of this, Australian Government expenditure accounted for \$7.9 billion (80%) and State and Territory government expenditure of \$2.0 billion, with preschool services accounting for 85.8% of the State and Territory government expenditure.³¹

Evidence shows that the best outcomes for children from education and care come from high quality service settings and while the increased participation in early childhood education programs is beneficial, the highest long-term benefits are realised from engagement in high quality educational programs.³² There is a significant body of evidence that shows that high quality early childhood education and care can:

- improve children’s cognitive and socio-emotional development. The time spent in early childhood education and care is a strong predictor for the level of performance later in life³³
- create positive outcomes in areas of health and well-being, and support children’s outcomes later in life, including market participation, reduction in poverty, increased social mobility and social integration³⁴
- have a positive effect for children experiencing higher levels of educational and social disadvantage, and can help them catch up to their more advantaged peers.³⁵

There is a growing body of evidence that investment in human capital during the prior-to-school years yields a strong rate of return. For every dollar spent on quality early childhood education and care in Australia, there is a minimum return of \$2.62 and up to \$17.07 for the most vulnerable and disadvantaged children.³⁶

1.9 Outcomes for children

Overall, outcomes for Australian children against a range of objective measures have improved since 2009. According to the Australian Early Development Census (AEDC), which collects data on five key domains that predict later health, wellbeing and academic success, the percentage of Australian children developmentally vulnerable on one or more domains has decreased nationally from 23.6% in 2009 to 21.7% in 2018.³⁷

There has also been a steady improvement in the language and cognitive skills of children starting school across Australia. The percentage of children developmentally on track in the language and cognitive skills (school-based) domain has increased significantly from 77.1% in 2009 to 84.4% in 2018.³⁸

Improvements have also been documented in the domain of communication skills and general knowledge, with the proportion of developmentally vulnerable children moving from 9.2% in 2009 down to 8.2% in 2018.³⁹

1.10 Sector performance

Since its introduction, the NQF has been an effective framework to guide high quality service delivery and promote continuous improvement. The percentage of education and care services rated as Meeting NQS or above continues to increase, from 62% in 2014 to 86% on 30 September 2021.⁴⁰

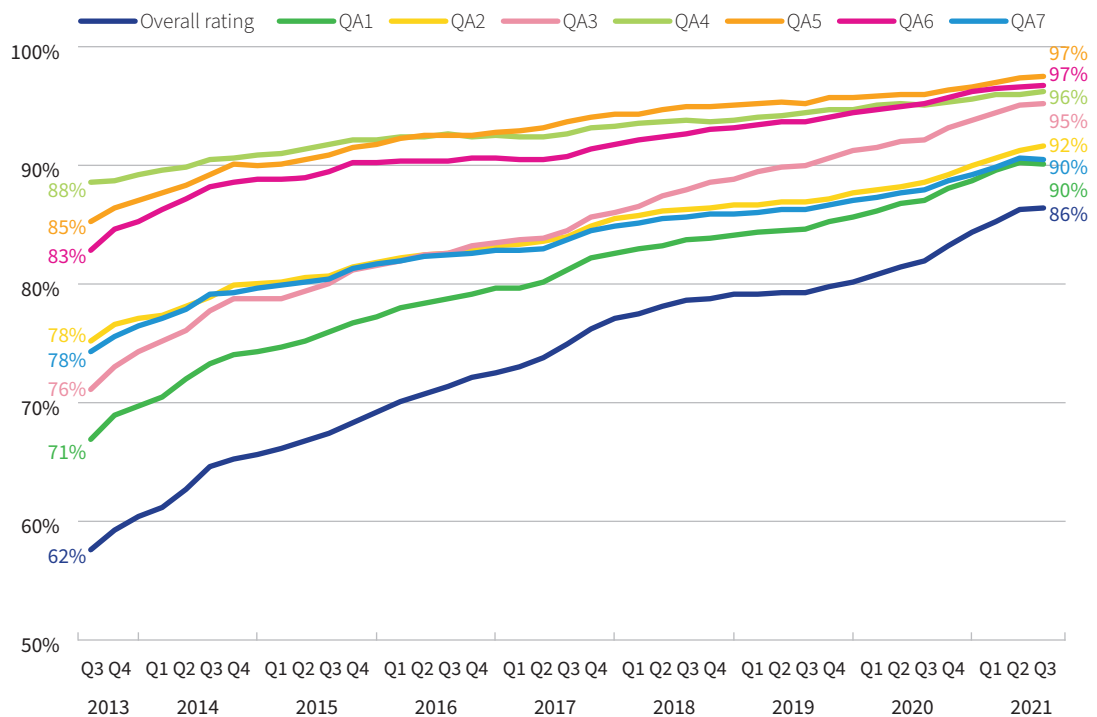


Figure 2: Proportion of services rated Meeting NQS or above by overall rating and quality area⁴¹

1.11 Regulatory burden

ACECQA's regulatory burden surveys reveal that support for the NQF has consistently remained very positive. Between 2013 and 2015, over 80% of respondents were either very supportive or supportive of the NQF.⁴² In the 2019 NQF Annual Performance Report produced by ACECQA, the vast majority of providers continued to indicate support for the NQF.⁴³

Following the changes made to the National Law and National Regulations in October 2017 and February 2018, two thirds of respondents to ACECQA's 2018 survey on regulatory burden indicated that the benefits of the changes to the NQF outweighed the burden they placed on them.⁴⁴

The overall perception of burden has largely remained constant across the five surveys completed between 2013 and 2018.⁴⁵ The perception of burden was higher amongst OSHC and preschool providers compared to LDC providers, with the lowest perception of burden in FDC. Larger providers had a lower perception of burden than smaller providers.⁴⁶

1.12 2014 NQA Review

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

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

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

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

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

The changes were well received, as evidenced by the continued high level of support for the NQF from the sector following the changes.⁴⁷

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



- the scope of the NQF, in particular whether it should be expanded to include former Budget Based Funded (BBF) services
- governance of services, in particular the definition of ‘person with management or control’ (PMC) of the service
- arrangements regarding relief of an early childhood teacher (ECT) in circumstances of short-term illness or absence
- changes to prescribed fees to increase cost recovery for regulatory authorities.

In regard to the expansion of the NQF to regulate former BBF services, governments have determined that due to the unique operating contexts of these services, and the low number of services impacted (134 nationally) this issue would best be resolved by a separate process directly consulting with the impacted services, rather than through the 2019 NQF Review process.

1.13 2019 NQF Review

In December 2018, the Ministerial Council agreed to commission the 2019 NQF Review. This Review is intended to build on the 2014 Review and ensure the NQF is current, fit for purpose and implemented through best practice regulation. Specifically, the purpose of the 2019 NQF Review is to ensure that the NQF continues to meet its objectives⁴⁸ and is effective and sustainable in light of the continuing evolution of the education and care sector.

By endorsing the 2019 NQF Review Terms of Reference, Education Ministers committed to ensuring the continuing effectiveness of the NQF. The Terms of Reference for the 2019 NQF Review set out the parameters of the Review. They also state that possible improvements to the system should be investigated, including in relation to:

- Governance arrangements for the NQF
- Whether fees should be more closely aligned to the cost of regulatory services, in line with best practice guidelines for cost recovery
- Recommendations from the Improving Quality in Family Day Care program of work commissioned by the Education Council that require legislative and policy change
- Changes required as a result of recommendations made pursuant to the Royal Commission into Institutional Responses to Child Sexual Abuse
- Any further critical issues which emerge from consultation with the sector.⁴⁹

- A number of areas were deemed out of scope of the 2019 NQF Review, given the previous 2014 Review of the NQF and comprehensive changes arising from that Review. Areas out of scope of the 2019 NQF Review and not included in this Regulation Impact Statement (RIS) are:
 - The quality areas, standards and elements of the NQS
 - Issues resolved by the 2014 Review
 - The approved learning frameworks.

An Issues Paper⁵⁰ and CRIS⁵¹ have been through national consultations. Results of consultations have informed policy development within this DRIS.

1.14 Phases of the 2019 NQF Review

The 2019 NQF Review has included two rounds of public consultation. Consultation on the Issues Paper led to the development of the CRIS, with feedback from later consultation in 2021 supporting governments in developing the DRIS. Below is a flow chart outlining the four overarching stages of the 2019 NQF Review.

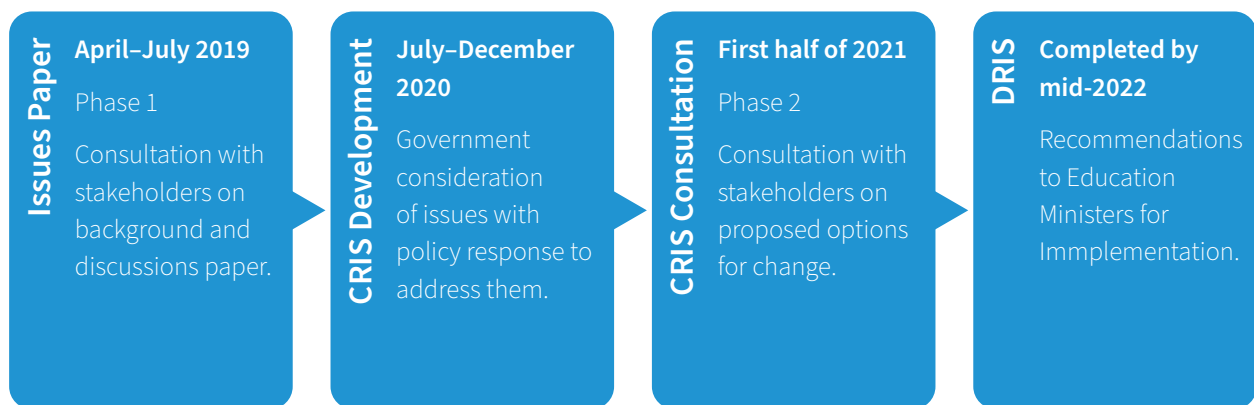


Figure 3: Phases of the 2019 NQF Review

2 WHAT ARE THE PROBLEMS TO BE SOLVED?

With the establishment of the NQF,⁵² governments committed to ensuring children have access to quality early childhood education, that children’s environments are nurturing, culturally appropriate and safe, and best support children’s development.⁵³ The NQF introduced a national regulatory framework to meet that objective, and the 2019 NQF Review has focused solely on reviewing this framework to ensure that it is current and remains fit for-purpose.

The initial National Partnership Agreement on the National Quality Agenda (NP NQA) between the Australian Government and State and Territory governments emphasised the importance of reviewing the NQA after five years to inform potential improvements to how education and care is regulated in Australia. From this, the 2014 Review and the 2019 NQF Review were undertaken to consider potential changes required to ensure the NQF is still fit for purpose and to achieve the agreed objectives and outcomes under the 2009 NP NQA.

While the 2019 NQF Review seeks to address a range of issues as described in the CRIS published in 2020, these individual issues can be best considered as elements of broader ‘problems’ to be addressed within the NQF. At the core of issues outlined in the CRIS, three types of problems have been considered as part of the 2019 NQF Review:

- Accessibility of information
- Administrative and regulatory burden
- Unacceptable hazard or risk to children.

The issues canvassed in the CRIS are expanded in greater detail in Appendix 2. The following table outlines the issues:

CRIS Chapter	Issue	Page number
3.1	Safety of children during transitions between services (including school)	97
3.2	Sleep and rest requirements	103
3.3	Improving children’s safety during regular transportation	109
3.4	Improving children’s safety during emergency and evacuations from multi-storey buildings	115
4.1	Embedding the National Child Safe Principles	122
4.2	Updating record keeping requirements	129

CRIS Chapter	Issue	Page number
5.1	FDC register and notification requirements	134
5.2	FDC exceptional circumstances	138
5.3	Safety around swimming pools in FDC residences	142
5.4	Safety of glass used by services in family day care	148
6.1	Assessment and rating of OSHC services	155
7.1	Restrictions on short-term relief for early childhood educators	159
7.2	Educators who are 'actively working towards' a qualification	163
7.3	Minimum qualification requirements for educators in FDC	167
8.1	The quality ratings system	171
9.1	Changes in fees for regulatory authorities	176
9.2	Changes in application fees for ACECQA functions	183
10.1	Assessing suitability of individuals to work directly or indirectly with children	188
10.2	Cancellation of provider approval under the Family Assistance Law	194
10.3	Arrangements to transfer a service to another approved provider	197
10.4	Maintaining current information about service delivery	202
11.1	Notice of Transport in the NQA ITS	206
11.2	Policies and procedures relating to physical activity	208
11.3	FDC: Display requirements for venues/residences	208
11.4	Tasmania specific Amendment – Regulation 353	210
11.5	Excellent rating	211
11.6	Death of an approved provider	213
11.7	Waivers for the NQS Elements	213
11.8	Program-level documentation for children over preschool age	215

Table 4: Issues from 2019 NQF Review CRIS

There is a high level of intersection between the three overarching areas outlined above. For example, ensuring educators have the required knowledge for safe sleep practices (Chapter 3.2 of the CRIS) shows the intersection between accessibility of information and



reducing hazards and risk to children. By targeting all three overarching policy problems, this DRIS aims to deliver system-level strategic resolutions to appropriately address the identified problems.

Not all issues within the sector are addressed by this DRIS. This is because the 2019 NQF Review is focused solely on the NQF, with particular regard to the National Law and National Regulations, rather than broader issues such as funding sources, workforce shortages, supply and demand, accessibility and other issues for the sector. These broader issues will be addressed in other government initiatives (such as the Joined-up Approvals Project and the National Children's Education and Care Workforce Strategy).

While regulatory change to the NQF is recommended within this DRIS, in many cases improved guidance and information have been considered sufficient to address the stated problems.

2.1 Accessibility of information

Maintaining clear, adequate and accessible information is important to ensure all stakeholders are informed and able to act in their best interests.

Under the NQF, transparency and access to regulatory information and guidance for providers and services is vital to support high quality outcomes for children in education and care. For parents and carers, access to adequate, timely and relevant information about an education and care service is important when deciding whether or not to enrol their child in a particular service.

For educators and staff, a lack of access to high quality information and guidance can also result in adverse outcomes for children attending education and care services. This can be addressed through further guidance, information campaigns or training to ensure educators are knowledgeable about issues affecting education and care services. For example, ensuring educators are knowledgeable about safe sleep practices for infants is likely to reduce the risk of sudden unexpected death in infancy (SUDI) (Chapter 3.2 of the CRIS).

For providers, unclear or inconsistent information about regulatory requirements may result in additional burdens to ensure compliance with the National Law and National Regulations. For example, inconsistent height requirements for safety glass across the FDC sector may lead to providers spending additional time and effort ensuring that individual FDC residences are compliant with their respective height requirements (Chapter 5.4 of the CRIS). This burden may be reduced, for example, if the complexity of information was simplified so that there is a clearer understanding of what obligations apply and to prevent unintentional non-compliance with regulatory requirements.

Another example from the CRIS relates to understanding of quality ratings by families (Chapter 8.1 of the CRIS). Families may have a low understanding of quality ratings which could affect their ability to utilise the ratings when choosing a service. By providing better information for families, community understanding of the quality rating system is likely to improve, providing greater autonomy to families in choosing a service, while providers are encouraged and incentivised to improve their services.

2.2 Reducing administrative and regulatory burden for education and care providers and their services

Under the NQF, providers of education and care services incur costs associated with ensuring compliance with regulatory requirements. These costs may be administrative, such as updating records or notifying the government of certain activities, or substantive compliance costs, such as providing training to employees or purchasing additional equipment. The costs may also relate to regulatory burdens associated with devising and implementing required policies and procedures and complying with legislation.

Governments have a responsibility to consider the regulatory burdens placed on education and care services under the NQF. For example, streamlining online processes for some applications may ultimately save providers time and administrative effort, such as through clearer guidance as to who constitutes a person with management or control (Chapter 10.1 of the CRIS). A further example from the CRIS relates to moving the FDC Register to an online format (Chapter 5.1 of the CRIS).

The recommendations within the 2019 NQF Review consider the way in which administrative and regulatory burdens may impact on education and care services, and ultimately impact on families and children.

2.3 Reducing hazard or risk to children

A key objective of the National Law is ensuring the safety, health and wellbeing of children attending education and care services.⁵⁴ Many of the issues as outlined in the CRIS relate to the safety, health and wellbeing of children in education and care services, such as emergency evacuations from services operating in multi-storey settings (Chapter 3.4 of the CRIS).



Within the context of education and care services, hazards or risks are generally mitigated by requiring services to put in place policies and procedures, conduct risk assessments and ensure that educators are adequately aware of emerging risks or issues affecting children’s safety, health and wellbeing. These regulatory requirements are commonly applied across a variety of safety, health and wellbeing issues under the NQF to proactively address potential negative impacts on children.

The 2019 NQF Review considers a number of issues where governments and the sector have identified a range of hazards or risks to children, and where potential new regulatory interventions have been determined to outweigh any associated costs. For example, there have been a number of fatal incidents during the transportation of children by services. Implementation of new risk mitigation strategies aims to reduce future instances where children are left on vehicles, and any associated fatalities (Chapter 3.3 of the CRIS).

Another example from the CRIS relates to transition processes between school and education and care services (Chapter 3.1 of the CRIS). This is a common period when children are reported “missing or unaccounted for” and implementation of further strategies to reduce these instances may also increase safety of children. Often risk mitigation strategies can be implemented with relatively low cost or regulatory impact to providers.

3 WHY IS GOVERNMENT ACTION NEEDED?

Since the introduction of the NQF, there have been continuous improvements to overall service quality within the system. However, there remain a number of issues within the NQF that relate to children's safety, health and wellbeing, administrative and regulatory burdens and barriers to accessibility of information.

State and Territory governments regulate education and care providers and their services through quality assurance programs and initiatives, compliance action and, in some cases, regulatory reforms. By refining regulatory aspects of the NQF through regulatory reviews, governments seek to ensure that the effectiveness of the NQF is maintained over time.

While governments take an active role in regulating the education and care sector, they are often not responsible for the operational aspects on the ground. This is because the Australian education and care sector is made up of for-profit, not-for-profit, community-based and government providers. Considering that the majority of education and care services in Australia are non-government entities, the NQF acts as a form of regulatory oversight to ensure minimum standards for quality and children's safety, health and wellbeing are maintained.

As part of their role in the regulatory system, governments are expected to utilise their regulatory and legislative powers in risk-based compliance and quality assurance activities. This regulatory control allows governments to identify, respond to and investigate potential risks to children's safety, health and wellbeing in education and care services. However, the level of regulatory power provided to governments is fundamentally regulated by the National Law and National Regulations, limiting the potential actions of governments in responding to emerging issues or concerns. This administrative law framework means that governments will often have to establish or modify existing regulatory or legislative provisions in response to emerging regulatory issues. As these provisions shape regulatory authorities' powers, the new provisions grant government additional regulatory powers to review and address the relevant concerns in education and care services.

Government action aims to mitigate the problems identified in Chapter 5 of this DRIS, including minimizing hazard and risk to children, reducing regulatory and administrative burden for providers and their services, and improving accessibility of information for providers, services and families. The aims of government action also reflect the overall objectives of the NQF, which include ensuring the quality of early childhood services and promoting children's safety, health and wellbeing.



As noted in the Issues Paper and the CRIS, the 2019 NQF Review identified a number of issues that currently impede the effectiveness of the NQF. Collectively, these issues are captured under the three major policy problems outlined in Chapter 5 of this DRIS (and noted above). Government action is needed to address these issues and mitigate their negative impacts on early childhood stakeholders, including sector stakeholders like providers, services, and educators, as well as consumers like families, children, and the community. Ongoing changes in the market have meant that current regulation does not effectively meet the needs and requirements of every stakeholder in the early childhood sector. As government is committed to ensuring regulation remains responsive and fit for purpose, government intervention is required to enhance the operations of the market and to ensure the delivery of a much-needed service. A lack of government action against the identified policy problems may lead to future sub-optimal outcomes for children.

4 WHAT POLICY OPTIONS ARE YOU CONSIDERING?

Chapter 2 of this DRIS identified three major policy problems considered as part of the 2019 NCF Review which form a frame for the analysis of the 21 issues in the CRIS. These three problems are:

- Accessibility of information
- Administrative and regulatory burden
- Unacceptable hazard or risk to children.

Drawing on feedback from the national public consultations on the CRIS, alongside the available evidence and data on regulatory issues, the DRIS proposes three policy solutions to address all three policy problems:

- Option 1: No change and retention of the status quo
- Option 2: A mixed approach using both legislative and non-legislative tools to address the issues presented in the CRIS
- Option 3: A highly prescriptive legislative approach.

The CRIS focussed on, and presented options for change for each regulatory issue individually but within the range of status quo, non-legislative and legislative changes.

The three options above in the DRIS provide a cumulative view of the options across all issues in the CRIS and against the problems being solved. An explanation of each of the three cumulative policy solutions can be found below.

4.1 Option 1: Status quo

Option 1 involves making no changes to the NCF, including the National Law and National Regulations, through the NCF Review. There would be no measures applied against issues identified through the Issues Paper and CRIS. This would see a continuation of business as usual in terms of the regulation of the sector.

The education and care sector includes services regulated under the National Law and National Regulations, specifically LDC, FDC, preschool (or kindergarten) and OSHC services. The National Law and National Regulations also apply to approved providers of services and early childhood educators, as well as primary school teachers (when considered as an equivalent ECT) and volunteers in certain contexts. Collectively, providers, services and service staff are responsible for the provision and delivery of education and care to young children, and as such they are significant stakeholders in



the 2019 NQF Review. Families, children and the broader community are the principal consumers in the context of the Review and are among the main beneficiaries of proposed changes to the NQF. By extension, they are highly important stakeholders in the 2019 NQF Review.

Option 1 would not increase administrative burden and the associated costs of regulatory change as services would continue to operate under the regulatory status quo. Education and care providers, services and educators would not be required to modify their systems or behaviour to comply with any new requirements under the NQF.

However, an option for no change may mean there are continuing impacts associated with the major policy problems identified in Chapter 2 of this DRIS. There would be no resolution of existing problems around administrative burden for providers and their services, clarity and accessibility of information for services and consumers, and emergent or continuing risks of harm and hazard to children.

4.2 Option 2: Mixed approach (legislative and non-legislative changes)

Option 2 involves a mix of legislative and non-legislative changes aimed at producing a proportionate response to issues raised in the 2019 NQF Review.

The assumption of ‘proportionality’ considers the problem being solved, the evidence available, the overall impacts and benefits of proposed policy responses, and broader, external factors such as current work being conducted by governments outside the 2019 NQF Review.

Addressing the broader issues of administrative burden, accessibility of information and hazard and risk to children (outlined in Chapter 5), Option 2 includes both legislative and non-legislative refinements to the NQF. These changes include moderate amendments to the National Law and National Regulations aimed at enhancing system efficiencies (e.g., around improving children’s safety, health and wellbeing in education). Collectively, this suite of legislative and non-legislative measures aims to reduce administrative burdens on providers and their services, to remove barriers to information that may impede regulatory compliance by providers and prevent informed decision-making by consumers, and to improve the protection of children from hazard and risks. Option 2 also has a strong focus on improving family and sector knowledge and awareness through the provision of targeted guidance and information.

Proposed non-legislative changes include developing information, communications and guidance to improve awareness of quality outcomes and regulatory standards under the NQF. This guidance is generally directed at the sector and families. One example is Issue 3.3 – Improving children’s safety during regular transportation, where the non-legislative

option involves providing guidance to providers to support the development of risk assessment strategies for the transportation of children. The guidance is intended to be adaptable to a service's particular circumstances and aims to help services meet existing regulatory requirements for adequate supervision of children during transportation.⁵⁵

For many issues identified in the 2019 NQF Review, this informational approach through developing communications or guidance will deliver better, more effective outcomes than simply changing legislative requirements. Improving information, communications and guidance will likely improve understanding, knowledge and awareness of important elements of the NQF without imposing excessive administrative or financial burden on providers, services, or educators.

The level of regulatory and legislative changes required is dependent on the operational context of the issues considered. In some cases, simple amendment to existing provisions under the National Law and National Regulations is adequate to provide greater clarity or reduce administrative burden. In other cases, changes can be introduced in practice within policies and procedures, without imposing significant legislative changes. These changes may be managed by providers without direct government oversight, and may include activities that are already required under the National Regulations, such as the preparation of risk assessments in new contexts, or the provision of more detail in certain policies and procedures.

Option 2 may also involve the introduction of additional regulatory requirements which do involve direct regulatory oversight by government, and which therefore carry higher administrative burdens and financial costs. However, these costs are outweighed by the expected mitigation of hazard and risk to children.

This option would require early childhood providers, services and educators to change their behaviour to satisfy new requirements under an updated NQF. For example, Option 2 would encourage behavioural change by increasing educator knowledge and awareness through new guidance and training, particularly around safety (e.g., Issue 3.2). For Issue 3.2, a mixed approach would involve the development of guidance for providers to support policies and procedures for sleep and rest, and would also provide information to families on safe sleeping practices. This approach would likely promote behavioural change for families as a result. Guidance around the NQS may, for example, support informed decision-making around child care, leading families to seek services with higher quality ratings (Issue 8.1).

Behavioural modifications under Option 2 will likely be less significant than under an option for purely legislative change (i.e., Option 3). A mixed approach incentivises compliance with the NQF and improves system efficiencies whilst ensuring public value outcomes are achieved. As opposed to the more prescriptive approach of Option 3, Option 2 results in relatively lower administrative and regulatory burden, reduces

barriers to information that impede regulatory compliance by the sector and informed decision-making by families, and minimises hazard and risk to children without imposing prohibitive costs on providers and services. The impacts of Option 2 are analysed further in Chapter 9.

Table 5 below shows the type of policy change adopted for each issue in the CRIS under a mixed approach. Please note that the matters identified in the ‘issue’ column and the change options listed in the ‘CRIS options falling under a mixed approach’ column are taken directly from the CRIS and are distinct from the policy problems identified in Chapter 2 of this DRIS and the policy solutions explored in this Chapter (i.e., Options 1, 2 and 3.)

Issue	CRIS options falling under a mixed approach	Type of change
3.1 – Safety of children during transitions between services (including school)	<p>Option C: Recommendation to State and Territory school authorities and non-government school sector organisations to develop policies and procedures to safely transfer children between schools and education and care services.</p> <p>Option D: Require that where relevant, an approved provider must ensure that the service has a policy and procedures in place for the transition period between education and care services (for example between school and OSHC, or OSHC and preschool), including a risk assessment process.</p> <p>Option E: Develop further guidance to support policies and procedures relating to the delivery of children to, and the collection from, education and care service premises.</p>	Legislative and non-legislative (guidance)
3.2 – Sleep and rest requirements	<p>Option C: Further guidance developed to support policies and procedures for sleep and rest.</p> <p>Option D: Amend the National Regulations to specify the matters that must be included in services’ policies and procedures for sleep and rest.</p> <p>Option E: Amend the National Regulations to require a risk assessment to be conducted in relation to sleep and rest, including matters that must be considered within that risk assessment.</p> <p>Option G: Legislative change to require compulsory training on safe sleep practices for all FDC educators subject to governments undertaking further research, costing and impact analysis of any proposed training and the implementation approach.</p>	Legislative and non-legislative (guidance)

Issue	CRIS options falling under a mixed approach	Type of change
<p>3.3 – Improving children’s safety during regular transportation</p>	<p>Option D: Legislative change to require the presence of a staff member of the service (other than the driver) when children are embarking and disembarking from the vehicle at the education and care service premises.</p> <p>Option F: Further explicit guidance on the application of current requirements for ratios and qualifications, and what is adequate supervision as it relates to transportation provided or arranged by a service. Separate guidance will also be generated for the FDC sector.</p>	<p>Legislative and non-legislative (guidance)</p>
<p>3.4 – Improving children’s safety during emergency evacuations from multi-storey buildings</p>	<p>Option B - Amend the legislation about requirements for emergency and evacuation procedures to require that for centre-based services located in multi-storey buildings:</p> <p>the emergency and evacuation procedures must set out additional information in regard to instructions for what must be done in an emergency, staged evacuations, identification of the person-in-charge and staff roles and responsibilities, and</p> <p>a review and/or risk assessment must be conducted, following certain prescribed events or a prescribed time period.</p> <p>Option C: Strengthen service approval processes to require that for centre-based services located in multi-storey buildings the regulatory authority, in assessing the suitability of the education and care service premises, is to consider the need for direct egress to safe evacuation areas for very young children and non-ambulatory children. This option would also apply to FDC requiring approved providers to conduct risk assessments of FDC residences and venues before education and care are provided, where located in multi-storey buildings.</p> <p>Option D: Amend service approval processes to require approved providers wishing to operate a centre-based service from premises in a multi-storey building in Victoria or ACT to apply to the regulatory authority for pre-approval of development and building plans for the proposed premises prior to development and construction. (Victoria and ACT only).</p> <p>Option E: Enhance national guidance and communication strategies to improve understanding of service approval considerations for centre-based multi-storey buildings and reinforce existing emergency and evacuation requirements for the early childhood education and care sector. Guidance would also be prepared for persons involved in third-party planning and building development processes across States and Territories.</p>	<p>Legislative and non-legislative (guidance)</p>

Issue	CRIS options falling under a mixed approach	Type of change
4.1 – Embedding the National Child Safe Principles	<p>Option D: Amend the National Law and Regulations and associated guidance to address identified gaps between the Child Safe Principles and the NQF to:</p> <ul style="list-style-type: none"> • Clarify that volunteers must be aware of the existence and application of any child protection law and any obligations held under it. • Require that all FDC co-ordinators complete child protection training prior to commencing employment and undertake annual refresher training. • Include Working with Vulnerable People/Children Check details on volunteer staff records. • Require that services child safe environment policies and procedures must also cover the creation of a child safe culture and the safe use of online environments. • Require service complaint handling policies to include policies and procedures for managing complaints alleging that a child is exhibiting harmful sexual behaviours. • Require that services’ policies and procedures for handling complaints are child focussed. 	Legislative change
4.2 – Updating record keeping requirements	<p>Option B: Improved guidance to assist providers on record keeping utilising existing best practice instructions developed by relevant Commonwealth, State and Territory Archive Authorities (for example, the National Archives of Australia General Records Authority 41) as per Recommendation 8.3, along with the five high-level record keeping principles recommended by the Royal Commission in Recommendation 8.4.</p>	Non-legislative (guidance)
5.1 – FDC Register and notification requirements	<p>Option B: Changes (legislative or otherwise) to the FDC Register requirements to enable regulatory authorities to have timely access to FDC service level data that will enable risk-based proactive approaches to regulation and allow regulatory authorities, particularly during emergency situations such as bushfires, to support service providers in meeting their obligations to ensure the safety of children.</p>	Legislative and/or non-legislative change
5.2 – FDC exceptional circumstances	<p>Option B: Require approved providers to include details of FDC educators operating above ratio due to exceptional circumstances on the FDC Register.</p>	Legislative change

Issue	CRIS options falling under a mixed approach	Type of change
5.3 – Safety around swimming pools in FDC residences	<p>Option B: FDC residences with swimming pools would continue to operate with additional safeguards to ensure active supervision and regular review of risks. Approved providers must ensure that residences comply with fencing requirements and conduct monthly inspections of swimming pools and surrounds.</p> <p>Option D: Regulatory authorities to provide additional guidance and resources in relation to water safety to FDC educators.</p>	Legislative and non-legislative change (guidance)
5.4 – Safety of glass used by services in family day care	<p>Option B: FDC residences and venues to comply with 0.75m height requirement.</p> <p>Option E: Regulatory authorities to provide additional guidance and resources in relation to glass safety requirements for FDC services.</p>	Legislative and non-legislative change (guidance)
6.1 – Assessment and rating of OSHC services	<p>Option B: Review and consider changes to the assessment and rating methodology for services whose main purpose is providing education and care to children over preschool age. *Responsibility for the review must be determined and taken into account for implementation.</p> <p>Technical amendment to require program-level documentation for Tasmania, SA, WA and VIC (see Technical Amendment 11.8)</p>	Non-legislative (further review of issue prior to change)
7.1 – Restrictions on short-term relief for early childhood educators	<p>Option C: Extend the provision enabling short-term staff replacements by allowing primary teachers to replace certificate III and diploma qualified educators for a period of up to 30 days.</p>	Legislative change
7.2 – Educators who are ‘actively working towards’ a qualification	<p>Option A: No change.</p> <p>Option C: Develop guidance for providers to ensure staff who are ‘actively working towards’ qualifications are making satisfactory progress.*</p> <p>*To be progressed once data from the 2021 Workforce Census is made available.</p>	Retain status quo and non-legislative change (guidance)
7.3 – Minimum qualification requirements for educators in FDC	<p>Option B: Remove the ‘actively working towards’ provisions for FDC educators and require these educators to hold an approved Certificate III qualification prior to commencing their role in an FDC service.</p>	Legislative change
8.1 – The quality ratings system	<p>Option A: No change.</p> <p>Option B: Review the quality rating terminology.</p> <p>Option D: Provide further guidance and advice to the community about the purpose of quality ratings. *</p> <p>*Option D to be considered after further research and evaluation is completed by governments.</p>	Status quo and non-legislative change (guidance)

Issue	CRIS options falling under a mixed approach	Type of change
9.1 – Changes in fees for regulatory authorities	<p>Option B: Create a fourth category of application/annual fee for centre-based services with 101 or more places and FDC services with 61 or more educators.</p> <p>Option C: Increase fees for the following:</p> <ol style="list-style-type: none"> 1. Annual fees 2. Application for provider approval 3. Application for service approval 4. Notification of intended transfer of service approval <p>Option D: Introduce a new fee for applications for amendment to service approval (which is currently free).</p>	Legislative change
9.2 – Changes in application fees for ACECQA functions	<p>Option B: Increase application fee for a review by the ratings Review Panel of rating level (s145(2)(c)).</p> <p>Option D: Increase application fee for assessment of a course to be included on the list of approved qualifications (regulation 138).</p>	Legislative change
10.1 – Assessing suitability of individuals to work directly or indirectly with children	<p>Option B: Clarify the definition of ‘person with management or control’ (PMC) of a service in the National Law to align with the definition of PMC of an approved provider body in the Commonwealth Family Assistance Law to capture persons who have authority or responsibility for, or significant influence over, planning, directing or controlling the activities of the service (whether or not they are employed by the approved provider of the service).</p> <p>Option C: Specify in the National Law that the regulatory authority can administer questions to an applicant in relation to their fitness and propriety in any format and undertake an assessment of their knowledge of the NQF. This will be aligned to the regulatory authority’s existing powers to ask the prospective applicant to provide further information and conduct further enquiries about their fitness and propriety.</p> <p>Option E: Include an explicit obligation for FDC educators to notify the approved provider of circumstances arising that pose a risk to the health, safety or wellbeing of children of the service and that approved providers use this information in a risk assessment.</p>	Legislative change

Issue	CRIS options falling under a mixed approach	Type of change
10.2 Cancellation of provider approval under Family Assistance Law	<p>Option B: Legislative change that provides for FAL cancellation as explicit grounds for cancellation of provider approval under the NQF in circumstances where the FAL cancellation relates to fitness and propriety and/or a breach of the NQF.</p> <p>Option C: Legislative change that provides for refusal of provider approval under the FAL as explicit grounds for cancellation of provider approval under the NQF, where the FAL refusal relates to fitness and propriety and/or a breach of the NQF.</p>	Legislative change
10.3 – Arrangements to transfer a service to another approved provider	<p>Option B: Develop guidance for services and providers about the service transfer process and how to best advise families about the transfer (for example, in relation to storage of children’s records).</p> <p>Option C: Minor legislative changes to address challenges associated with timeframes including:</p> <p>Increasing the notification period 42 days to 60 days</p> <p>Making it mandatory for transferring and receiving providers to notify the regulatory authority of any change or delay to the intended date of transfer</p> <p>Increasing the notice period to families from 2 days to 7 days before the transfer takes effect.</p>	Legislative and non-legislative change (guidance)
10.4 – Maintaining current information about service delivery	<p>Option B: Amend the National Regulations to require notification of changes to the ages of children being cared for and nature of care provided to the regulatory authority, with an associated offence for failing to notify.</p> <p>Option D: Regulatory authorities to provide guidance and resources in relation to age appropriate programs and facility requirements.</p>	Legislative and non-legislative change (guidance)

Table 5: Policy changes under a mixed approach (DRIS Option 2)

4.3 Option 3: Highly prescriptive legislative approach

Option 3 entails a prescriptive set of legislative changes that would amend some existing requirements under the National Law and National Regulations. This option would involve explicit government regulation of the sector and a significantly stricter regulatory regime for providers and their services as a result.

Note that there are also legislative changes under this option which are intended to reduce regulatory burden. For example, a prescriptive approach to Issue 6.1 – *Assessment and rating of OSHC services* would involve a review and potential modification of the current assessment and rating methodology to ensure it is tailored to the unique context

of OSHC services. Another example is Issue 7.1 – Restrictions on short-term relief for early childhood educators, where a legislative approach would broaden the requirements for short-term absences to ensure services are able to draw on relief educators when required. In both cases, a prescriptive approach aims to reduce regulatory and administrative burden and to improve flexibility for providers and their services.

Under Option 3, issues put forward for consultation through the Issues Paper and CRIS would see the most prescriptive legislative changes applied. This option would involve extensive amendments and/or additions to existing legislation and regulations to compel the sector to comply with changes to the NQF.

This option would see education and care providers, services and educators significantly modify their behaviour to comply with heightened legislative requirements under the NQF. For example, Option 3 would amend the National Law to specify staff supervision requirements during periods of regular transportation (Issue 3.3) and transition between services (Issue 3.1). It would also introduce compulsory training (Issue 3.2) and qualification requirements (Issues 7.1 and 7.3) for early childhood educators, and would amend the National Regulations to include new requirements for policies and procedures on child safety in services (e.g. Issue 4.1).

Increased legislative requirements under Option 3 may have a broader dampening effect on the market. For example, heightened qualification and training requirements may deter sector entry by new educators and exacerbate existing workforce constraints. Increased administrative burden and costs may add costs to providers of existing services and present barriers to market entry by new services. In some cases, providers may be prohibited from entering, or expanding within, the sector altogether (e.g. Issue 5.3). Collectively, these changes may reduce accessibility and affordability of care for families and lead to adverse outcomes for children.

Compliance with the new regulations and laws under this option would likely increase accessibility of information for education and care providers and consumers and reduce hazard and risk to children. Option 3 may also result in excessive administrative and financial burden for providers and their services, who would be required to carry the associated costs of regulatory change. The expected benefits of a highly prescriptive legislative approach may not justify its costs, particularly as beneficial change may be achieved through less prescriptive measures such as those proposed under Option 2. The impacts of Options 3 are analysed further in Chapter 9.

Table 6 below shows the type of policy change adopted for each issue in the CRIS under a highly prescriptive legislative approach. Please note that the matters identified in the ‘issue’ column and the change options listed in the ‘CRIS options falling under a highly prescriptive legislative approach’ column are taken directly from the CRIS and are distinct from the policy problems identified in Chapter 2 of this DRIS and the policy solutions explored in this Chapter (i.e., Options 1, 2 and 3.)

Issue	CRIS options falling under a highly prescriptive legislative approach	Type of change
3.1 – Safety of children during transitions between services (including school)	Option B: Legislative change to specify staff supervision requirements during periods of transition between education and care services.	Legislative change
3.2 – Sleep and rest requirements	<p>Option B: Legislative change to require compulsory safe sleep practices training for all educators who care for sleeping children (birth to five years).</p> <p>Option F: Legislative change to require that sleeping and resting children in education and care services are within sight and hearing distance of an educator at all times.</p>	Legislative change
3.3 – Improving children’s safety during regular transportation	<p>Option B: Legislative change to require specific transport ratio requirements for when children are being transported by, or are on transportation arranged by, an education and care service.</p> <p>To clarify that the driver is counted in the ratio during transportation.</p> <p>For example, transport-specific ratio requirements could require:</p> <ul style="list-style-type: none"> a. In the case of vehicles carrying no more than 7 children at any one time, only the driver of the vehicle is required to be on the vehicle; and b. In the case of vehicles carrying more than 7 children at any one time, there must be the driver and at least one other additional staff member on the vehicle. <p>Option C: Legislative change to specify in the case of vehicles transporting only school age children that ratio requirements would not apply in the vehicle.</p> <p>Option E: Legislative change to require that where the driver is not a staff member of the education and care service that prior to transportation of the children the approved provider must ensure that the driver holds a current Working with Children Check (unless an exclusion applies), a current approved first aid qualification and has undertaken anaphylaxis and emergency asthma management training.</p>	Legislative change

Issue	CRIS options falling under a highly prescriptive legislative approach	Type of change
3.4 – Improving children’s safety during emergency evacuations from multi-storey buildings	<p>Option C: Strengthen service approval processes to require that for centre-based services located in multi-storey buildings the regulatory authority, in assessing the suitability of the education and care service premises, is to consider the need for direct egress to safe evacuation areas for very young children and non-ambulatory children.</p> <p>Option D: Amend service approval processes to require approved providers wishing to operate a centre-based service from premises in a multi-storey building in Victoria or ACT to apply to the regulatory authority for pre-approval of development and building plans for the proposed premises prior to development and construction. (Victoria and ACT only).</p>	Legislative change
4.1 – Embedding the National Child Safe Principles	<p>Option C: Amend the National Regulations so that the requirement for services to have in place policies and procedures for providing a child safe environment specifically refers to implementing the National Principles.</p> <p>Amend the National Regulations and associated guidance so that approved providers will be required to:</p> <p>Ensure that policies and procedures for their service/s address the National Principles for both staff members and volunteers</p> <p>Ensure all volunteers and staff at their service/s are advised of the existence and application of the National Principles.</p>	Legislative change
4.2 – Updating record keeping requirements	<p>Option C: Amend the National Regulations to increase record keeping requirements to 45 years (in relation to relevant records regarding actual or alleged instances of child sexual abuse) in line with the Royal Commission recommended minimum.</p> <p>Option D: Require not-for-profit, community and for-profit providers to store records in accordance with recommended standards and timeframes of the Royal Commission.</p>	Legislative change
5.1 – FDC Register and notification requirements	<p>Option B: Changes (legislative or otherwise) to the FDC Register requirements to enable regulatory authorities to have timely access to FDC service level data that will enable risk-based proactive approaches to regulation and allow regulatory authorities, particularly during emergency situations such as bushfires, to support service providers in meeting their obligations to ensure the safety of children.</p>	Legislative and/or non-legislative change
5.2 – FDC exceptional circumstances	<p>Option B: Require approved providers to include details of FDC educators operating above ratio due to exceptional circumstances on the FDC Register.</p>	Legislative change

Issue	CRIS options falling under a highly prescriptive legislative approach	Type of change
5.3 – Safety around swimming pools in FDC residences	<p>Option C: Prevent the registration or engagement of new FDC educators at residences or venues with a swimming pool to operate from specified date.</p> <p>* Please note, this option would not apply to Tasmania, where swimming pools area already prohibited.</p>	Legislative change
5.4 – Safety of glass used by services in family day care	<p>Option C: FDC residences and venues that are approved on or after the date the regulation comes into effect will be required to comply with 1m height requirement.</p> <p>Existing FDC residences will retain current requirements as follows:</p> <p>a. FDC residences/venues approved before 1 June 2014 to comply with 0.75m requirement</p> <p>b. FDC residences/venues approved between 2 June 2014 and [date regulation comes into force] to comply with 0.5m requirement, as currently specified by AS 1288–2006.</p> <p>Option D: All new FDC residences and venues to comply with 1m height requirement from [date regulation comes into force].</p> <p>FDC residences/venues approved before [date regulation comes into force] subject to the 0.5m and 0.75m requirements to be transitioned into the new 1m requirement by [sunset date].</p>	Legislative change
6.1 – Assessment and rating of OSHC services	<p>Option B: Review and consider changes to the assessment and rating methodology for services whose main purpose is providing education and care to children over preschool age. <i>*Responsibility for the review must be determined and taken into account for implementation.</i></p>	Non-legislative change (further review of issue prior to change)
7.1 – Restrictions on short-term relief for early childhood educators	<p>Option B: Extend the requirements for ‘short-term’ absences to 80 days.</p> <p>Option C: Extend the provision enabling short-term staff replacements by allowing primary teachers to replace certificate III and diploma qualified educators for a period of up to 30 days.</p> <p>Option D: Allow Suitably Qualified Persons to replace a third or fourth ECT to address workforce shortages (NSW only).</p>	Legislative change

Issue	CRIS options falling under a highly prescriptive legislative approach	Type of change
7.2 – Educators who are ‘actively working towards’ a qualification	<p>Option B: Limit the ‘actively working towards’ provision by:</p> <p>Introducing a minimum proportion of educators with a completed qualification (as opposed to 50 per cent of educators required within ratios to be qualified or ‘actively working towards’ a qualification); or</p> <p>Introducing a timeframe in which staff ‘actively working towards’ a qualification must complete their qualification in order to be counted in ratios; or</p> <p>Specifying a threshold staff must meet to make ‘satisfactory’ progress through their course in order to be counted in ratios.</p>	Legislative change
7.3 – Minimum qualification requirements for educators in FDC	<p>Option B: Remove the ‘actively working towards’ provisions for FDC educators and require these educators to hold an approved certificate III qualification prior to commencing their role in an FDC service.</p> <p>Option C: Require educators in FDC services to have completed at least an approved Certificate III qualification within 24 months of commencement in an FDC educator role. Not applicable to South Australia.</p> <p>Option D: Require educators in FDC services who are ‘actively working towards’ their Certificate III qualification to have completed at least 50% of their qualification, including child protection elements, prior to commencing employment. Not applicable to South Australia.</p>	Legislative change
8.1 – The quality ratings system	<p>Option B: Modify the quality rating terminology.</p> <p>Option C: Introduce a visual representation for communicating and promoting the quality ratings.</p>	Legislative change
9.1 – Changes in fees for regulatory authorities	<p>Option E: Introduce an annual fee for approved providers that is scaled by the number of services operated by the provider.</p> <p>Option F: Change legislation to allow States and Territories to set their own fees (except for provider application fees).</p>	Legislative change
9.2 – Changes in application fees for ACECQA functions	<p>Option C: Increase application fee for determination of equivalent qualification (regulation 139).</p> <p>Option E: Introduce a fee for an application for the highest rating (Excellent rating).</p>	Legislative change

Issue	CRIS options falling under a highly prescriptive legislative approach	Type of change
10.1 – Assessing suitability of individuals to work directly or indirectly with children	<p>Option B: Clarify the definition of ‘person with management or control’ (PMC) of a service in the National Law to align with the definition of PMC of an approved provider body in the Commonwealth Family Assistance Law to capture persons who have authority or responsibility for, or significant influence over, planning, directing or controlling the activities of the service (whether or not they are employed by the approved provider of the service).</p> <p>Option C: Specify in the National Law that the regulatory authority can administer questions to an applicant in relation to their fitness and propriety in any format and undertake an assessment of their knowledge of the NQF. This will be aligned to the regulatory authority’s existing powers to ask the prospective applicant to provide further information and conduct further enquiries about their fitness and propriety.</p> <p>Option E: Include an explicit obligation for FDC educators to notify the approved provider of circumstances arising that pose a risk to the health, safety or wellbeing of children of the service and that approved providers use this information in a risk assessment.</p>	Legislative change
10.2 Cancellation of provider approval under Family Assistance Law	<p>Option B: Legislative change that provides for FAL cancellation as explicit grounds for cancellation of provider approval under the NQF in circumstances where the FAL cancellation relates to fitness and propriety and/or a breach of the NQF.</p> <p>Option C: Legislative change that provides for refusal of provider approval under the FAL as explicit grounds for cancellation of provider approval under the NQF, where the FAL refusal relates to fitness and propriety and/or a breach of the NQF.</p>	Legislative change
10.3 – Arrangements to transfer a service to another approved provider	<p>Option D: Amend the National Regulations to ‘deem’ the transfer to have occurred based on the advice of the receiving provider only, with receipt of the receiving provider’s right to occupy.</p>	Legislative change
10.4 – Maintaining current information about service delivery	<p>Option C: Amend the National Regulations to introduce an approval requirement, which obliges providers to apply to the regulatory authority to change the ages of children cared for and nature of care delivered by a service.</p>	Legislative change

Table 6: Policy changes under a highly prescriptive legislative approach (DRIS Option 3)

5 WHO DID YOU CONSULT?

Two rounds of full public consultations were conducted to seek sector and community views on improving the NQF through the 2019 NQF Review process.

5.1 Phase 1 Consultations: The Issues Paper

The first phase of public consultations ran from April to June 2019 and specifically sought feedback on the Issues Paper which identified four broad areas within the NQF for discussion:

1. Approvals processes
2. Operation of the NQF
3. Public awareness of quality
4. Compliance and enforcement within the NQF.

The sector and families were invited to provide feedback through a national consultation process in 2019. This consultation allowed respondents to provide input on four focus areas and sought feedback on any additional issues that should be considered in the 2019 NQF Review. Feedback could be provided by attending a face-to-face consultation session, held in metropolitan and regional areas across Australia, completing a survey online, or making a written submission. In total, 2,500 participants attended the consultation sessions across Australia, 1,769 surveys were completed and 17 written submissions were received.

Surveys completed

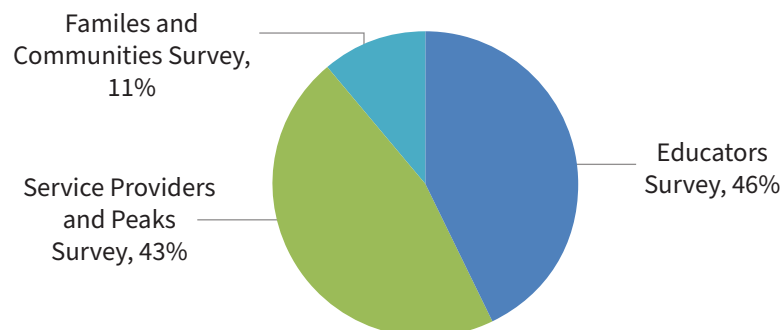


Figure 4: Surveys Completed by Stakeholder Group

The purpose of this consultation was to test the scope of the 2019 NQF Review with stakeholders and explore whether further issues should be considered as part of the Review.

23% of survey respondents suggested there were issues not covered in the Issues Paper that significantly impacted on the NQF being able to meet its objectives. These key issues included:

- The quality assessment and rating process
- Sector workforce issues
- Qualification requirements
- A review of the approved learning frameworks
- The need for clearer information and guidance for the sector
- Inconsistency in regulatory approach and interpretation of legislation.

A number of these issues were referred to other government processes, including the following:

- An update to the approved learning frameworks was commissioned by Education Ministers in December 2020.⁵⁶ The updated frameworks are due to be released in 2023.
- Sector workforce issues and qualification requirements were referred to the National Workforce Strategy⁵⁷ which was considered by Education Ministers in 2021.

As a result of consultations on the Issues Paper, the CRIS⁵⁸ was developed to include issues to address the need for clearer information and guidance for the sector and to improve regulatory approach and interpretation of legislation. For example, the following issues were included:

- A proposal to address issues with the assessment and rating process for OSHC services
- Proposals to address issues relating to regulatory approach and clarifying the legislation, for example clarifying the requirements for safety glass in FDC and the definition of a person with management or control of a service within the National Law
- Options to develop further guidance for the sector on a range of issues within the CRIS.

Some issues consulted on within the Issues Paper (or flagged for inclusion within the Review), such as a joined-up approval process between the NQF and the FAL, FDC co-ordinator ratios and educator caps, were not progressed through the 2019 NQF Review due to separate government work plans. The Joined-up Approvals Project 'Regulatory Systems Reform Project' is due for completion in mid-2023.

A Consultation Summary Report was published in December 2019 detailing the results of consultation on the Issues Paper. This can be found at www.nqfreview.com.au/about-nqf-review.



5.2 Phase 2 Consultations – The CRIS

Stakeholders including approved providers, peak bodies, educators, teachers and families and communities, were invited to provide feedback on the 2019 NQF Review CRIS throughout March and April 2021. Information sessions were held by each State and Territory regulatory authority and feedback was able to be provided in four ways:

- online survey
- a full **CRIS Sector Survey** for participants specifically engaged with the education and care sector and
- a shorter, more targeted **Family and Carers Survey** for community members
- written submission.

5.3 Analysis of CRIS Feedback

Analysis of the feedback received through the CRIS public consultation process has guided policy development on preferred options to best suit the problems being addressed within the 2019 NQF Review. The findings have influenced the development of the DRIS, and particular consultation results are noted for each of the specific issue summaries provided in **Appendix 2**.

Feedback received through the CRIS consultation process suggests that NQF stakeholders understood and supported the intent of the CRIS, in particular efforts to improve the safety, health and wellbeing of children. Stakeholders wanted to see acknowledgement of, and a balance between these efforts and the administrative burden and costs that some of the proposed changes may place on service providers.

Overall, stakeholder feedback suggested continued strong support for the NQF in its 10th year and for continued investment by governments in funding the NQF for the benefit of all Australian children.

This was evident in specific feedback where, for example, FDC sector stakeholders commented on the level of administrative burden already being experienced by this part of the sector and the need to consider the impact that some of the proposed changes may have on FDC service viability. However, stakeholders were supportive of measures that promote accountability, transparency and improve oversight of the sector, and suggested that any changes to the National Law and National Regulations would need to be supported by appropriate guidance and targeted support for the sector to better understand the requirements.

Similarly, OSHC sector stakeholders were supportive of changes that recognise the unique context of the services they offer and opportunities to better represent the diversity and

dynamics of this important sector. There were also calls for nationally consistent qualification requirements to support ongoing quality OSHC service provision.

In response to the proposed changes to workforce requirements, many respondents called for current work on a National Workforce Strategy and data collected through the 2021 National Workforce Census to be used to better inform options for change in this area. Views were divided between limitations posed by current workforce shortages and the importance of building and sustaining a more qualified sector to improve educational outcomes for children.

There were mixed views on options for change to the quality ratings system naming conventions, but there was general support for any activities that can improve the knowledge and awareness of the system among families, as well as improve understanding of the Working Towards NQS rating. Some stakeholders called for a National Communications Plan to raise public awareness of the NQF and the benefits to children’s outcomes.

In terms of oversight and governance of services and providers, feedback suggested that better use of technology would help service providers manage their business processes more efficiently, including measures such as harmonisation of government and provider IT systems where possible, centralised data and information storage solutions, and effective use of the NQA ITS to manage the relationship and transfer of information between service providers and regulatory authorities.

It is evident that there were a number of issues that stakeholders held strong opinions on. Analysis of survey data for the question around ‘how significant do you see this issue’ identified the areas that stakeholders felt required government focus and regulatory change. Figure 5 reflects the percentage of respondents that identified each issue as a significant to very significant issue across the survey.

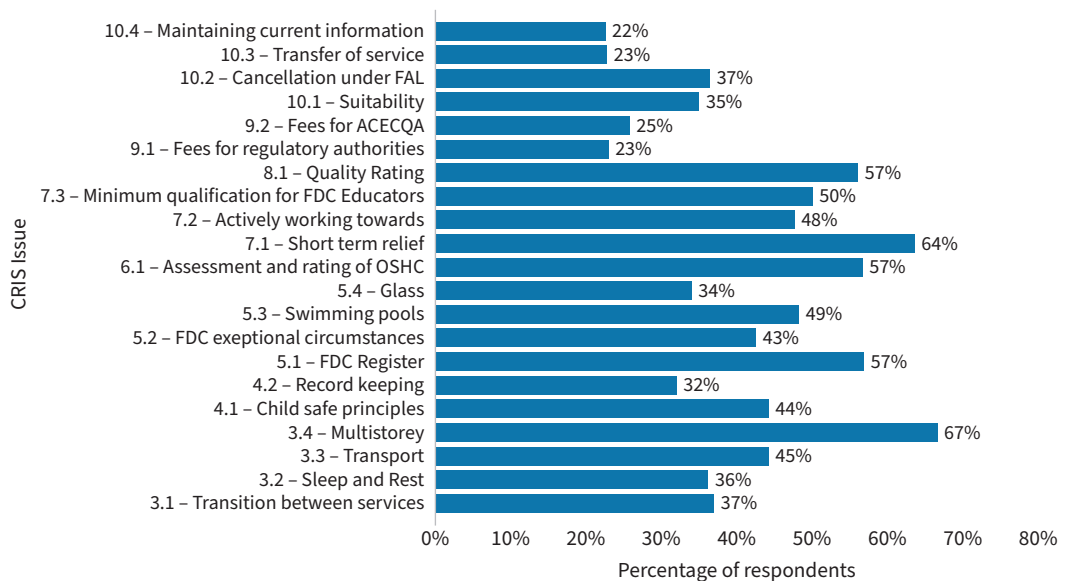


Figure 5: Percentage of respondents that identifies issues to be significant or very significant

Figure 5 shows which issues were most consistently identified by respondents as being ‘significant’ to ‘very significant’ across the survey. The four issues with the highest levels of engagement in this regard include Issues 3.4 *Multi-storey*, 5.1 *FDC Register*, 6.1 *Assessment and rating of OSHC* and 7.1 *Short term relief*.

Feedback for Issue 5.1 showed that 47% of sector survey respondents considered *family day care register and notification requirements* a ‘Very Significant’ (20%) or ‘Significant’ (28%) problem. By comparison, this number dropped to 27% for FDC respondents. For this cohort, 8% considered this problem to be ‘Very significant’ and 19% considered it to be ‘Significant.’ Both quantitative and qualitative findings indicated fairly strong sector support for change in regard to this issue, which would involve amending FDC Register requirements to ensure the register is kept within the NQA ITS. The sector identified a number of benefits to this change, with greatest emphasis placed on its promotion of increased accountability, transparency and oversight of the FDC sector. These advantages were echoed by one particular survey respondent, who stated:

‘This will allow for more transparency and at the same time, having this information readily available will mean children placed at FDC are able to be located in case of emergencies i.e. bush fires, floods, local disturbances.’

This emphasis on benefits was balanced by stakeholders’ concerns around the costs of a change option. For example, stakeholder responses focused on the increased administrative workload this option would entail for providers, especially as it would require duplication of data that providers are already required to record in the Australian Government’s Child Care Subsidy System (CCSS). To overcome this, one written submission from a respondent suggested harmonising systems where possible, including the NQA ITS, the CCSS and service provider systems. As expressed in this submission, system harmonisation would ensure the desired records are incorporated into the NQA ITS without the need for additional, duplicative and unduly burdensome administration/record keeping processes for services.

Almost two-thirds (64%) of sector survey respondents who answered questions about Issue 7.1 considered *restrictions on short-term relief for early childhood educators* a ‘Very significant’ (32%) or ‘Significant’ (32%) problem. Quantitative and qualitative findings revealed different levels of support for the available options for change. Quantitative feedback indicated a preference for broadening qualification requirements for short-term staff replacements, while qualitative feedback showed greater support for extending requirements for ‘short-term’ staff absences. Some opposition to both options was relatively strongly expressed in the qualitative feedback. There was also strong support for a no change option in the written submissions received through the consultation process. A number of key themes were evident in the qualitative feedback with stakeholders highlighting the difficulties experienced by services when attempting

to recruit and retain appropriately qualified staff. While many respondents felt that proposed changes would improve flexibility for services and ease pressures caused by staff shortages, some expressed concerns about potential negative impacts on the quality of education and care. As one local government group from NSW observed in their written submission:

'[Our] service is concerned that the focus of this change appears to be on cost savings to services, and parents, at the expense of ensuring the quality of service provision.'

Some peak organisations and higher education institutions also questioned the veracity of certain claims made in the CRIS, particularly that using lower-qualified educators would have little to no impact on outcomes for children in the short-term. Many respondents also felt that proposed measures would not mitigate existing staff shortage issues. These were largely viewed as a symptom of a broader workforce issue, and respondents commonly noted that current work on a National Workforce Strategy should be the focus in this context. This is reflected in a written submission from a survey respondent:

'We are concerned by the continuing workforce shortages, and the effect this has on our capacity to provide a quality program. We need a response to workforce shortages that ensures that a workforce is built and supported to meet children's education and care requirements. Urgent government attention to address workforce shortages in early childhood is required. The NQF Review should enshrine the importance of highly trained staff across the sector, noting the key difference they make to children's outcomes. The [National] Workforce Strategy under development must address the shortage of skilled staff and focus on retaining and developing the existing workforce.'

In regard to Issue 6.1, three-fifths (57%) of sector survey respondents deemed *assessment and rating of outside school hours care services* a 'Very significant' (17%) or 'Significant' (40%) issue. For OSHC respondents in particular, the percentage of responses identifying this issue as a 'Very significant' problem doubles to 34%, with 42% considering it a 'Significant' problem. Quantitative and qualitative analysis of the sector feedback both revealed a preference for modifying assessment and rating methodology for these services. The qualitative feedback strongly emphasised the need for a tailored approach to assessment and rating of OSHC services, with one response noting 'the current one size fits all [approach] disadvantages OSHC.' Sector respondents suggested that a tailored approach would better suit the unique context of OSHC and would be more equipped to capture the quality of these services. Support for a modified methodology for OSHC services is also evident in feedback from the CRIS Family and Carers Survey, where one respondent stated:

‘Our expectations of OSHC are vastly different to those of long day care...In regards to rating OSHC, I think it needs different ways of assessing services’ quality, because ratios, age groups, duration of care and family’s expectations for the services would be quite different from child care.’

Sector peak bodies and large providers also acknowledged the challenges experienced by OSHC providers in meeting NQS requirements, but highlighted the importance of maintaining professionalism of the sector. In particular, some peak bodies suggested that changes to assessment and rating methodology for OSHC risked de-professionalising the sector and scaling back progress made to date. Also, not all respondents felt that major modifications to assessment and rating methodology were required. A number of peak organisations noted that current quality ratings for OSHC services, with 80% rated at Meeting the NQS or above, do not provide sufficient evidence that major changes to assessment and rating methodology are necessary. These organisations expressed support for an alternative approach which recognises the challenges faced by OSHC services, whilst also aligning with the revised approach adopted by NSW, Queensland and the Northern Territory in 2017. This sentiment is reflected in a written submission from a peak organisation for independent schools in NSW:

‘According to ACECQA’s National Register of services, the vast majority of OSHC services in NSW are able to meet or exceed the National Quality Standard, and one has achieved an Excellent rating. These results show that it is not impossible for OSHC services to comply with the quality standards, and though the purpose of OSHC is different to services educating and caring for children below school age, it is not that far removed. Changes to requirements for OSHC services in NSW in relation to programming expectations have been generally well received and if adopted nationally may be popular with some OSHC providers. While [peak body] is generally supportive of modifying assessment and rating methodology for services whose main purpose is providing education and care to children over preschool age (Option B), this support would only extend to the minor modifications necessary to align with the current NSW approach (Regulation 274A).’

Levels of stakeholder engagement were considerably lower for a number of other issues put forward for consultation in the CRIS Sector Survey. For example, stakeholders were far less likely to engage with issues related to two particular areas of the NQF Review: oversight and governance of services and providers, and changes in fees within the NQF system. For example, quantitative analysis of feedback for Issue 9.1 showed that only 23% of respondents considered *changes in fees for regulatory authorities* to be a ‘Very significant’ (8%) or ‘Significant’ (15%) problem. Engagement levels were similarly low for Issue 9.2, where only one-quarter (25%) of respondents viewed proposed *changes in fees for ACECQA functions* as ‘Very significant’ (9%) or ‘Significant’ (16%). The majority of responses for both issues supported no change in fees, with very few respondents

identifying benefits to fee increases for regulatory functions. In contrast, a majority of responses indicated a very strong focus on the costs of proposed changes as opposed to their advantages.

Questions concerning changes to oversight and governance processes, and to existing systems in particular, received comparably low levels of engagement from stakeholders. For instance, 23% of survey respondents deemed Issue 10.3 - *Arrangements to transfer a service to another approved provider* a 'Very significant' (4%) or 'Significant' (19%) issue. The same number of respondents considered Issue 10.4 - *Maintaining current information about service delivery* a 'Very significant' (6%) or 'Significant' (17%) issue. Though some stakeholders noted benefits to proposed changes for both issues, more than two-fifths of respondents in each case viewed these issues as 'Not a problem' or a 'Minor problem.'

6 IMPACT ANALYSIS

Conducting an RIA requires an evaluation of all available data and evidence to identify impacts affecting stakeholders and the broader community. This allows governments to consider how regulatory changes will impact all parties affected by potential changes to the NQF. This could include:

- education and care services
- educators and staff working in services
- children in education and care
- parents, families and carers.

Considering the broad scope of regulatory issues addressed in the 2019 NQF Review, the impact analysis in this DRIS will measure the impact of the three RIS options through:

- the direct regulatory costs to business, community and individuals, measured through a Regulatory Burden Estimate (RBE)
- a qualitative breakdown of the impacts of each option on stakeholders
- a cost-benefit analysis table for each option, including a breakdown of the NPV of each option, by jurisdiction over 10 years.

A full breakdown of costs for each CRIS issue is available in the supplementary document: NQF Review Cost-Benefit Analysis.

6.1 Regulatory Burden measurement (RBM)

In line with the Regulatory Impact Analysis Guide for Ministers' Meetings and National Standard Setting Bodies,⁵⁹ all regulations or changes to existing regulation must identify the increase or decrease in regulatory costs placed on businesses, community organisations and individuals. This is called a Regulatory Burden Measurement (RBM).

The table below is the Regulatory Burden Estimate (RBE) for each option:

- Option 1: No change and retention of the status quo
- Option 2: A mixed approach using both legislative and non-legislative changes
- Option 3: Highly prescriptive legislative changes.

The RBE is the ‘total cost’ of activities undertaken by businesses, community organisations and individuals in order to be compliant with regulation on an annual basis. This cost includes things such as updating equipment and materials and training staff. However, this estimate does not include ‘business as usual’ activities or elements of the NQF Review such as increased fees to government agencies.⁶⁰

Note: this RBE table does not include the calculated net benefit of the policy changes, but rather the direct regulatory costs associated with change compared to maintaining the status quo (business as usual). A holistic breakdown factoring in the associated benefits is found in the cost-benefit analysis tables further in this chapter.

When calculating these figures, businesses are considered to be for-profit providers of education and care services. Community organisations are assumed to be not-for-profit, community and government providers of education and care services. Individuals are assumed to be early childhood educators and staff.

Average annual change in regulatory costs (compared to current business as usual)				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Option 1 – Status quo	\$0	\$0	\$0	\$0
Option 2 – Mixed approach	\$4.52 million	\$4.53 million	\$268,000	\$9.3 million
Option 3 – Highly prescriptive legislative approach	\$91.9 million	\$92 million	\$1.2 million	\$185.1 million

Table 7: Regulatory burden estimate (RBE) for each option

Considering the regulatory burden estimate for each of the proposed options in the DRIS, there is a distinct increase in costs attributable to businesses, community organisations and individuals under Options 2 and 3 when compared to the status quo (Option 1).

However, the highly prescriptive legislative approach expected under Option 3 is found to have significantly higher overall costs for businesses, the community and individuals when compared to the ‘mixed approach’ under Option 2.

6.2 Qualitative breakdown of impacts on stakeholders

Option 1: Status quo (no change)

Retaining the status quo would result in limited impacts for the sector as no change to current regulatory settings would be applied. However, the impact of Option 1 is varied depending on the issue. For example, retaining the status quo would not resolve existing issues within regulation, for example limiting services' ability to hire primary school teachers to backfill educators for short-term absences. However, for other issues, retaining the status quo will mean no additional administrative or regulatory burdens are applied.

Considering the lack of regulatory change, this option is considered to have no impact on cost, as it would retain business as usual.

Providers and services

Providers would not be expected to experience financial impacts or administrative burdens as a result of retaining the status quo.

However, retaining the status quo would also mean that the issues outlined in the CRIS would remain. This may have a negative impact for smaller providers and services. For example, retaining the current arrangements for workforce (Chapter 7 of CRIS) may mean that smaller providers and services continue to experience difficulties in ensuring sufficient staffing arrangements.

Larger providers may be able to leverage their scale to address issues outlined in the CRIS through disseminating resources and information through their own organisation. However, they would likely still experience difficulties in relation to ongoing staffing arrangements and broader workforce challenges raised in Chapter 7 of the CRIS.

Regional and remote services

Retaining the status quo may afford a benefit of continued flexibility for regional and remote services. An example comes from the FDC sector, specifically relating to minimum qualification requirements. The status quo may continue to allow flexibility to allow FDC educators to start a business while working towards a Certificate III qualification (except for SA where minimum qualification requirements are already in place). This is especially relevant for regional and remote educators where supply of educators may be short. However, the status quo may continue existing risks associated with child safety due to lower qualification levels for educators.

Metro services

The majority of multi-storey buildings are located in metropolitan regions of Australia. Retaining the status quo in relation to multi-storey buildings could result in children being exposed to unsafe environments due to ineffective emergency and evacuation plans for infants and non-ambulatory children. However, there are existing regulations such as planning, building and fire and emergency services that stipulate requirements for services operating within multi-storey buildings. As such, the status quo may not result in additional costs for providers of these services to meet more stringent requirements.

Centre-based educators

Centre-based educators are unlikely to experience significant impacts from retaining the status quo, as there would be no change from existing requirements. However, by not responding to issues in the NQF Review, such as sleep and rest requirements, educators would not increase their overall awareness or knowledge to support children's health and wellbeing, which may continue heightened risks for children's safety.

FDC educators

FDC educators are unlikely to experience negative financial or administrative impacts from retaining the status quo, as they would continue with existing requirements.

As FDC educators are usually working alone, they have reduced opportunities to gain from the knowledge and experience of other staff and mentors during their day-to-day work. Considering this single-educator model in the majority of FDC residences, FDC educators may not always receive additional information or guidance to increase their overall awareness or knowledge to support children's health and wellbeing, unless provided by the FDC co-ordinator.

Families and communities

If the status quo is maintained, there is unlikely to be any financial impact to parents, carers and the broader community as existing practice would continue. However, families would not receive the benefits of additional guidance and resources available through Option 2. Furthermore, a certain amount of risk to children's health and safety in relation to a number of areas outlined in the CRIS will remain as a result of government inaction. For example, inaction following fatal incidents during sleep and rest and periods of transportation will not reduce the likelihood of further events.

Under Option 1, regional and remote communities will continue to experience workforce shortages as outlined in the CRIS. For example, services would continue to experience barriers in filling short-term relief positions when educators are absent from a service.

However, retaining the status quo would mean aspects of the education and care service, such as regular transportation, maintain the same level of regulation. Option 1 would therefore maintain the existing level of access to educational opportunities in regional and remote areas.

Option 2: Mixed approach (legislative and non-legislative changes)

Option 2 involves a mix of legislative and non-legislative tools in response to issues consulted on in the CRIS. This option includes elements of retaining the status quo, developing guidance and information, and amending existing laws and regulations, taking into account the relative benefits against costs. Despite introducing revised and additional regulatory requirements, the overall impact of Option 2 to stakeholders is expected to be considerably less than the more interventionist approach outlined in Option 3.

Providers and services

Smaller and sole trader providers

Services of all sizes will likely experience additional administrative costs associated with complying with changes under Option 2. The cost of these changes, however, is relatively minor compared to those proposed under Option 3.

Providers of education and care services will have additional regulatory requirements under Option 2 compared to the status quo. This may affect smaller or 'sole trader' providers more than larger providers, as the administrative burdens associated with aligning to new regulatory requirements may be comparatively higher on a per child basis.

Larger providers (e.g. national organisations)

Providers of education and care services will have additional regulatory requirements under Option 2 compared to the status quo. For example, progressing Option 2 would require providers of OSHC services to develop a policy and procedures in relation to transitions between schools and education and care services. For larger providers, this regulatory change, as well as many of the other regulatory changes under Option 2, can be undertaken by management staff within corporate offices. Therefore, there is likely to be a much smaller administrative burden associated with aligning to new regulatory requirements compared to smaller approved providers.

Regional and remote services

Legislative changes such as increased requirements for regular transportation may result in an increased burden for services that provide regular transportation to ensure access for children in regional and remote areas. For example, if increased regulatory requirements were to reduce providers' interest in operating regular transportation, this may in turn reduce children's access to education and care in the region. However, Option 2 proposes a mixed approach for regular transportation, with a relatively limited regulatory burden compared to the legislative changes proposed under Option 3.

More broadly, regional education and care services may also experience a relatively higher administrative burden under Option 2 compared to services in metropolitan regions, as services may have less ongoing access to administrative or management staff, requiring educators to find additional time and resources to review and adopt regulatory changes.

Centre-based educators

Centre-based educators will experience additional regulatory and administrative requirements as a result of implementing Option 2. For example, this may include complying with additional policies and procedures relating to sleep and rest, or ensuring that certain activities undertaken at the service have been adequately risk assessed if required under the National Regulations. However, while educators may require additional time to comply with updated requirements, it is unlikely that a centre-based educator would personally experience any financial cost as a result of regulatory changes.

FDC educators

FDC educators may experience additional regulatory and administrative requirements as a result of implementing Option 2. This may include complying with additional policies and procedures, and ensuring the FDC residence complies with requirements under the NQF. For example, FDC educators would be required to display information relating to the areas used by the FDC service in the residence.

Under Option 2, FDC educators must complete an approved early childhood qualification prior to commencing work as an FDC educator. Even though a very small proportion (approximately 4%⁶¹) of current FDC educators are not yet qualified, increasing qualification requirements will increase the entry barriers for prospective educators. This may result in delays of prospective FDC educators opening their services, and reducing access for families seeking FDC services. From a market perspective, this restriction may also increase overall competition and revenue for qualified FDC educators. This is because a potential reduction in workforce numbers would likely lead to a reduced supply of places, increasing the demand for existing places in FDC services for families.

The single-educator model of FDC may also mean that FDC educators will require additional time to understand the updated requirements and regulations as a result of changes under Option 2, for example reporting requirements for young people who reside at the FDC premise that are charged with serious offences.

Families and communities

Option 2 recommends that parents receive additional information and guidance from regulatory authorities and services on several issues. It is expected that parents and carers will have increased confidence in the quality of education and care provided, and in the overall safety, health and wellbeing of their child in care. For example, increased knowledge and awareness of safe sleep requirements by educators may increase parents' overall confidence that children are being adequately cared for at the service. Likewise, increased knowledge of emergency and evacuation plans for services operating in multi-storey environments may provide families with greater peace of mind.

Sector feedback during the 2019 NQF Review consultations has highlighted that increased regulatory costs will likely be transferred by providers onto families as the consumer. Considering the additional costs attributable to Option 2, it is expected that providers of education and care services will increase fees charged to families to meet these additional costs. However, when considering the regulatory costs of Option 2 to the size of the Australian education and care sector, the increase to current cost represents \$8.76 per child, per year.⁶²

There may be broader impacts on other parts of society, such as relevant authorities or industry experts being asked for information and assistance by services in multi-storey buildings regarding the development of emergency and evacuation plans for services operating in multi-storey buildings.

Cumulative cost impact of Option 2

The financial impacts of the associated legislative and non-legislative changes under Option 2 have been calculated over 10 years in Table 8 below, assuming any changes will be phased in over a transitional period. A breakdown of the cumulative costs of Option 2 by jurisdiction is provided in Table 10 below. This data is sourced from the *Cost-Benefit Analysis (CBA) of proposed options to support the NQF Review*, and is presented in terms of a 10-year NPV of total cost. The data assumes a 7% real discount rate, and takes the first date of cash flow to be 30 June 2023, to allow for time to draft regulations and pass legislation where required.

Note: Some costs and benefits associated with the selected legislative/regulatory options have been considered qualitatively and are not costed in the table below.

Option 3: Highly prescriptive legislative change

Option 3 involves a highly prescriptive set of regulatory and legislative changes that would overhaul some existing components of the NQF. Applying this option to all of the issues in the CRIS would result in a substantial increase in regulation for the sector, and would be likely to significantly impact both the education and care sector as well as families and the broader community.

Compliance with new requirements would result in a greater regulatory burden for the education and care sector as a whole. The cumulative impact of these changes may have negative effects on the financial viability of services, the recruitment and retention of qualified staff, and the affordability and accessibility of care for families.

Providers and services

Smaller and sole trader providers

Services of all sizes would face increased regulatory burden under Option 3. Compliance with the changes proposed by this option would entail increased financial and administrative load for providers and their services, which may strain operational capacity and reduce flexibility for these businesses.

Option 3 is the most costly option being considered within this DRIS. Increases to costs may impact on financial viability of certain services and may increase the likelihood of service closures. It is also likely that these costs, in conjunction with the overall increase in regulatory burden, would create a barrier to entry to the sector for new services. The impacts will be largest for smaller businesses and sole traders, as these businesses generally lack the administrative and financial resources of larger providers.

For example, the issue around children's safety during regular transportation, including transitions between services and schools, illustrates the potential impacts of Option 3 on smaller businesses. The prescriptive solution to this problem involves changing the National Law to specify staff supervision requirements during periods of transition between education and care services. While the aim of this option is to reduce risks to children's safety, mandating educator to child ratio requirements through legislation may introduce significant additional costs on services providing regular transportation to and from the service.

Larger providers

Option 3 also imposes significant burdens on larger providers. These businesses will face a comparable increase in administrative and financial costs as a result. For example, updating record keeping requirements (Issue 4.2) involves increasing the period of time that services must keep records relating to actual or alleged instances of child sexual

abuse to 45 years. This requirement would mean that both large and small providers would incur additional costs as a result of maintaining records, and ensuring they are accessible, for an additional 20 years. However, because larger providers are often better resourced than small businesses and sole traders, these added burdens are not expected to affect business viability or to increase the likelihood of business closure in this context.

Larger providers may more easily meet the new regulatory and legislative requirements under Option 3. For example, regarding record keeping requirements, larger providers are more likely to have the financial, technological, and staffing capacity required to properly comply with the new regulations. Smaller providers and sole traders generally have comparatively limited resources in all these areas.

Regional and remote services

Option 3 is likely to disproportionately affect services in regional and remote areas. For example, service viability in regional and remote areas may be considerably undermined. This may lead to reduced accessibility for families in these areas, who may already face significant barriers to access. The increased costs under this option are the most direct threat to service operation in these communities.

For example, prescriptive changes to transportation (Issue 3.3) would involve legislating explicit educator to child ratios that apply when the service provides transportation. There is currently limited evidence to show that such changes would reduce accidents involving children being left on buses, and the compliance costs may be prohibitive, especially for regional and remote services. If the transport ratios cannot be met, services may cease to provide transportation entirely, which may unintentionally create barriers to access for families who otherwise cannot transport children to a service. These changes would likely result in higher fees for families which would reduce affordability and create further restrictions to access. This is most likely to be a problem in regional and remote areas, where accessibility of care can be particularly difficult for families.

Centre-based educators

Under Option 3, educators in all services will be obliged to comply with stricter regulatory requirements. Although many of these new requirements are aimed at mitigating risks of harm and hazard to children, ultimately highly prescriptive changes may reduce the attractiveness of education and care as a viable career choice. For example, changed requirements around ‘actively working towards’ a qualification (Issue 7.2) would at least temporarily constrain the pool of suitably qualified educators, and may also create barriers to entry and encourage educators to leave the sector. This may also undermine flexibility in work and study for educators at centre-based services.

FDC educators

Enacting highly prescriptive legislative changes in the FDC sector is also likely to exacerbate existing workforce shortages, resulting in a reduction in the overall number of FDC educators operating across Australia.

For example, a highly prescriptive legislative change in response to swimming pools (Issue 5.3) would prohibit all new FDC educators from operating an FDC service from a residence or venue with a swimming pool. While this change reduces children's risk of drowning, it also presents a barrier to sector entry for any potential FDC educator seeking to operate out of a residence or venue with a swimming pool. Please note, this proposal would not affect Tasmania who currently prohibits swimming pools.

Another example is requiring FDC educators to hold a minimum qualification (Issue 7.3). This approach would reduce the number of educators qualified to provide education and care and would decrease flexibility for educators, which may discourage sector entry by potential new FDC educators. This deterrent effect is particularly problematic given current workforce shortages.

These increased restrictions for employment would likely result in reduced access for families which use FDC services. However, as noted above, restricting the workforce numbers of FDC educators may increase competition among existing FDC educators in the sector. This is because a reduction in available FDC educators would increase demand for existing places in FDC services for families.

Introducing highly restrictive regulatory requirements may also promote perverse outcomes for regulatory authorities, such as increased non-compliance through services operating without provider approval. Considering the localised nature of FDC services, enacting significant regulatory burdens on FDC services may also result in educators 'leaving the regulated sector' and providing care to children outside of the NQF.

Families and communities

Option 3 has the potential for enhancing the safety, health and wellbeing of children in education and care services. For example, mandating staff supervision during the transition period between school and OSHC would lead to less children being reported 'missing or unaccounted for.' However, this option also entails a significantly large financial cost which may threaten service viability across the sector. Reduced viability of services may, by extension, lead to increased rates of service closure, which directly undermines accessibility of care for families. Legislative change is also not the most effective way to achieve the desired outcomes for some of the issues that need to be addressed.

During the national consultations, approved providers and services noted that any increase in regulatory costs was likely to be transferred onto families. Therefore, Option 3, which imposes relatively large regulatory costs onto providers and services, will likely result in increased fees for families. This increase may reduce affordability of care and reduce accessibility for families. While most parents and carers would still receive funding for education and care through the CCS, increased service fees may raise the ‘gap’ amount charged to families on top of the CCS.

Considering the regulatory costs of Option 3 to the size of the Australian education and care sector, the increase in cost represents the equivalent of approximately \$148 per child, per year.⁶³

Cumulative cost impact for Option 3

The cumulative costs of all changes under Option 3 have been calculated across a 10-year period and are presented in Table 9 below. A breakdown of cumulative costs by jurisdiction is provided in Table 10 below. This data is sourced from the *Cost-Benefit Analysis (CBA) of proposed options to support the NQF Review*, and is presented in terms of a 10-year NPV of total cost. The data assumes a 7% real discount rate, and takes the first date of cash flow to be 30 June 2023, to allow for time to draft regulations and pass legislation where required.

Note: Some costs and benefits associated with the selected legislative/regulatory options have been considered qualitatively.

6.4 Cost-benefit analysis tables, including a breakdown of the Net Present Value (NPV) of each DRIS option by jurisdiction

Below is a breakdown of each of the proposed options within the CRIS, including total assumed costs for each assumed policy change within DRIS Options 2 (mixed approach) and 3 (highly legislative approach). The breakdown also includes the associated benefits attributable to the respective policy decisions under each option.

This cost-benefit analysis table uses NPV to measure estimated costs. For more information about how NPV has been calculated, refer to the supplementary document: *Cost-Benefit Analysis (CBA) of proposed options to support the NQF Review*. Further detail regarding the methodology, data inputs, and assumptions behind the figures for each issue can also be found in the CBA document.

Cumulative cost (Net Present Value) of each issue under Option 2

Issue	Legislative/Regulatory Options	Estimated annual Net Present Value of total cost	Estimated 10-year Net Present Value of total cost	Estimated net benefits of legislative/non-legislative change
3.1 – Safety of children during transitions between services (including school)	<p>Option C: Recommendation to State and Territory school authorities and non-government school sector organisations to develop policies and procedures to safely transfer children between schools and ECE services.</p> <p>Option D: Require that where relevant, an approved provider must ensure that the service has a policy and procedures in place for the transition period between education and care services (for example between school and OSHC, or OSHC and preschool), including a risk assessment process.</p> <p>Option E: Develop further guidance to support policies and procedures relating to the delivery of children to, and the collection from, education and care service premises.</p> <p><i>(Option C not costed)</i></p>	\$662K	\$5.77M	<ul style="list-style-type: none"> Improved safety, health and wellbeing of children, staff and families. Reduction in incidents and associated operational costs.
3.2 – Sleep and rest requirements	<p>Option C: Further guidance developed to support policies and procedures for sleep and rest.</p> <p>Option D: Amend the National Regulations to specify the matters that must be included in services' policies and procedures for sleep and rest.</p> <p>Option E: Amend the National Regulations to require a risk assessment to be conducted in relation to sleep and rest, including matters that must be considered within that risk assessment.</p> <p>Option G: Legislative change to require compulsory training on safe sleep practices for all FDC educators subject to governments undertaking further research, costing and impact analysis of any proposed training and the implementation approach.</p> <p><i>(Options D, E and G are not costed)</i></p>	\$469K	\$3.95M	<ul style="list-style-type: none"> Improved child health and safety. Improved educator awareness of best practice.

Issue	Legislative/Regulatory Options	Estimated annual Net Present Value of total cost	Estimated 10-year Net Present Value of total cost	Estimated net benefits of legislative/non-legislative change
<p>3.3 – Improving children’s safety during regular transportation</p>	<p>Option D: Legislative change to require the presence of a staff member of the service (other than the driver) when children are embarking and disembarking from the vehicle at the education and care service premises.</p> <p>Option F: Further explicit guidance on the application of current requirements for ratios and qualifications, and what is adequate supervision as it relates to transportation provided or arranged by a service. Separate guidance will also be generated for the FDC sector.</p>	\$540K	\$3.8M	<ul style="list-style-type: none"> • Reduced risk to children’s health and safety.
<p>3.4 – Improving children’s safety during emergency evacuations from multi-storey buildings</p>	<p>Option B: Amend the legislation about requirements for emergency and evacuation procedures to require that for centre-based services located in multi-storey buildings:</p> <ul style="list-style-type: none"> • the emergency and evacuation procedures must set out additional information in regard to instructions for what must be done in an emergency, staged evacuations, identification of the person-in-charge and staff roles and responsibilities, and • a review and/or risk assessment must be conducted, following certain prescribed events or a prescribed time period. <p>Option C: Strengthen service approval processes to require that for centre-based services located in multi-storey buildings the regulatory authority, in assessing the suitability of the education and care service premises, is to consider the need for direct egress to safe evacuation areas for very young children and non-ambulatory children. <i>This option would also apply to FDC requiring approved providers to assess the FDC residence as part of their approval processes, where located in multi-storey buildings.</i></p>	\$15K	\$128K	<ul style="list-style-type: none"> • Reduced risk to child and staff health and safety.

Issue	Legislative/Regulatory Options	Estimated annual Net Present Value of total cost	Estimated 10-year Net Present Value of total cost	Estimated net benefits of legislative/non-legislative change
3.4 – (continued)	<p>Option D: Amend service approval processes to require approved providers wishing to operate a centre-based service from premises in a multi-storey building in Victoria or ACT to apply to the regulatory authority for pre-approval of development and building plans for the proposed premises prior to development and construction. (Victoria and ACT only).</p> <p>Option E: Enhance national guidance and communication strategies to improve understanding of service approval considerations for centre-based multi-storey buildings and reinforce existing emergency and evacuation requirements for the early childhood education and care sector. <i>Guidance would also be prepared for persons involved in third-party planning and building development processes across States and Territories.</i></p>			
4.1 – Embedding the National Child Safe Principles	<p>Option D: Amend the National law and National Regulations and associated guidance to address identified gaps between the Child Safe Principles and the NQF to:</p> <ul style="list-style-type: none"> • Clarify that volunteers must be aware of the existence and application of any child protection law and any obligations held under it. • Require that all FDC co-ordinators complete child protection training prior to commencing employment and undertake annual refresher training. • Include Working with Vulnerable People/ Children Check details on volunteer staff records. • Require that services child safe environment policies and procedures must also cover the creation of a child safe culture and the safe use of online environments. 	\$3.4M	\$29M	<ul style="list-style-type: none"> • Reduction in potential risk and improvements in broader wellbeing. • Maintained trust and ECEC reputation.

Issue	Legislative/Regulatory Options	Estimated annual Net Present Value of total cost	Estimated 10-year Net Present Value of total cost	Estimated net benefits of legislative/non-legislative change
4.1 – (continued)	<ul style="list-style-type: none"> Require service complaint handling policies to include policies and procedures for managing complaints alleging that a child is exhibiting harmful sexual behaviours. Require that services’ policies and procedures for handling complaints are child focussed. 			
4.2 – Updating record keeping requirements	<p>Option B: Improved guidance to assist providers on record keeping utilising existing best practice instructions developed by relevant Commonwealth, State and Territory Archive Authorities (for example, the National Archives of Australia General Records Authority 41) as per Recommendation 8.3, along with the five high-level record keeping principles recommended by the Royal Commission in Recommendation 8.4.</p>	\$2.55M	\$16M	<ul style="list-style-type: none"> Increased efficiencies for ECEC providers. Reduction in loss or removal of institutional records. Improved access to records for survivors of child sexual abuse.
5.1 – FDC Register and notification requirements	<p>Option B: Changes (legislative or otherwise) to the Family Day Care (FDC) Register to enable regulatory authorities to have timely access to FDC service level data that will enable risk-based proactive approaches to regulation and allow regulatory authorities, particularly during emergency situations such as bushfires, to support service providers in meeting their obligations to ensure the safety of children.</p>	<i>Not costed</i>	<i>Not costed</i>	<ul style="list-style-type: none"> Increased ability for governments to support service staff, families and children during emergency situations. Reduction in risks to children’s safety, health and wellbeing. Increased information for governments to support compliance activities.

Issue	Legislative/Regulatory Options	Estimated annual Net Present Value of total cost	Estimated 10-year Net Present Value of total cost	Estimated net benefits of legislative/non-legislative change
5.2 – FDC exceptional circumstances	Option B: Require approved providers to include details of FDC educators operating above ratio due to exceptional circumstances on the FDC Register.	<i>Not costed</i>	<i>Not costed</i>	<ul style="list-style-type: none"> • Increased information for governments to support compliance activities.
5.3 – Safety around swimming pools in FDC residences	<p>Option B: FDC residences with swimming pools would continue to operate with additional safeguards to ensure active supervision and regular review of risks. Approved providers must ensure that residences comply with fencing requirements and conduct monthly inspections of swimming pools and surrounds.</p> <p>Option D: Regulatory authorities to provide additional guidance and resources in relation to water safety to FDC educators.</p> <p>*Please note, Tasmania currently prohibits swimming pools, however changes relating to water hazards would still apply.</p>	\$367K in first year, then \$115K per year thereafter	\$1.02M	<ul style="list-style-type: none"> • Increased awareness of water hazards and water safety requirements. • Reduction in risk to child health and safety.
5.4 – Safety of glass used by services in family day care	<p>Option B: FDC residences and venues to comply with 0.75m height requirement.</p> <p>Option E: Regulatory authorities to provide additional guidance and resources in relation to glass safety requirements for FDC services.</p>	\$2.3 million in first year, no cost thereafter	\$2.3M	<ul style="list-style-type: none"> • Increased consistency, awareness and compliance. • Reduction in incidents. • Improved safety for children.
6.1 – Assessment and rating of OSHC services	<p>Option B: Review and consider changes to the assessment and rating methodology for services whose main purpose is providing education and care to children over preschool age.</p> <p><i>*Responsibility for the review must be determined and taken into account for implementation.</i></p> <p>Technical amendment to require program-level documentation for Tasmania, SA, WA and VIC (see <i>Technical Amendment 11.8</i>)</p>	<i>Not costed</i>	<i>Not costed</i>	<ul style="list-style-type: none"> • Reduced regulatory burden for OSHC providers. • Increased capacity for OSHC staff to focus on core educational activities.

Issue	Legislative/Regulatory Options	Estimated annual Net Present Value of total cost	Estimated 10-year Net Present Value of total cost	Estimated net benefits of legislative/non-legislative change
7.1 – Restrictions on short-term relief for early childhood educators	Option C: Extend the provision enabling short-term staff replacements by allowing primary teachers to replace certificate III and diploma qualified educators for a period of up to 30 days.	<i>Not costed (qualitative)</i>	<i>Not costed (qualitative)</i>	<ul style="list-style-type: none"> • Increased flexibility to fill short-term vacancies with primary teachers. • Reduced operational/ administrative burden.
7.2 – Educators who are ‘actively working towards’ a qualification	<p>Option A: No change.</p> <p>Option C: Develop guidance for providers to ensure staff who are ‘actively working towards’ qualifications are making satisfactory progress.*</p> <p><i>*To be progressed once data from the 2021 Workforce Census is made available.</i></p>	\$489K	\$2.6M	<ul style="list-style-type: none"> • Improved quality of workforce and educational outcomes for children.
7.3 – Minimum qualification requirements for educators in FDC	Option B: Remove the ‘actively working towards’ provisions for FDC educators and require these educators to hold an approved Certificate III qualification prior to commencing their role in an FDC service.	<i>Not costed</i>	<i>Not costed</i>	<ul style="list-style-type: none"> • Improved quality of education and care.
8.1 – The quality ratings system	<p>Option A: No change.</p> <p>Option B: Modify the quality rating terminology. <i>*Further research is required for this option to determine the most effective terminology. Research on how best to communicate varying levels of quality to families, taking into account different education levels and cultural understandings, is also required.</i></p> <p>Option D: Provide further guidance and advice to the community about the purpose of quality ratings</p> <p><i>*Option D has not been costed, *Option B and D to be considered after further research and evaluation is completed by governments.</i></p>	<i>Option D not costed</i>	<i>Option D not costed</i>	<ul style="list-style-type: none"> • Increased awareness and understanding for families.

Issue	Legislative/Regulatory Options	Estimated annual Net Present Value of total cost	Estimated 10-year Net Present Value of total cost	Estimated net benefits of legislative/non-legislative change
9.1 – Changes in fees for regulatory authorities	<p>Option B: Create a fourth category of application/annual fee for centre-based services with 101 or more places and FDC services with 61 or more educators.</p> <p>Option C: Increase fees for the following:</p> <ol style="list-style-type: none"> 1. Annual fees 2. Application for provider approval 3. Application for service approval 4. Notification of intended transfer of service approval <p>Option D: Introduce a new fee for applications for amendment to service approval (which is currently free).</p>	\$2.34M, after three-year rollout	\$11.89M	<ul style="list-style-type: none"> • Improved cost recovery according to Australian Government guidelines.
9.2 – Changes in application fees for ACECQA functions	<p>Option B: Increase application fee for a review by the ratings Review Panel of rating level (s145(2)(c)).</p> <p>Option D: Increase application fee for assessment of a course to be included on the list of approved qualifications (regulation 138).</p>	\$24K, after three-year rollout	\$119K	<ul style="list-style-type: none"> • Improved cost recovery according to Australian Government guidelines.

Issue	Legislative/Regulatory Options	Estimated annual Net Present Value of total cost	Estimated 10-year Net Present Value of total cost	Estimated net benefits of legislative/non-legislative change
<p>10.1 – Assessing suitability of individuals to work directly or indirectly with children</p>	<p>Option B: Clarify the definition of ‘person with management or control’ (PMC) of a service in the National Law to align with the definition of PMC of an approved provider body in the Commonwealth Family Assistance Law to capture persons who have authority or responsibility for, or significant influence over, planning, directing or controlling the activities of the service (whether or not they are employed by the approved provider of the service).</p> <p>Option C: Specify in the National Law that the regulatory authority can administer questions to an applicant in relation to their fitness and propriety in any format and undertake an assessment of their knowledge of the NQF. This will be aligned to the regulatory authority’s existing powers to ask the prospective applicant to provide further information and conduct further enquiries about their fitness and propriety.</p> <p>Option E: Include an explicit obligation for FDC educators to notify the approved provider of circumstances arising that pose a risk to the health, safety or wellbeing of children of the service and that approved providers use this information in a risk assessment.</p>	<p><i>Not costed (qualitative)</i></p>	<p><i>Not costed (qualitative)</i></p>	<ul style="list-style-type: none"> • Clearer understanding of definitions. • Alignment of definitions provides legislative underpinnings to achieve system efficiencies through the Regulatory Systems Reform project. • Reduction of risk to children’s safety, health and wellbeing.
<p>10.2 Cancellation of provider approval under Family Assistance Law</p>	<p>Option B: Legislative change that provides for FAL cancellation as explicit grounds for cancellation of provider approval under the NQF in circumstances where the FAL cancellation relates to fitness and propriety and/or a breach of the NQF.</p> <p>Option C: Legislative change that provides for refusal of provider approval under the FAL as explicit grounds for cancellation of provider approval under the NQF, where the FAL refusal relates to fitness and propriety and/or a breach of the NQF.</p>	<p><i>Not costed (qualitative)</i></p>	<p><i>Not costed (qualitative)</i></p>	<ul style="list-style-type: none"> • Reduction of risks for children.

Issue	Legislative/Regulatory Options	Estimated annual Net Present Value of total cost	Estimated 10-year Net Present Value of total cost	Estimated net benefits of legislative/non-legislative change
10.3 – Arrangements to transfer a service to another approved provider	<p>Option B: Develop guidance for services and providers about the service transfer process and how to best advise families about the transfer (for example, in relation to storage of children’s records).</p> <p>Option C: Minor legislative changes to address challenges associated with timeframes including:</p> <p>Increasing the notification period from 42 to 60 days;</p> <p>Making it mandatory for transferring and receiving providers to notify the regulatory authority of any change or delay to the intended date of transfer.</p> <p>Increasing the notice period to families from 2 days to 7 days before the transfer takes effect.</p>	\$1.6M in first year, then \$450K in subsequent years	\$3.8M	<ul style="list-style-type: none"> Improved understanding for providers and families.
10.4 – Maintaining current information about service delivery	<p>Option B: Amend the National Regulations to require notification of changes to the ages of children being cared for and nature of care provided to the regulatory authority, with an associated offence for failing to notify.</p> <p>Option D: Regulatory authorities to provide guidance and resources in relation to age appropriate programs and facility requirements.</p>	<i>Not costed (qualitative)</i>	<i>Not costed (qualitative)</i>	<ul style="list-style-type: none"> Improved support and processes for providers. Increased access to information and assessment of risk.
Cumulative cost of legislative/regulatory options		\$11.43M per year* <i>*Average annual cost in a 10 year period, assuming variation in costs over time (i.e. some upfront costs and some phased in costs)</i>	\$80.3M over 10-year period	

Table 8: Cumulative costs of Option 2 (by 10-year NPV and annually)

Cumulative cost (Net Present Value) of each issue under Option 3

Issue	Legislative/Regulatory Options	Estimated annual Net Present Value of total cost	Estimated 10-year Net Present Value of total cost	Estimated net benefits of regulatory and legislative change
3.1 – Safety of children during transitions between services (including school)	Option B: Legislative change to specify staff supervision requirements during periods of transition between education and care services.	\$107.6M	\$655.3M	<ul style="list-style-type: none"> Improved safety, health and wellbeing of children, staff and families. Reduction in incidents and associated operational costs.
3.2 – Sleep and rest requirements	<p>Option B: Legislative change to require compulsory safe sleep practices training for all educators who care for sleeping children (birth to five years).</p> <p>Option F: Legislative change to require that sleeping and resting children in education and care services are within sight and hearing distance of an educator at all times.</p> <p><i>*Option F not costed.</i></p>	\$5.9M in the first year, then \$1.65M per year thereafter (for Option B)	\$14M (Option B)	<ul style="list-style-type: none"> Improved child health and safety. Improved educator awareness of best practices.
3.3 – Improving children’s safety during regular transportation	<p>Option B: Legislative change to require specific transport ratio requirements for when children are being transported by, or are on transportation arranged by, an education and care service.</p> <p>To clarify that the driver is counted in the ratio during transportation.</p> <p>For example, transport specific ratio requirements could require:</p> <p>a. In the case of vehicles carrying no more than 7 children at any one time, only the driver of the vehicle is required to be on the vehicle; and</p> <p>b. In the case of vehicles carrying more than 7 children at any one time, there must be the driver and at least one other additional staff member on the vehicle.</p>	\$16.4M (for Option B)	\$163.7M (Option B)	<ul style="list-style-type: none"> Reduced risk to children’s health and safety.

Issue	Legislative/Regulatory Options	Estimated annual Net Present Value of total cost	Estimated 10-year Net Present Value of total cost	Estimated net benefits of regulatory and legislative change
3.3 – (continued)	<p>Option C: Legislative change to specify in the case of vehicles transporting only school age children that ratio requirements would not apply in the vehicle.</p> <p>Option E: Legislative change to require that where the driver is not a staff member of the education and care service that prior to transportation of the children the approved provider must ensure that the driver holds a current Working with Children Check (unless an exclusion applies), a current approved first aid qualification and has undertaken anaphylaxis and emergency asthma management training.</p> <p><i>*Options C and E not costed.</i></p>			
3.4 – Improving children’s safety during emergency evacuations from multi-storey buildings	<p>Option C: Strengthen service approval processes to require that for centre-based services located in multi-storey buildings the regulatory authority, in assessing the suitability of the education and care service premises, is to consider the need for direct egress to safe evacuation areas for very young children and non-ambulatory children.</p> <p>Option D: Amend service approval processes to require approved providers wishing to operate a centre-based service from premises in a multi-storey building in Victoria or ACT to apply to the regulatory authority for pre-approval of development and building plans for the proposed premises prior to development and construction. (Victoria and ACT only).</p>	\$47.5K in the first year, then \$13.5K per year thereafter	\$112K	<ul style="list-style-type: none"> • Reduced risk to child and staff health and safety.

Issue	Legislative/Regulatory Options	Estimated annual Net Present Value of total cost	Estimated 10-year Net Present Value of total cost	Estimated net benefits of regulatory and legislative change
<p>4.1 – Embedding the National Child Safe Principles</p>	<p>Option C: Amend the National Regulations so that the requirement for services to have in place policies and procedures for providing a child safe environment specifically refers to implementing the National Principles.</p> <p>Amend the National Regulations and associated guidance so that approved providers will be required to:</p> <p>Ensure that policies and procedures for their service/s address the National Principles for both staff members and volunteers</p> <p>Ensure all volunteers and staff at their service/s are advised of the existence and application of the National Principles.</p>	<p>\$6.23M in the first year, then \$1.6M per year thereafter</p>	<p>\$14M</p>	<ul style="list-style-type: none"> • Reduction in potential risk and improvements in broader wellbeing. • Maintained trust and ECEC reputation.
<p>4.2 – Updating record keeping requirements</p>	<p>Option C: Amend the National Regulations to increase record keeping requirements to 45 years (in relation to relevant records regarding actual or alleged instances of child sexual abuse) in line with the Royal Commission recommended minimum.</p> <p>Option D: Require not-for-profit, community and for-profit providers to store records in accordance with recommended standards and timeframes of the Royal Commission.</p> <p><i>*Neither Options C or D have been costed.</i></p>	<p><i>Not costed</i></p>	<p><i>Not costed</i></p>	<ul style="list-style-type: none"> • Improved access to records for survivors seeking redress. • Improved ability of authorities to detect perpetrators of abuse. • Reduction in risks to children’s safety, health and wellbeing.

Issue	Legislative/Regulatory Options	Estimated annual Net Present Value of total cost	Estimated 10-year Net Present Value of total cost	Estimated net benefits of regulatory and legislative change
5.1 – FDC Register and notification requirements	Option B: Changes (legislative or otherwise) to the FDC Register requirements to enable regulatory authorities to have timely access to FDC service level data that will enable risk-based proactive approaches to regulation and allow regulatory authorities, particularly during emergency situations such as bushfires, to support service providers in meeting their obligations to ensure the safety of children.	<i>Not costed</i>	<i>Not costed</i>	<ul style="list-style-type: none"> • Increased ability for governments to support service staff, families and children during emergency situations. • Reduction in risks to children’s safety, health and wellbeing. • Increased information for governments to support compliance activities.
5.2 – FDC exceptional circumstances	Option B: Require approved providers to include details of FDC educators operating above ratio due to exceptional circumstances on the FDC Register.	<i>Not costed</i>	<i>Not costed</i>	<ul style="list-style-type: none"> • Increased information for governments to support compliance activities.
5.3 – Safety around swimming pools in FDC residences	Option C: Prevent the registration or engagement of new FDC educators at residences or venues with a swimming pool to operate from specified date. *Option C has not been costed and would not apply in Tasmania.	<i>Not costed</i>	<i>Not costed</i>	<ul style="list-style-type: none"> • Increased awareness of water hazards and water safety requirements. • Reduction in risk to child health and safety.

Issue	Legislative/Regulatory Options	Estimated annual Net Present Value of total cost	Estimated 10-year Net Present Value of total cost	Estimated net benefits of regulatory and legislative change
<p>5.4 – Safety of glass used by services in family day care</p>	<p>Option C: FDC residences and venues that are approved on or after the date the regulation comes into effect will be required to comply with 1m height requirement.</p> <p>Existing FDC residences will retain current requirements as follows:</p> <p>a. FDC residences/venues approved before 1 June 2014 to comply with 0.75m requirement</p> <p>b. FDC residences/venues approved between 2 June 2014 and [date regulation comes into force] to comply with 0.5m requirement, as currently specified by AS 1288–2006.</p> <p>Option D: All new FDC residences and venues to comply with 1m height requirement from [date regulation comes into force].</p> <p>FDC residences/venues approved before [date regulation comes into force] subject to the 0.5m and 0.75m requirements to be transitioned into the new 1m requirement by [sunset date].</p> <p><i>*Option C has not been costed.</i></p>	<p>\$12.6M in the first year, then no cost thereafter (for Option D)</p>	<p>\$11M (Option D)</p>	<ul style="list-style-type: none"> • Increased consistency and compliance. • Reduction in incidents. • Improved safety for children.
<p>6.1 – Assessment and rating of OSHC services</p>	<p>Option B: Review and consider changes to the assessment and rating methodology for services whose main purpose is providing education and care to children over preschool age.</p> <p><i>*Responsibility for the review must be determined and taken into account for implementation.</i></p> <p><i>*Option B has not been costed.</i></p>	<p><i>Not costed</i></p>	<p><i>Not costed</i></p>	<ul style="list-style-type: none"> • Reduced regulatory burden for OSHC providers. • Increased capacity for OSHC staff to focus on core educational activities.

Issue	Legislative/Regulatory Options	Estimated annual Net Present Value of total cost	Estimated 10-year Net Present Value of total cost	Estimated net benefits of regulatory and legislative change
7.1 – Restrictions on short-term relief for early childhood educators	<p>Option B: Extend the requirements for ‘short-term’ absences to 80 days.</p> <p>Option C: Extend the provision enabling short-term staff replacements by allowing primary teachers to replace certificate III and diploma qualified educators for a period of up to 30 days.</p> <p>Option D: Allow Suitably Qualified Persons to replace a third or fourth ECT to address workforce shortages (NSW only).</p>	<i>Not costed (qualitative)</i>	<i>Not costed (qualitative)</i>	<ul style="list-style-type: none"> • Increased flexibility to fill short-term vacancies. • Reduced operational/ administrative burden.
7.2 – Educators who are ‘actively working towards’ a qualification	<p>Option B: Limit the ‘actively working towards’ provision by:</p> <p>Introducing a minimum proportion of educators with a completed qualification (as opposed to 50 per cent of educators required within ratios to be qualified or ‘actively working towards’ a qualification); or</p> <p>Introducing a timeframe in which staff ‘actively working towards’ a qualification must complete their qualification in order to be counted in ratios; or</p> <p>Specifying a threshold staff must meet to make ‘satisfactory’ progress through their course in order to be counted in ratios.</p> <p>*CBA costs Option B(i) only.</p>	\$55.7M	\$377M	<ul style="list-style-type: none"> • Improved quality of workforce and educational outcomes for children.

Issue	Legislative/Regulatory Options	Estimated annual Net Present Value of total cost	Estimated 10-year Net Present Value of total cost	Estimated net benefits of regulatory and legislative change
7.3 – Minimum qualification requirements for educators in FDC	<p>Option B: Remove the ‘actively working towards’ provisions for FDC educators and require these educators to hold an approved Certificate III qualification prior to commencing their role in an FDC service.</p> <p>Option C: Require educators in FDC services to have completed at least an approved Certificate III qualification within 24 months of commencement in an FDC educator role. Not applicable to South Australia.</p> <p>Option D: Require educators in FDC services who are ‘actively working towards’ their Certificate III qualification to have completed at least 50% of their qualification, including child protection elements, prior to commencing employment. Not applicable to South Australia.</p>	<i>Not costed (qualitative)</i>	<i>Not costed (qualitative)</i>	<ul style="list-style-type: none"> Improved quality of education.
8.1 – The quality ratings system	<p>Option B: Modify the quality rating terminology.</p> <p>Option C: Introduce a visual representation for communicating and promoting the quality ratings.</p> <p><i>*Option B and C have not been costed.</i></p>	<i>Not costed</i>	<i>Not costed</i>	<ul style="list-style-type: none"> Increased awareness and understanding for families.
9.1 – Changes in fees for regulatory authorities	<p>Option E: Introduce an annual fee for approved providers that is scaled by the number of services operated by the provider.</p> <p>Option F: Change legislation to allow States and Territories to set their own fees (except for provider application fees).</p>	\$10.7M, after three-year rollout	\$55M	<ul style="list-style-type: none"> Improved cost recovery according to Australian Government guidelines.

Issue	Legislative/Regulatory Options	Estimated annual Net Present Value of total cost	Estimated 10-year Net Present Value of total cost	Estimated net benefits of regulatory and legislative change
9.2 – Changes in application fees for ACECQA functions	<p>Option C: Increase application fee for determination of equivalent qualification (regulation 139).</p> <p>Option E: Introduce a fee for an application for the highest rating (Excellent rating).</p>	\$45K, after three-year rollout	\$232K	<ul style="list-style-type: none"> Improved cost recovery according to Australian Government guidelines. Option E is expected to reduce fees for large centre-based/FDC services.
10.1 – Assessing suitability of individuals to work directly or indirectly with children	<p>Option B: Clarify the definition of ‘person with management or control’ (PMC) of a service in the National Law to align with the definition of PMC of an approved provider body in the Commonwealth Family Assistance Law to capture persons who have authority or responsibility for, or significant influence over, planning, directing or controlling the activities of the service (whether or not they are employed by the approved provider of the service).</p> <p>Option C: Specify in the National Law that the regulatory authority can administer questions to an applicant in relation to their fitness and propriety in any format and undertake an assessment of their knowledge of the NQF. This will be aligned to the regulatory authority’s existing powers to ask the prospective applicant to provide further information and conduct further enquiries about their fitness and propriety.</p> <p>Option E: Include an explicit obligation for FDC educators to notify the approved provider of circumstances arising that pose a risk to the safety, health or wellbeing of children of the service and that approved providers use this information in a risk assessment.</p>	<i>Not costed (qualitative)</i>	<i>Not costed (qualitative)</i>	<ul style="list-style-type: none"> Clearer understanding of definitions. Alignment of definitions provides legislative underpinnings to achieve system efficiencies through the Regulatory Systems Reform project. Reduction of risk to children’s safety, health and wellbeing.

Issue	Legislative/Regulatory Options	Estimated annual Net Present Value of total cost	Estimated 10-year Net Present Value of total cost	Estimated net benefits of regulatory and legislative change
10.2 Cancellation of provider approval under Family Assistance Law	<p>Option B: Legislative change that provides for FAL cancellation as explicit grounds for cancellation of provider approval under the NQF in circumstances where the FAL cancellation relates to fitness and propriety and/or a breach of the NQF.</p> <p>Option C: Legislative change that provides for refusal of provider approval under the FAL as explicit grounds for cancellation of provider approval under the NQF, where the FAL refusal relates to fitness and propriety and/or a breach of the NQF.</p>	<i>Not costed (qualitative)</i>	<i>Not costed (qualitative)</i>	<ul style="list-style-type: none"> • Reduction of risks for children.
10.3 – Arrangements to transfer a service to another approved provider	<p>Option D: Amend the National Regulations to ‘deem’ the transfer to have occurred based on the advice of the receiving provider only, with receipt of the receiving provider’s right to occupy.</p>	<i>Not costed (qualitative)</i>	<i>Not costed (qualitative)</i>	<ul style="list-style-type: none"> • Improved efficiency of service transfer process. • Prevention of delays for some transfers, reduction in regulatory burden for transferring providers and greater flexibility and certainty of transfer dates.

Issue	Legislative/Regulatory Options	Estimated annual Net Present Value of total cost	Estimated 10-year Net Present Value of total cost	Estimated net benefits of regulatory and legislative change
10.4 – Maintaining current information about service delivery	Option C: Amend the National Regulations to introduce an approval requirement, which obliges providers to apply to the regulatory authority to change the ages of children cared for and nature of care delivered by a service.	<i>Not costed (qualitative)</i>	<i>Not costed (qualitative)</i>	<ul style="list-style-type: none"> • Greater accuracy and currency of information recorded in NQA ITS. • Improved regulatory oversight of services. • Reduction of risk to children’s safety, health and wellbeing.
Cumulative cost of legislative/regulatory options		\$193.5M per year* <i>*Average annual cost in a 10-year period, assuming variation in costs over time (i.e. some upfront costs and some phased in costs)</i>	\$1.29B over 10-year period	

Table 9: Cumulative costs of Option 3 (by 10-year NPV and annually)

Assumed impact and cumulative cost (Net Present Value) by jurisdiction

While the implementation of recommendations from the 2019 NQF Review will impact education and care services across Australia, the regulatory costs associated with legislative and non-legislative changes will differ between State and Territories.

Considering the relative size of the education and care sectors, larger States such as NSW will experience over ten times the cumulative costs associated with Options 2 or 3, compared to smaller jurisdictions such as Tasmania, Northern Territory or the ACT. However, considering the national approach to regulation under the NQF, there are unlikely to be significant disparities or disproportionate experiences of regulatory costs at a service level across Australia.

However, some jurisdictions may be adversely impacted by certain issues more than others. For example, regulatory changes which impact on the eligibility of educators' employment may result in increased workforce challenges in areas such as remote Northern Territory where there is already a limited supply of qualified early childhood staff.

Furthermore, some specific issues in the 2019 NQF Review, such as regulations relating to swimming pools in FDC residences, are likely to have a greater impact on jurisdictions where pools are more common in residential homes in the demographic reflected in the FDC sector. For example, regulatory change associated with banning swimming pools under Option 3 may present FDC workforce challenges in northern jurisdictions with warmer climates and where pool safety activities are considered part of the preschool program.

For jurisdictions such as Queensland and the Northern Territory, regional and remote services often provide transportation services to ensure access to education and care. Therefore, introducing additional legislative and regulatory requirements around regular transportation, such as in Option 3, may impact on staffing and costs.

In some circumstances, issues may affect some jurisdictions but be completely absent in others. For example, the safety issues with evacuations from services located in multi-storey buildings do not affect Tasmania, which does not have any services operating in multi-storey buildings.

Based on the figures from the Cost-Benefit Analysis, Table 10 below includes a breakdown of the costs associated with implementing Options 1, 2 and 3 in this DRIS, by jurisdiction:

Issue	Estimated NPV of cost/benefit for implementing option, by jurisdiction (over 10 years)								
	National	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
Option 1 – Status quo	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Option 2 – Mixed approach	\$80.3M	\$27.9M	\$21.2M	\$14.9M	\$5.5M	\$6.5M	\$1.3M	\$1.5M	\$1.5M
Option 3 – Highly prescriptive legislative approach	\$1.29B	\$389.6M	\$221.7M	\$311.3M	\$80.2M	\$120.1M	\$23.2M	\$24.5M	\$60.4M

Table 10: Cumulative Net Present Value (NPV) of cost of Options 2 and 3 by jurisdiction

Note: This jurisdictional breakdown includes an estimate of associated costs for Issue 9.1 (Changes in fees for regulatory authorities) and Issue 9.2 (Changes in application fees for ACECQA functions). This jurisdictional allocation of costs attributable to Issues 9.1 and 9.2 is based on the assumption that service sizes are uniform across jurisdictions.

7 WHAT IS THE BEST OPTION FROM THOSE CONSIDERED?

To ensure that the NQF remains fit for purpose, the 2019 NQF Review considers three fundamental policy problems within the current NQF arrangements:

- Accessibility of information
- Regulatory and administrative burdens
- Unacceptable level of hazard or risk to children.

These policy problems are discussed in Chapter 5: *What are the problems to be solved? of this DRIS document, as well as within the policy papers at Appendix 2.*

In line with the Australian Government Guide to Regulatory Impact Analysis,⁶⁴ an RBE was included in the previous Chapter of this RIS, together with estimates of the direct regulatory costs for businesses, community organisations and individuals on an annual basis.

Average annual change in regulatory costs (compared to current business as usual)				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Option 1 – Status quo	\$0	\$0	\$0	\$0
Option 2 – Mixed approach	\$4.52 million	\$4.53 million	\$268,000	\$9.3 million
Option 3 – Highly prescriptive legislative approach	\$61.2 million	\$61.25 million	\$1.1 million	\$123.55 million

Table 11: Regulatory burden estimate (RBE) for each DRIS option

Note: This figure does not include the calculated net benefit of the policy changes, but rather the direct regulatory costs associated with change. A holistic breakdown factoring in the associated benefits is found in the cost-benefit analysis table in Chapter 9.

Comparing Options 1, 2 and 3 through the RBM found that Option 3 (highly prescriptive legislative approach) would have substantially higher annual regulatory costs across businesses, community organisations and individuals when compared to Option 2 (mixed approach) and Option 1 (status quo). In addition, neither Option 1 nor Option 3 would deliver the desired outcomes.

Incorporating this RBE, as well as the qualitative impacts and cumulative NPV analysis outlined in Chapter 9: *Impact analysis*, the preferred option will seek to address the three policy problems, without placing significantly restrictive and arduous regulatory

requirements on providers and services and by using proportionate and appropriate measures to achieve the desired outcomes

Based on the analysis presented in this Decision RIS, the preferred option is Option 2: A mixed approach using legislative and non-legislative methods to effect change.

Option 1: Status quo

Option 1 proposes retaining the status quo (no change) for all regulatory issues outlined in the CRIS. This option would propose no additional regulatory costs on the education and care sector under the NQF.

While this option would have the lowest (net zero) regulatory impact on providers and services, Option 1 would result in the regulatory issues highlighted in the CRIS continuing to exist under the NQF. In some cases, this may result in negative impacts on the safety, health and wellbeing of children in care.

Considering this, Option 1 (no change) is not recommended in this Decision RIS.

Option 2: Mixed approach

Option 2 proposes a mixed approach, incorporating a range of legislative and non-legislative responses to the issues outlined in the CRIS. The type of regulatory response to each issue has been determined by the importance of the issue, the severity of the risk or associated hazard, and the likelihood of response to deliver the intended change. For some issues, information and guidance have been considered as delivering a larger impact than increasing regulatory requirements. This has also been highlighted by sector feedback during the national consultations pointing to, in some cases, a lack of understanding of regulatory requirements rather than deliberate non-compliance with the NQF. By contrast, some issues outlined in the CRIS have been found to require more prescriptive legislative or regulatory changes, as non-legislative responses would fail to adequately deliver the sector-wide behavioural and procedural change to address the issue.

Option 2 provides a proportionate regulatory response to addressing the policy problems in a way that best meets the needs of education and care services and families. By enacting a range of legislative and non-legislative approaches in response to the issues outlined in the CRIS, Option 2 is likely to provide the sector with the highest net benefit when compared to the other options presented in this Decision RIS. Option 2's mixed approach of legislative and non-legislative changes is expected to cost Australia's education and care sector approximately \$107.2 million over 10 years.⁶⁵

Findings from the impact analysis in the Decision RIS support Option 2 as the recommended option for change.

Option 3: Highly prescriptive legislative approach

Option 3 proposes a relatively prescriptive set of legislative and regulatory changes to address the issues in the CRIS. Option 3 adopts a highly legislative approach only to address issues, without utilising complementary alternative non-legislative approaches such as providing additional guidance or communications. Through failing to consider a broad range of policy responses and to tailor the responses chosen to the particular issue, it is expected that Option 3 would produce poorer outcomes than Option 2.

There may also be unexpected consequences of Option 3. Introducing a suite of highly restrictive regulatory changes may introduce further complexity within the early childhood policy environment. For example, enacting restrictive measures in relation to workforce qualifications may impact on overall access to quality care for families and children, ultimately working against the objectives of the NQF.

Considering the regulatory and administrative costs associated with Option 3, introducing the suite of changes solely dependent on legislative change would be expected to cost Australia's education and care sector approximately \$1.3 billion over 10 years.⁶⁶ This is significantly larger than the \$107.2 million over 10 years (approx.) cost associated with changes under Option 2.

Feedback from education and care providers has suggested this cost would be ultimately passed on to families through increases in overall fees. Therefore, introducing significantly prescriptive requirements may impact overall access and affordability of education and care in the long term. This is especially apparent in areas with lower supply, such as regional and remote areas within Australia where compliance with the NQF already places a considerable burden on services.

Considering the significantly high regulatory and administrative costs as a result of solely adopting legislative and regulatory changes, as well as the fact that these changes are not the most appropriate or proportionate way to achieve the desired outcomes, Option 3 is not recommended in this DRIS.

Recommendation: This DRIS supports Option 2 as the recommended option for change.

8 IMPLEMENTATION AND OPPORTUNITIES FOR FUTURE REVIEW

8.1 Implementation Plan

The implementation of the 2019 NQF Review recommendations will involve all State and Territory governments, the Australian Government and ACECQA. The approach to implementation requires consideration and action in the following areas:

- Changes to policy and legislation
- Guidance and communication to the sector and communities
- Training and resources required for regulatory authorities
- NQA ITS modifications
- Sector preparation (i.e. transitional period(s) and additional resources).

8.2 Implementation phases

The DRIS recommendations for change will be implemented in phases. In some instances, there will be multiple phases and/or a number of steps being implemented simultaneously. The first phase will involve changes to the National Law and National Regulations that will need to be passed through the Victorian Parliament (as host for the legislation). Amendments to guidance documents such as The Guide to the NQF will also need to occur. The second phase will include communication and guidance to the broader sector on the scope of changes occurring from the 2019 NQF Review. Finally, the third phase will include additional resources and quality development initiatives.

Timing for implementation depends on when the legislation can be passed through Parliament. It is likely to commence from late 2022 and be implemented throughout 2023. Indicative phasing for implementation is provided below:

Phase 1	Phase 2	Phase 3
Amendments to the National Law and National Regulations. Some amendments to policy and associated guidance documents such as The Guide to the NQF will progress.	Additional guidance and targeted communication to the sector will occur after amendments are made to law and policy. Training/ updated supports for regulatory authority staff will also commence.	Finalising resources and other supports for the sector and regulatory authority staff will need to occur, alongside continuing quality development initiatives.

Table 12: Implementation phasing



8.3 Opportunities for future review

One of the objectives of the NQF system is to promote continuous improvement in the provision of education and care services.⁶⁷ As the system strives to continuously improve, there will be ongoing opportunities for review of the NQF system, including the initiatives introduced through this Review. There will continue to be opportunities for stakeholder feedback into matters that require change.

Further, the Australian Government and all jurisdictions take a cooperative approach to the ongoing implementation and evaluation of the NQF. Cross-government committees facilitate ongoing evaluation within government.

APPENDIX 1 – TABLE OF RECOMMENDED CHANGES

Issue	Recommendation
3.1 – Safety of children during transitions between services (including school)	Option C: Recommendation to State and Territory school authorities and non-government school sector organisations to develop policies and procedures to safely transfer children between schools and education and care services.
3.1 – Safety of children during transitions between services (including school)	Option D: Require that where relevant, an approved provider must ensure that the service has a policy and procedures in place for the transition period between education and care services (for example between school and OSHC, or OSHC and preschool), including a risk assessment process.
3.1 – Safety of children during transitions between services (including school)	Option E: Develop further guidance to support policies and procedures relating to the delivery of children to, and the collection from, education and care service premises.
3.2 – Sleep and rest requirements	Option C: Further guidance developed to support policies and procedures for sleep and rest.
3.2 – Sleep and rest requirements	Option D: Amend the National Regulations to specify the matters that must be included in services’ policies and procedures for sleep and rest.
3.2 – Sleep and rest requirements	Option E: Amend the National Regulations to require a risk assessment to be conducted in relation to sleep and rest, including matters that must be considered within that risk assessment.
3.2 – Sleep and rest requirements	Option G: Legislative change to require compulsory training on safe sleep practices for all FDC educators subject to governments undertaking further research, costing and impact analysis of any proposed training and the implementation approach.
3.3 – Improving children’s safety during regular transportation	Option D: Legislative change to require the presence of a staff member of the service (other than the driver) when children are embarking and disembarking from the vehicle at the education and care service premises.
3.3 – Improving children’s safety during regular transportation	Option F: Further guidance around adequate supervision/risk assessment as it relates to transportation.

Issue	Recommendation
<p>3.4 – Improving children’s safety during emergency evacuations from multi-storey buildings</p>	<p>Option B: Amend the legislation about requirements for emergency and evacuation procedures to require that for centre-based services located in multi-storey buildings:</p> <ul style="list-style-type: none"> • the emergency and evacuation procedures must set out additional information in regard to instructions for what must be done in an emergency, staged evacuations, identification of the person-in-charge and staff roles and responsibilities, and • review and/or risk assessment must be conducted, following certain prescribed events or a prescribed time period.
<p>3.4 – Improving children’s safety during emergency evacuations from multi-storey buildings</p>	<p>Option C: Strengthen service approval processes to require that for centre-based services located in multi-storey buildings the regulatory authority, in assessing the suitability of the education and care service premises, is to consider the need for direct egress to safe evacuation areas for very young children and non-ambulatory children. <i>This option would also apply to FDC requiring approved providers to conduct risk assessments of FDC residences and venues before education and care are provided, where located in multi-storey buildings.</i></p>
<p>3.4 – Improving children’s safety during emergency evacuations from multi-storey buildings</p>	<p>Option D: Amend service approval processes to require approved providers wishing to operate a centre-based service from premises in a multi-storey building in Victoria or ACT to apply to the regulatory authority for pre-approval of development and building plans for the proposed premises prior to development and construction. (Victoria and ACT only).</p>
<p>3.4 – Improving children’s safety during emergency evacuations from multi-storey buildings</p>	<p>Option E: Enhance national guidance and communication strategies to improve understanding of service approval considerations for centre-based multi-storey buildings and reinforce existing emergency and evacuation requirements for the early childhood education and care sector. <i>Guidance would also be prepared for persons involved in third-party planning and building development processes across states and territories.</i></p>

Issue	Recommendation
<p>4.1 – Embedding the National Child Safe Principles</p>	<p>Option D: Amend the National Law and National Regulations and associated guidance to address identified gaps between the Child Safe Principles and the NQF to:</p> <ul style="list-style-type: none"> • Clarify that volunteers must be aware of the existence and application of any child protection law and any obligations held under it. • Require that all FDC co-ordinators complete child protection training prior to commencing employment and undertake annual refresher training. • Include Working with Vulnerable People/Children Check details on volunteer staff records. • Require that services’ child safe environment policies and procedures must also cover the creation of a child safe culture and the safe use of online environments. • Require services’ complaint handling policies and procedures to be child-focussed and include policies and procedures for managing complaints alleging that a child is exhibiting harm sexual behaviours.
<p>4.2 – Updating record keeping requirements</p>	<p>Option B: Improved guidance to assist providers on record keeping, utilising existing best practice instructions developed by relevant Commonwealth, State and Territory Archive Authorities (for example, the National Archives of Australia General Records Authority 41) as per Recommendation 8.3, along with the five high-level record keeping principles recommended by the Royal Commission in Recommendation 8.4.</p>

Issue	Recommendation
<p>5.1 – FDC Register and notification requirements</p>	<p>Option B: Changes (legislative or otherwise) to the FDC Register requirements to enable regulatory authorities to have timely access to FDC service level data that will enable risk-based proactive approaches to regulation and allow regulatory authorities, particularly during emergency situations such as bushfires, to support service providers in meeting their obligations to ensure the safety of children.*</p> <p><i>*Note: Option B in Issue 5.1 of the CRIS has been revised to reduce impact to the sector, particularly to remove additional administrative burden the original Option B may impose on service providers (see Consultation Feedback section below). For example, providers of FDC services having to input data through both the Child Care Subsidy System (CCSS) and the NQA ITS concurrently is burdensome.</i></p> <p>The original Option B in the CRIS was:</p> <ul style="list-style-type: none"> • “Amend the register requirements so that the FDC Register is kept within the NQA ITS, and records information such as: • Names and dates of birth of children attending the service • Names and contact phone numbers of educators, co-ordinators and educator assistants. • Days and hours of care and number of children attending per session. • Relevant dates (e.g. residence assessment date, educator commencement/end dates). • Educators operating above ratio (and the applicable approved provider approved exceptional circumstance as per proposal 5.2). • FDC educators’ and co-ordinators’ PRODA numbers.”
<p>5.2 – FDC exceptional circumstances</p>	<p>Option B: Require approved providers to include details of FDC educators operating above ratio due to exceptional circumstances on the FDC Register.</p>

Issue	Recommendation
<p>5.3 – Safety around swimming pools in FDC residences</p>	<p>Option B: FDC residences with swimming pools would continue to operate with additional safeguards to ensure active supervision and regular review of risks. Approved providers must ensure that residences comply with fencing requirements and conduct monthly inspections of swimming pools and surrounds.*</p> <p><i>*Please note that Option B has been amended. The original Option B in the CRIS was:</i></p> <ul style="list-style-type: none"> • “Swimming pools allowed with improved oversight. • Enable new and existing FDC educators with swimming pools to continue to operate with children under five years of age, with requirements for: <ul style="list-style-type: none"> – fencing (consistent with existing laws) – monthly monitoring by the approved provider (checklist assessment of pool and surrounds – with training; differentiated from compliance checks by council).” <p><i>*Please note that Tasmania prohibits swimming pools, however changes relating to water hazards would still apply.</i></p>
<p>5.3 – Safety around swimming pools in FDC residences</p>	<p>Option D: Regulatory authorities to provide additional guidance and resources in relation to water safety to FDC educators.</p>
<p>5.4 – Safety of glass used by services in family day care</p>	<p>Option B: All FDC residences and venues to comply with 0.75m height requirement.</p> <p>(This reverts to previously superseded version of regulation 117).</p>
<p>5.4 – Safety of glass used by services in family day care</p>	<p>Option E: Regulatory authorities to provide additional guidance and resources in relation to glass safety requirements for FDC services.</p>

Issue	Recommendation
<p>6.1 – Assessment and rating of OSHC services</p>	<p>Option B: Review and consider changes to the assessment and rating methodology for services whose main purpose is providing education and care to children over preschool age. <i>Responsibility for the review must be determined and taken into account for implementation.*</i></p> <p><i>* Please note that Option B has been amended. The original Option B in the CRIS was:</i></p> <p><i>“Modify assessment and rating methodology for services whose main purpose is providing education and care to children over preschool age.”</i></p> <p><i>Following further consultation and review of the issue by governments, this Option has been revised to allow for a broader analysis around the assessment and rating process for OSHC services.</i></p>
<p>7.1 – Restrictions on short-term relief for early childhood educators</p>	<p>Option C: Extend the provision enabling short-term staff replacements by allowing primary teachers to replace certificate III and diploma qualified educators for a period of up to 30 days.</p> <p><i>*In addition, regulation 135 will be amended to include resignation and practicum as allowable reasons for short term absences.</i></p>
<p>7.2 – Educators who are ‘actively working towards’ a qualification</p>	<p>Option A: No change.</p>
<p>7.2 – Educators who are ‘actively working towards’ a qualification</p>	<p>Option C: Develop guidance for providers to ensure staff who are ‘actively working towards’ qualifications are making satisfactory progress.*</p> <p><i>*To be progressed once data from the 2021 Workforce Census is available.</i></p>
<p>7.3 – Minimum qualification requirements for educators in FDC</p>	<p>Option B: Remove the ‘actively working towards’ provisions for FDC educators and require these educators to hold an approved Certificate III qualification prior to commencing their role in an FDC service.</p>
<p>8.1 – The quality ratings system</p>	<p>Option A: No change.</p>
<p>8.1 – The quality ratings system</p>	<p>Option B: Review the quality rating terminology. <i>*Further research is required for this option to determine the most effective terminology. Research on how best to communicate varying levels of quality to families, taking into account different education levels and cultural understandings, is also required.</i></p>

Issue	Recommendation
8.1 – The quality ratings system	Option D: Provide further guidance and advice to the community about the purpose of quality ratings.
9.1 – Changes in fees for regulatory authorities	Option B: Create a fourth category of application/annual fee for centre-based services with 101 or more places and FDC services with 61 or more educators.
9.1 – Changes in fees for regulatory authorities	Option C: Increase fees for the following: <ol style="list-style-type: none"> 1. Annual fees 2. Application for provider approval 3. Application for service approval 4. Notification of intended transfer of service approval
9.1 – Changes in fees for regulatory authorities	Option D: Introduce a new fee for applications for amendment to service approval (which is currently free).
9.2 – Changes in application fees for ACECQA functions	Option B: Increase application fee for a review by the Ratings Review Panel of rating level (s145(2)(c)).
9.2 – Changes in application fees for ACECQA functions	Option D: Increase application fee for assessment of a course to be included on the list of approved qualifications (regulation 138).
10.1 – Assessing suitability of individuals to work directly or indirectly with children	Option B: Clarify the definition of ‘person with management or control’ (PMC) of a service in the National Law to align with the definition of PMC of an approved provider body in the Commonwealth Family Assistance Law to capture persons who have authority or responsibility for, or significant influence over, planning, directing or controlling the activities of the service (whether or not they are employed by the approved provider of the service). Amendment will be supported by regulatory policies and streamlined business process / IT solutions enabling a nationally consistent, risk-based approach to how regulatory authorities apply relevant discretionary aspects of fitness and propriety assessment.

Issue	Recommendation
<p>10.1 – Assessing suitability of individuals to work directly or indirectly with children</p>	<p>Combined Option C and D: Specify in the National Law that the regulatory authority can administer questions to an applicant in relation to their fitness and propriety in any format and undertake an assessment of their knowledge of the NQF. This will be aligned to the regulatory authority’s existing powers to ask the prospective applicant to provide further information and conduct further enquiries about their fitness and propriety.*</p> <p>*Please note that the original Options C and D have been combined.</p> <p>The original Option C in the CRIS is as below:</p> <p><i>“Specify in the National Law that the regulatory authority can administer questions to an applicant in any format, in addition to the already existing powers to ask the person to provide further information and undertake inquiries in relation to the person.”</i></p> <p>The original Option D in the CRIS is as below:</p> <p><i>“Make provision in the National Law to require applicants to undertake an assessment of their knowledge of the NQF prior to making an application, if requested by the regulatory authority.”</i></p> <p>**Please note: Following analysis of the consultation material and intergovernmental policy discussions, Option B has been reworded and Options C and D have been combined into one option. The previous Option D assumed that regulatory authorities have a right to assess an applicant’s knowledge of the NQF prior to them submitting an application for approval, and this was incorrect. Regulatory authorities cannot ask for this assessment of knowledge until the applicant has engaged in the approval process by submitting relevant documentation to the regulatory authority, so the options have been combined and amended to reflect such.</p>
<p>10.1 – Assessing suitability of individuals to work directly or indirectly with children</p>	<p>Option E: Include an explicit obligation for FDC educators to notify the approved provider of circumstances arising that pose a risk to the safety, health or wellbeing of children of the service and that approved providers use this information in a risk assessment.</p>
<p>10.2 – Cancellation of provider approval under Family Assistance Law</p>	<p>Option B: Legislative change that provides for FAL cancellation as explicit grounds for cancellation of provider approval under the NQF in circumstances where the FAL cancellation relates to fitness and propriety and/or a breach of the NQF.</p>

Issue	Recommendation
10.2 – Cancellation of provider approval under Family Assistance Law	Option C: Legislative change that provides for refusal of provider approval under the FAL as explicit grounds for cancellation of provider approval under the NQF, where the FAL refusal relates to fitness and propriety and/or a breach of the NQF.
10.3 – Arrangements to transfer a service to another approved provider	Option B: Develop guidance for services and providers about the service transfer process and how to best advise families about the transfer (for example, in relation to storage of children’s records).
10.3 – Arrangements to transfer a service to another approved provider	Option C: Minor legislative changes to address challenges associated with timeframes including: <ol style="list-style-type: none"> 1. Increasing the notification period from 42 days to 60 days; 2. Allowing the regulatory authority to refuse or delay a transfer if a significant issue arises after the intervention period has ended (intervention period is at least 28 days prior to intended transfer date) but before the transfer date; and/or 3. Making it mandatory for transferring and receiving providers to notify the regulatory authority of any change or delay to the intended date of transfer. 4. Increasing the notice period to families from 2 days to 7 days before the transfer takes effect.
10.4 – Maintaining current information about service delivery	Option B: Amend the National Regulations to require notification of changes to the ages of children being cared for and nature of care provided to the regulatory authority, with an associated offence for failing to notify.
10.4 – Maintaining current information about service delivery	Option D: Regulatory authorities to provide guidance and resources in relation to age appropriate programs and facility requirements.
TECHNICAL AMENDMENTS	
11.1 – Notice of transport in the NQA ITS	Amend the National Regulations to require the approved provider to notify the regulatory authority where regular transportation is being provided as part of the service.
11.2 – Implementing physical activity guidelines	No change.
11.3 – FDC: Display in venue/residence	Amend the National Regulations to require FDC educators to display a diagram showing the areas of the residence for which the approved provider has conducted a risk assessment.

Issue	Recommendation
11.4 – Tasmania specific amendment – Regulation 353	Revoke regulation 353, which was intended to bring Tasmanian school-based kindergartens into line with the NQF. Regulation 353 can either be revoked immediately, or there could be a transition period before revocation.
11.5 – Excellent rating	Amend section 155(5) of the National Law to extend the validity of an ‘Excellent’ rating from a period of 3 calendar years, to 5 calendar years.
11.6 – Death of an approved provider	No change.
11.7 – Waivers for NQS Elements	Amend the legislation to remove the ability for approved providers to apply for waivers from prescribed element/s of the National Quality Standard.
11.8 – Program-level documentation for children over preschool age	Introduction of state-specific regulations for Tasmania, South Australia, Western Australia and Victoria in place of regulation 74(1)(b) requiring program-level documentation for children over preschool age rather than child-level documentation.
11.9 – Proposed modifications to the FOI Act for the purposes of the National Law	Amend the National Regulations to put beyond doubt that a determination by the National Education and Care Services (NECS) FOI Commissioner is not a Commonwealth instrument, rather that it is an instrument made under a state or territory law which has adopted the National Law, ensuring that the Commonwealth Legislation Act 2003 does not apply to the determination. In addition, an amendment is proposed so that the powers to make certain determinations by instruments under the FOI Act are included in the list of powers of the NECS FOI Commissioner that cannot be delegated.

APPENDIX 2 – SUMMARY OF CRIS ISSUES

Chapter:	3 – Safety, health and wellbeing
Issue:	3.1 – Safety of children during transitions between services (including school)
Preferred option:	<p>Option C: Recommendation to State and Territory school authorities and non-government school sector organisations to develop policies and procedures to safely transfer children between schools and education and care services.</p> <p>Option D: Require that where relevant, an approved provider must ensure that the service has a policy and procedures in place for the transition period between education and care services (for example between school and OSHC, or OSHC and preschool), including a risk assessment process.</p> <p>Option E: Develop further guidance to support policies and procedures relating to the delivery of children to, and the collection from, education and care service premises.</p>

Problem description

Many children transition from one education and care service or educational setting (such as a school) to another education and care service or educational setting. This is especially common between school and OSHC services.

The transition period from one education and care service to another educational setting, or vice versa, is a time of particular risk for the children.

Children may not be properly supervised during transition periods, creating a risk to their safety, health and wellbeing.

Education and care providers are required to report when a child is “missing or unaccounted for” to the relevant regulatory authority⁶⁸. Issue 3.1 in the CRIS noted that between 1 January 2012 and 30 June 2019, an average of more than 100 children was reported “missing or unaccounted for” each year during the transition from school to OSHC services nationally⁶⁹. The majority of the reported cases occurred during the afternoon transition period⁷⁰.

Incidents of a child ‘missing or unaccounted for’ can have a negative impact on the safety, health and wellbeing of the child. It is also likely to incur significant emotional costs to families and educators. A child missing for long periods of time may lead to more adverse consequences including, in an extreme case, the child suffering severe harm or is unable to be located.

The National Law requires the approved provider to ensure adequate supervision to protect children from harm and hazard at all times that the children are being educated and cared for by of the service⁷¹. However, children’s safety during these transition periods can be at risk at the point between when a child’s safety moves from being the responsibility of schools to the OSHC service.

The National Regulations require that an approved provider of an education and care service has in place policies and procedures relating to the delivery of children to and from education and care service premises⁷². The regulation does not require service providers to include information around transition periods between schools (or any other educational setting) and OSHC services.

The options below aim to address the identified gap in ensuring the safety of children during transition periods between schools and OSHC services, reducing potential risks to the safety, health and wellbeing of children.

Objective (ideal outcome of government action)

The number of incidents of “missing or unaccounted for” children during transition periods will be reduced resulting in improved child safety.

Description of each option

The proposed options are as follows:

Option A:

No change.

Option B:

Legislative change to specify staff supervision requirements during periods of transition between education and care services.

Option C:

Recommendation to State and Territory school authorities and non-government school sector organisations to develop policies and procedures to safely transfer children between schools and education and care services.

Option D:

Require that where relevant, an approved provider must ensure that the service has a policy and procedures in place for the transition period between education and care services (for example between school and OSHC, or OSHC and preschool), including a risk assessment process.

Option E:

Develop further guidance to support policies and procedures relating to the delivery of children to, and the collection from, education and care service premises.

***Note: Options are not mutually exclusive*

Impact (costs and benefits) of Option A

Benefits

Providers and services

Option A imposes no financial costs and further administrative burdens associated with changing policies and procedures for the transition period between services, as there would be no additional requirements.

Families and community

No impact or costs on families if there are no increased costs to services for compliance activities.

Costs

Providers and services

If the status quo remains, the risk of a serious incident occurring during transition periods will continue to exist.

Incidents may have a negative financial or operational impact on the provider of the service, as workforce may be temporarily reallocated, or the session cancelled, to search for the child and complete incident reporting.

Families and community

If the status quo remains, services' current arrangements for transition periods between schools and OSHC services would continue. Considering historical data, it is therefore expected that incidents where a child is "missing or unaccounted for" would continue to occur, resulting in a negative impact on the safety, health and wellbeing of children. It would also incur significant emotional costs to families and educators.

Impact (costs and benefits) of Option B

Benefits

Families and community

Staff supervision requirements during transition periods would potentially reduce the number of incidents of “missing or unaccounted for” children during transition periods. This is likely to provide families and the community with the greatest level of assurance that children will be adequately supervised during transition periods.

Costs

Providers and services

This option introduces an additional requirement for staff members to supervise children during transition periods between services. OSHC service providers are likely to face increased financial costs and administrative burdens to perform additional supervisory duties, as this option places a burden of responsibility of supervision during transition solely onto the provider. This prescriptive approach may lead to providers incurring additional costs to implement requirements that are not necessarily relevant to their specific circumstances.

Providers may need to employ additional staff to comply with the legislative requirements. In certain areas (particularly in remote and very remote areas), extra implementation costs may affect the viability of the service.

The implementation of Option B is expected to cost \$655.3 million nationally over a ten-year period⁷³, driven by the requirement that services must provide an extra 30 minutes of supervision by OSHC staff every day at a ratio of 1:15 staff per children for most jurisdictions⁷⁴. This is estimated at a cost of \$26.01 per hour at the diploma rate.

Families and community

Any additional costs to providers and services associated with changing policies and procedures may be transferred onto families through fee increases.

Impact (costs and benefits) of Option C

Benefits

Providers and services

This option recommends the school sector develop policies and procedures to safely transfer children during transition periods. This would have a minimal regulatory and financial burden on the education and care provider.

This option is likely to facilitate schools and providers clarifying roles and responsibilities between themselves, and agreement on when care is transferred from one educational setting to another.

Families and community

This option may result in greater collaboration between schools and OSHC services to address the gap in care during transition periods. This may assist in communication and engagement between schools and OSHC services to ensure the safety, health and wellbeing of children during transition periods. This is also likely to result in the reduction of incidents involving “missing or unaccounted for” children.

Costs

School sector

This option may pose additional costs for schools through time taken by school staff to develop policies and procedures, as well as the cost of potential additional supervision requirements by school staff if deemed necessary.

Providers

Some providers may find it difficult or impossible to reach agreement with schools on the division of roles and responsibilities relating to supervision during the transition between sites.

Impact (costs and benefits) of Option D

Benefits

Services and providers

This option would require providers and their services to develop policies and procedures relating to transition periods and conduct risk assessments in consultation with staff, children and families in a manner that is specific to their own operating context. Having policies and procedures would ensure consistent practice is adopted across the service and improve staff understanding of their responsibility for children during the transition period. Reduced incidents of missing children will benefit services and help them avoid possible compliance actions.

Families and community

The development of effective policies and procedures may improve the supervision of children during transition periods and reduce the number of children “missing or unaccounted for”. It may also be a benefit to involve families and community in the process of developing policies and procedures, for transparency and to raise awareness.

Costs

Services and providers

Providers are likely to incur additional costs and administrative burdens associated with developing, implementing and reviewing policies and procedures. The additional costs will depend on the particular circumstances of each service. However, the overall cost is not expected to be overly burdensome, considering providers are already required to have policies and procedures for a range of circumstances (such as transportation and excursions)⁷⁵.

Also, the consequences of serious incidents where a child is “missing or unaccounted for” outweigh these costs.

It is estimated that the establishment of policies and procedures for the transition periods will impose a burden of 2 days per service at the diploma level in the first year, and 0.5 day per service in future years.

The implementation of Option D is expected to cost \$3.8 million nationally over a ten-year period⁷⁶.

Impact (costs and benefits) of Option E

Benefits

Providers and services

Higher quality more comprehensive policies and procedures relating to transition periods, with an anticipated outcome of lower risk of incidents occurring during these times.

Costs

Providers and services

This option would require all staff members to read and understand guidance for transition periods. Larger services may require additional time. It is estimated that providing additional guidance will impose a burden of 1 day per service at the diploma level in the first year, and 0.25 day per service in future years.

There may be some costs associated with updating policies and procedures and relevant training for staff.

The implementation of Option E is expected to cost of \$1.9 million nationally over a ten-year period⁷⁷.

Families and community

As this option does not mandate risk assessments and the development of policies and procedures for transition periods, it does not guarantee increased safety of children. This may be a less effective option if implemented in isolation.

Consultation feedback

Nearly two-fifths (37%) of **CRIS Sector Survey** respondents that chose to answer questions about Issue 3.1 considered the *safety of children during transitions between services (including school)* as a 'Very Significant' (9%) or 'Significant' (28%) problem, with just over one-third (34%) deeming it a 'Moderate' problem (the total number of respondents for this question was 1069).

Both quantitative and qualitative findings indicate fairly strong support for Option C, followed by moderate support for Option D and E. Much lower levels of support were expressed for Option A and B, with the latter option being expressly disagreed with by many organisations and individuals.

Results from the CRIS Family and Carers Survey showed three-quarters (75%) of respondents indicating that both the school and the OSHC service should be responsible for children during the transition period (the total number of respondents for this question was 524). This view was strongly held across respondents in all jurisdictions.

The emphasis in the qualitative feedback was very much upon a collaborative approach between the school and the OSHC service, where there is shared responsibility for children's safety and wellbeing, including agreed roles and responsibilities between the services (including schools) involved.

Implementation requirements of the options

Option B: This option will require amendments to the National Law and/or Regulations to specify staff supervision requirements during periods of transition between services.

A transition period will be required to allow time for providers and their services to implement the new legislative requirements and employ additional staff if needed.

Option C: This option will require governments to communicate with the State and Territory school authorities and non-government school sector to recommend the development of policies and procedures to safely transfer children between schools and education and care services. This option would likely be progressed by governments following agreement by Education Ministers.

Option D: This option will require amendments to the National Law and/or Regulations to require providers and their services to have policies and procedures for the transition period between services, including a risk assessment process.

Following the amendments, further guidance and communication by the regulatory authorities and ACECQA will be required. New and revised guidance, resources and other communications materials may be required to raise awareness of, and support provider compliance with, the new requirements.

Option E: Detailed work will be required to develop and agree on national guidance that is of use to the providers and services, as well as parents and families. Guidance will need to be accessible for a diverse range of communities.

Conclusion/recommended option

Option A is not recommended as maintaining the status quo would result in the continued occurrence of incidents where a child is “missing or unaccounted for” during transition periods. This is likely to have a negative impact on the health and wellbeing of children, families and educators.

Option B is not recommended considering this is by far the costliest option. Governments are concerned with the potential for providers to face unreasonable additional costs that would impact on their services’ viability and families’ access to affordable education and care. Consultation feedback states Option B was expressly disagreed by many organisations and individuals.

It is recommended that Options D, and E be adopted.

Implementation of Options D and E in combination would increase the likelihood of improved supervision of children during transition periods. It would also reduce the associated time spent trying to resolve the incident by staff.

It is recommended that Option C be progressed internally by government, should Education Ministers agree to this approach.

Chapter:	3 – Safety, health and wellbeing
Issue:	3.2 – Sleep and rest requirements
Preferred option:	<p>Options C – Further guidance developed to support policies and procedures for sleep and rest.</p> <p>Option D – Amend the National Regulations to specify the matters that must be included in services’ policies and procedures for sleep and rest.</p> <p>Option E - Amend the National Regulations to require a risk assessment to be conducted in relation to sleep and rest, including matters that must be considered within that risk assessment.</p> <p>Option G - Legislative change to require compulsory training on safe sleep practices for all FDC educators subject to governments undertaking further research, costing and impact analysis of any proposed training and the implementation approach.</p>

Problem description

There has been a marked reduction in Sudden Unexpected Death in Infants (SUDI) deaths across Australia in recent decades, however young children remain at risk of SUDI during periods of sleep and rest, including in education and care services.

A lack of awareness and knowledge about safe sleeping still exists in many communities. According to Red Nose Australia, safe sleeping messages have been less successful reaching people in rural and remote and culturally and linguistically diverse communities. Aboriginal and Torres Strait Islander babies died suddenly and unexpectedly at over three times the rate of non-Indigenous babies.

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

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

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

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

Objective (ideal outcome of government action)

The ideal outcome of government action is to continue educating services about risk minimisation relating to SUDI and further reduce infant deaths in education and care settings.

Description of each option

The proposed options for change are as follows:

Option A

No change.

Option B

Legislative change to require compulsory safe sleep practices training for all educators who care for sleeping children (birth to five years).

Options C

Further guidance developed to support policies and procedures for sleep and rest.

Option D

Amend the National Regulations to specify the matters that must be included in services' policies and procedures for sleep and rest.

Option E

Amend the National Regulations to require a risk assessment to be conducted in relation to sleep and rest, including matters that must be considered within that risk assessment.

Option F

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

Option G

Legislative change to require compulsory training on safe sleep practices for all FDC educators subject to governments undertaking further research, costing and impact analysis of any proposed training and the implementation approach.

Impact (costs and benefits) of Option A

Benefits

Services and providers

There would be no increased administrative burden applied.

Community

NIL.

Cost

Services and providers

If no change is made it is expected that current risks of SUDI during periods of sleep and rest in education and care services will continue.

Community

If no change is made the current risks of SUDI at education and care settings will continue. There have been 7 deaths nationally relating to periods of sleep and rest in education and care settings since 2011.

Impact (costs and benefits) of Option B

Benefits

Services and providers

Compulsory sleep training would require providers to facilitate recognised training in safe sleep practices for all educators who care for sleeping children. This may improve the knowledge educators have on safe sleep practices and better prepare educators in implementing these practices on a day-to-day basis. This option may reduce SUDI risks in services as better trained educators may lead to safer sleep practices.

Community

Improvements in daily practice will result in greater risk minimisation for children, especially infants who are at higher risk of SUDI.

Cost

Services and providers

Providers would incur additional costs for prescribed training to educators who care for sleeping children which may be significant. This option has been costed with a net present value of \$14 million over 10 years across all services nationally. This assumes that services will wholly cover the costs of training associated with safe sleep, with an assumption that training is \$90 per primary contact staff.

Compulsory sleep training represents an eligibility requirement that educators who have not undertaken the training would not be permitted to provide care for sleeping children. This may represent another barrier to labour supply and may result in additional labour costs. It may also contribute to increased costs of child care.

Community

There may be increased charges to parents or taxpayers over time.

Impact (costs and benefits) of Option C

Benefits

Services and providers

This option would provide information and resources to help services strengthen existing policies and procedures, and provide information to families on safe sleeping practices. This would guide providers and services on the expectations to reduce risks to children's safety during periods of sleep and rest, without mandating specific requirements.

Guidance and education has been shown to be very effective in the broader community for reducing SUDI deaths over time. As such, it is likely that additional guidance will also assist with risk minimisation at education and care settings.

Community

The availability and implementation of this information is likely to result in reduced risks for children attending education and care services, especially infants who are at greater risk of SUDI.

Cost

Services and providers

The net present value of implementing Option C is estimated at \$4 million nationally over 10 years, assuming that educators will require 30 minutes each to understand the new guidance relating to safe sleep.

Community

This option is unlikely to have significant costs for families.

Impact (costs and benefits) of Option D

Benefits

Services and providers

While services are already required to have in place policies and procedures relating to sleep and rest, Option D means that NQF legislation will specify the content that must be considered and addressed within these policies and procedures. These options are likely to guide stronger safe sleeping practices, adequate supervision, and protection from harm and hazards during sleep and rest in the individual service context.

Community

This may result in reduced risks for children attending education and care services, especially infants who are at greater risk of SUDI.

Cost

Services and providers

There will be an increased administrative burden on services in developing policies and procedures that comply with the specific content requirements brought about by these options. Similarly, if services do not already have a risk assessment in place, there will be an administrative requirement to undertake this process in a comprehensive manner, again addressing specific content requirements.

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

Community

This option is unlikely to have significant costs for families.

Impact (costs and benefits) of Option E

Benefits

Services and providers

Option E further requires services to conduct a risk assessment, identifying specific matters for consideration in the unique context of each service. These options are likely to guide stronger safe sleeping practices, adequate supervision, and protection from harm and hazards during sleep and rest in the individual service context.

Community

This may result in reduced risks for children attending education and care services, especially infants who are at greater risk of SUDI.

Cost

Services and providers

There will be an increased administrative burden on services in developing policies and procedures that comply with the specific content requirements brought about by these options. Similarly, if services do not already have a risk assessment in place, there will be an administrative requirement to undertake this process in a comprehensive manner, again addressing specific content requirements.

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

Community

This option may result in increased fees for families due to the increased supervision requirements.

Impact (costs and benefits) of Option F

Benefits

Services and providers

This option may help to mitigate sleep related risks by requiring an educator to be within sight and hearing of sleeping children at all times.

Community

This option requires an educator to occupy the same physical space as sleeping and resting children, such that children are always in sight and hearing distance. This practice may encourage educators to check on children's breathing and the colour of their skin, and intervene immediately if something goes wrong.

Cost

Services and providers

This option would have significant cost impacts for providers and service provision. There would likely be further staffing costs with requiring an educator to be within sight and hearing. These costs may be prohibitive, and impact on ongoing service provision.

This option would not be possible to implement in the FDC space due to the nature of care provided. For example, where only one educator is present the educator may not always be in the room supervising the child, especially in an overnight context.

Community

There may be reduced service availability to parents of children in the early years because of increased regulatory requirements.

Impact (costs and benefits) of Option G

The impacts of this recommendation cannot be fully articulated until further research is undertaken by governments on what additional training requirements should be implemented for FDC educators. This option links to Issue 7.3 (minimum qualification requirements for FDC educators, below).

Consultation feedback

1472 or 52% of total CRIS Sector Survey respondents chose to answer questions about issue 3.3.

More than one-third (36%) of CRIS Sector Survey respondents that chose to answer questions about Issue 3.2 considered *sleep and rest requirements* a ‘Very Significant’ (12%) or ‘Significant’ (25%) problem, with a further 36% deeming them a ‘Moderate’ problem.

CRIS Sector Survey respondents were asked to rank the most suitable solution to the problem. Of the available options, the most suitable solution was deemed to be *Option B - Compulsory safe sleep practices training for all educators* by some margin, followed by *Option C - Guidance on policies and procedures, and information for families*.

In response to the question ‘*What do you think would help ensure the safety of children during sleep and rest at early childhood education and care services?*’ in the CRIS Family and Carers Survey, just over three-quarters (78%) of respondents indicated that *compulsory safe sleep training for all educators caring for sleeping children* would help.

Support for each of the options broadly accords with the quantitative data. That is, there was fairly strong support for Option B, followed by moderate support for Options C, D and E.

Participants noted that Option B (compulsory training) may improve educator knowledge and build capacity, however it would have a high cost burden, and staffing implications. The sector also raised that current training already covers these issues and a refresher course may be adequate. Considerations for government included offering subsidised or free training, flexible forms of training or the ability to undertake refresher courses rather than whole courses.

Participants stated that Option B may allow a contextualised response and improve risk mitigation, however that it may also increase regulatory burden including extra paperwork and staffing costs.

Regarding Option F, participants supported active supervision but warned against legislating educators to be within sight and hearing. For example:

We support ‘active supervision’ of sleeping or resting children but believe this is best achieved by having an educator actively check the child and their environment every five minutes, rather than by having an educator physically present at all times. Our policies and procedures clearly define practical measures to support safe sleep, incorporating activities such as observing children through supervision windows complemented with active monitoring at regular intervals to check and inspect a sleeping or resting child and their breathing, skin and environment.

– Goodstart Early Learning

The implementation of Option F would ultimately lead to a reduction in unique family day care service offerings, especially overnight care. Provision of overnight care is not only critical to meeting the needs of essential workers, such as health care professionals, police, and paramedics, but also in the context of emergency care provision in the event of local emergencies and/or in response to vulnerable children at significant and immediate risk of abuse or neglect outside standard hours.

– FDC Australia

Implementation requirements of the options

Legislative change to specify what must be included in policies and procedures and to require a risk assessment would be required (Options D and E). Further guidance will need to be prepared and distributed by governments (Option C).

Conclusion/recommended option

It is recommended that Options C, D and E be adopted.

Option C will provide a greater suite of training resources and guidance to services to support the development of policies and procedures for safe sleep. Guidance and education has been shown to be highly effective in reducing the instances of SUDI more broadly in society.

Option D will more clearly specify what service providers must take account in developing policies and procedures, such as the guidance provided by ACECQA, and the new training and guidance resources.

Option E may further strengthen risk minimisation strategies for sleep and rest at education and care settings.

Option G may help to improve FDC educators' understanding of best practice safe sleep requirements to minimise the risk of harm to infants. Additional research regarding what training would be most beneficial in meeting the needs of FDC educators is required by Governments. This option also links to issue 7.3 (minimum qualification requirements for FDC educators) Issue 7.3 mandates a minimum qualification for FDC educators, which would likely support the quality of education and care being provided at FDC. This option also aligns with current requirements in South Australia where FDC educators must hold their qualification before they commence their role, increasing national consistency under the NQF. This option would also help to ensure FDC educators are qualified to identify and address risks to a child's safety, health and wellbeing.

Chapter:	3 – Safety, health and wellbeing
Issue:	3.3 – Improving children’s safety during regular transportation
Preferred option:	<p>Option D – Legislative change to require the presence of a staff member of the service (other than the driver) when children are embarking and disembarking from the vehicle at the education and care service premises.</p> <p>Option F – Further explicit guidance on the application of current requirements for ratios and qualifications, and what is adequate supervision as it relates to transportation provided or arranged by a service. Separate guidance will also be generated for the FDC sector.</p>

Problem description

Transportation can present heightened risks to children’s safety, in particular, during the period of transition between a vehicle and an education and care service premises or other location. Risks are further heightened for very young children in this context.

There is evidence that the consequences of leaving a child unsupervised on or after transportation can be fatal. Many of the serious instances have occurred during periods of embarkation and disembarkation.

New regulations regarding transportation commenced in October 2020, outlining that where transportation forms part of an education and care service, the service must:

- have in place a transportation-specific policy and procedure that addresses the additional risks that may arise when services are transporting children
- conduct risk assessments for the transportation of children in all circumstances, and
- obtain the required written authorisations before children are transported.

States and Territories currently approach adult to child ratio requirements on transportation for centre-based services differently. As such there may be some confusion for providers about how the existing educator to child ratios should apply when transporting children, whether the driver of the vehicle may be included in those ratios, and if so, what qualification requirements apply. Often the driver of the vehicle is not a staff member of the education and care service.

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

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

Objective (ideal outcome of government action)

The ideal outcome is to increase the safety outcomes for children during regular transportation.

Description of each option

The proposed options for change are as follows:

Option A

No change.

Option B

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

To clarify that the driver is counted in the ratio during transportation.

For example, transport specific ratio requirements could require:

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

**For FDC services the FDC age limitations continue to apply.*

Option C

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

Option D

Legislative change to require the presence of a staff member of the service (other than the driver) when children are embarking and disembarking from the vehicle at the education and care service premises.

Option E

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

Option F

Further explicit guidance on the application of current requirements for ratios and qualifications, and what is adequate supervision as it relates to transportation provided or arranged by a service. Separate guidance will also be generated for the FDC sector.**

***Please note, Option F has been reworded from the original CRIS wording which was:
Further guidance around adequate supervision/risk assessment as it relates to transportation.*

Impact (costs and benefits) of Option A

Benefits

Services and providers

No change would benefit rural and remote services where they may find it hard to obtain staff to transport the children. Given the recent amendments to the National Regulations mandating transport-specific policies and procedures, improvements to transportation may be underway and it is still too soon to measure the impact from this change.

Community

No change would benefit rural and remote families that find it difficult to access services.

Cost

Services and providers

While the recent amendments to the National Regulations address transport-specific policies and procedures, they do not address the ratio requirements during transportation. There is also no specificity around the driver being counted in the ratio and what training or qualifications they need to hold. This will continue to be confusing for providers and their services.

Community

While the likelihood of serious harm during transportation remains low, the consequences can be fatal. If no change is made the risk to children remains.

Impact (costs and benefits) of Option B

Benefits

Services and providers

This option provides clarity to service providers around specific ratio requirements and circumstances where the driver can be included in the ratio when providing regular transportation.

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

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

Community

This option means that the risk to a child may be reduced during regular transportation provided by a service provider, as there may be greater supervision provided.

Cost

Services and providers

There will be costs associated with achieving compliance if additional staff members are required. Services may have to employ additional staff during periods of transportation, or may cease to provide transport based on the number of children they can safely and viably carry, which may create access issues for families who otherwise cannot transport children to a service.

Community

This may also lead to an increase in the cost of education and care services for families and reduce access to education and care for families who may no longer be able to afford education and care. However, this is balanced against a reduction in the likelihood of incidents where a child is left on a vehicle due to inadequate supervision.

Impact (costs and benefits) of Option C

Benefits

Services and providers

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

Community

Transportation would still be readily available to families.

Cost

Services and providers

Services must undertake a risk assessment to determine whether additional personnel are required to accompany the driver to ensure the adequate supervision of children. The risk assessment will need to consider circumstances such as numbers of children in combination with their specific characteristics (e.g. mobility, behaviour, disability, etc) to determine appropriate strategies to manage relevant risks and ensure adequate supervision.

Community

This option does not address the risk to the younger children during transportation in services.

Impact (costs and benefits) of Option D.

Benefits

Services and providers

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

A Queensland study of transportation found that 31% of services operated with a transport service, and of this 31% only 22% operated with a sole driver. As such, the 78% of vehicles transporting children would already be able to comply with this additional supervision requirement.

Community

This option will provide an additional safeguard to help ensure all children are accounted for during this time of heightened risk to children's safety.

Cost

Services and providers

There are likely to be some costs associated with achieving compliance with this option. A staff member at the service (other than the driver of the vehicle) would need to attend to conduct supervision of the embarking/ disembarking process. However, the cost of this option would be minimal for services that already have an additional staff member present during the transport who could fulfil this role (other than the driver).

Community

Increased cost to services may be passed on to families.

Impact (costs and benefits) of Option E

Benefits

Services and providers

This option would ensure that all staff involved in the transportation of children have the necessary certifications to help ensure children's safety.

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

Community

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

Cost

Services and providers

There may be costs for drivers and/or their employers to ensure they have a current working with children check, approved first aid qualification and anaphylaxis and emergency asthma management training.

Community

This option may discourage people from providing transportation services which may result in families not being able to access services.

Impact (costs and benefits) of Option F

Benefits

Services and providers

This option acknowledges that there are various transport scenarios that may arise for a service, and that the management strategy to mitigate risk is particular to the circumstances at the time. There is also differentiated approaches taken across States and Territories.

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

Community

Services remain readily available to families with a potential decreased risk to children's safety and health with guidance provided to services.

Cost

Services and providers

There are unlikely to be any costs associated for providers and their services.

Community

NIL

Consultation feedback

904 (or 32%) of total CRIS Sector Survey respondents chose to answer questions about issue 3.3.

45% of these respondents considered *improving children's safety during regular transportation* a 'Very Significant' (16%) or 'Significant' (28%) problem, with a further two-fifths (40%) deeming it a 'Moderate' problem

CRIS Sector Survey respondents were asked to rank the most suitable solution to the problem. Of the available options, the most suitable solution was deemed to be *Option D - Require staff presence when embarking and disembarking at the service*, very closely followed by *Option B - Require specific transport ratios*.

CRIS Sector Survey respondents were relatively evenly split when asked *if a driver should be counted in the ratio of staff members for the vehicle during transportation*, with 46% stating 'No' and 43% stating 'Yes'.

Implementation requirements of the options

Option D – The legislation will need to be amended to include the presence of a staff member embarking and disembarking from a vehicle. Providers and services will need to implement strategies to meet these new legislative requirements.

Option F - Guidance and communication will need to be provided to providers and services about the legislation regarding embarking and disembarking from a vehicle, and further guidance about adequate supervision and completing risks assessments for transportation.

Regulatory authorities will need to receive training in regards to the requirements of services when transportation is offered.

Conclusion/recommended option/s

It is recommended that Option D and F be implemented in the DRIS.

Option A is not recommended as recurring transport incidents are often very serious, and indicate the need for further regulatory clarity to help minimise risk to children.

Option B is not recommended as site specific arrangements are preferable and it does not address the key risk around the embarking and disembarking. Option B would also be very costly across Australia and may have large unintended consequences for providers, services and families, especially in relation to access and affordability of education and care.

Option C is not recommended as evidence has found that the risk is greater for younger children rather than school age children.

Option D is recommended as it minimises the associated risks to children’s safety as a result of inadequate embarking and disembarking procedures during transportation. This option is also the lowest cost option with the greatest likely impact on improving children’s health and safety.

Option F is recommended as guidance can be tailored to providers and services to help management manage and minimise risks to children during transportation, while still allowing flexibility to services and families. Draft guidance has been drafted, but is subject to change.

Option E is not recommended as introducing qualification requirements for drivers may result in a reduction in the number of qualified drivers available to provide transport for services. This may have unintended consequences for service availability and accessibility. Historical incidents relating to transportation more commonly relate to inadequate procedures for the embarking and disembarkment of children, rather than the qualification of the driver on the vehicle.

Chapter:	3 – Safety, health and wellbeing
Issue:	3.4 – Improving children’s safety during emergency evacuations from multi-storey buildings
Preferred option:	<p>Option B: Amend the legislation about requirements for emergency and evacuation procedures to require that for centre-based services located in multi-storey buildings:</p> <ul style="list-style-type: none"> • the emergency and evacuation procedures must set out additional information in regard to instructions for what must be done in an emergency, staged evacuations, identification of the person-in-charge and staff roles and responsibilities, and • a review and/or risk assessment must be conducted, following certain prescribed events or a prescribed time period. <p>Option C: Strengthen service approval processes to require that for centre-based services located in multi-storey buildings the regulatory authority, in assessing the suitability of the education and care service premises, is to consider the need for direct egress to safe evacuation areas for very young children and non-ambulatory children.</p> <p><i>This option would also apply to FDC requiring approved providers to conduct risk assessments of FDC residences and venues before education and care are provided, where located in multi-storey buildings.</i></p> <p>Option D: Amend service approval processes to require approved providers wishing to operate a centre-based service from premises in a multi-storey building in Victoria or ACT to apply to the regulatory authority for pre-approval of development and building plans for the proposed premises prior to development and construction. (Victoria and ACT only).</p> <p>Option E: Enhance national guidance and communication strategies to improve understanding of service approval considerations for centre-based multi-storey buildings and reinforce existing emergency and evacuation requirements for the early childhood education and care sector.</p> <p><i>Guidance would also be prepared for persons involved in third-party planning and building development processes across States and Territories.</i></p>

Problem description

There are specific evacuation risks for children attending services located in multi-storey buildings, particularly where such facilities are located above ground level. Young children, non-ambulatory children and infants take longer to evacuate than adults, with careful site specific planning and practice required to ensure safety during emergency evacuations.

In Victoria and the ACT, there is a particular problem with new service premises being developed and built that may comply with local planning requirements but may not comply with regulatory requirements under the National Law for the evacuation of young children, non-ambulatory children and infants, when the approved provider applies for service approval.

Objective (ideal outcome of government action)

To improve the safety of children during emergency evacuations in multistorey buildings and to improve clarity around approval requirements for multi-storey buildings proposed to be used for education and care purposes.

Description of each option

The proposed options for change are as follows:

Option A:

No change.

Option B**:

Amend the legislation about emergency and evacuation procedures to require that for centre-based services located in multi-storey buildings:

- that the emergency and evacuation procedures must set out additional information in regard to instructions for what must be done in an emergency, staged evacuations, identification of the person-in-charge and staff roles and responsibilities, and
- a review and/or risk assessment, following certain prescribed events or a prescribed time period.

A three step test has been developed to outline which services will be captured under the new requirements. Only services that satisfy all of the following elements will have the new regulations applied:

- 1) Operating in a building with three or more storeys (ground floor is counted as the first storey).
- 2) Do not have access to direct egress.
- 3) The building is multi-tenanted with other occupants.

Option C:

Strengthen service approval processes to require that for centre-based services located in multi-storey buildings the regulatory authority, in assessing the suitability of the education and care service premises, is to consider the need for direct egress to safe evacuation areas for very young children and non-ambulatory children. Note: The above three step test will also apply under Option C.

This option would also apply to FDC requiring approved providers to conduct risk assessments of FDC residences and venues before education and care are provided, where located in multi-storey buildings.

Option D:

Amend service approval processes to require approved providers wishing to operate a centre-based service from premises in a multi-storey building in Victoria or ACT to apply to the regulatory authority for pre-approval of development and building plans for the proposed premises prior to development and construction. (Victoria and ACT only).

Option E:

Enhance national guidance and communication strategies to improve understanding of service approval considerations for centre-based multi-storey buildings and reinforce existing emergency and evacuation requirements for the early childhood education and care sector.

Guidance would also be prepared for persons involved in third-party planning and building development processes across States and Territories.

***Please note that Option B has been amended. The original option in the CRIS was:*

Amend the legislation about emergency and evacuation procedures to require that for centre-based services located in multi-storey buildings:

- appropriate experts (such as fire safety experts, fire safety engineers, or emergency management professionals) are required to be:
 - engaged in the development of emergency and evacuation procedures and/or plans; and
 - to observe and report on one full emergency evacuation rehearsal at least annually and provide a report (which is made available upon request to the regulatory authority); and
- that the emergency and evacuation procedures must set out additional information in regard to instructions for what must be done in an emergency, staged evacuations, identification of the person-in-charge and staff roles and responsibilities, and
- a review and/or risk assessment, following certain prescribed events or a prescribed time period.

Impact (costs and benefits) of Option A

Benefits

Providers and Services

There would be no additional regulatory burdens or costs associated with retaining the status quo.

Cost

Providers and Services

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

Families and community

If no change is made the possible consequences of an actual emergency evacuation situation could be catastrophic, and may result in loss of life.

Impact (costs and benefits) of Option B

Benefits

Services and providers

Despite differences in multi-storey buildings regarding structural or building design or existing emergency facilities, this option may mitigate risks associated with emergency evacuations.

The introduction of mandatory review and risk assessments of the emergency and evacuation procedures, whether on a regular basis or following a planned event, may help to ensure that policies and procedures are current and remain relevant to the specific risks faced by children at staff at individual services in multi-storey buildings.

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

Please note, this option will be directly limited to occupants of higher risk multi-tenanted buildings, who do not have access to direct egress.

Families and community

This option may improve outcomes for children in the event of an emergency evacuation from a multi-storey building.

Cost

Services and providers

The Guide to the NQF states that as part of an assessment and rating visit, assessors may sight records of emergency drills and evaluations of these,⁷⁸ however evaluations are not mandated and it is unclear what the specific focus of the evaluation should be.

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

Impact (costs and benefits) of Option C

Benefits

Services and providers

This option would form part of the regulatory authority determination of a centre-based service approval for services operating from multistorey buildings. Approvals would be impacted by capabilities for staff to assist in the evacuation of children, such risk mitigation strategies for staff carrying more than one child down stairs or via emergency exits. The process would also have regard to staff/child movement, where there are evacuating cohort/s of other building tenants, long distances to exits and service locations on upper levels.

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

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

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

Family and Community

This option may help to ensure that children are safe in the event of an emergency evacuation.

Costs

Services and providers

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

There are likely to be costs to providers arising from this proposal such as administrative delays from the regulatory authority requiring further information to decide the service approval.

Family and Community

There may be additional costs to families due to changes to services that select a premises above ground floor.

Impact (costs and benefits) of Option D

Benefits

Services and providers

A pre-approval application process for services located in multi-storey buildings would provide an opportunity for the regulatory authority to identify non-compliant proposals before construction, and ensure that plans are adequate to meet regulatory requirements, including protecting the safety of young children in emergency evacuations. This process would enable the approved provider to avoid potential refusal of a service approval application or the cost of making alterations for the premises to become compliant.

Community

This option would also ensure there will be reduced risk for young children if there were to be an emergency evacuation.

Cost

Services and providers

An application fee would apply and final service approval would be required following construction. As with a service approval, a pre-approval would be transferrable between approved providers.

This process would enable the approved provider to avoid potential refusal of a service approval application or the cost of making alterations for the premises to become compliant.

Impact (costs and benefits) of Option E

Benefits

Services and providers

National guidance may reinforce existing requirements relating to emergencies and evacuations, including the need for policies and procedures (regulation 168), requirements for rehearsals (regulation 97) and the 'reasonable steps' to be taken in ensuring that staff and volunteers follow procedures (regulation 170).

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

Families and Community

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

Cost

Services and providers

Implementation of Option E is expected to cost providers \$16,000 over ten years.

Families and Community

There are no costs to families arising from this Option E.

Consultation feedback

560 or 20% of total CRIS Sector Survey respondents chose to answer questions about issue 7.3.

Two-thirds (67%) of CRIS Sector Survey respondents that chose to answer questions about Issue 3.4 considered *improving children's safety during emergency evacuations from multi-storey buildings* a 'Very Significant' (35%) or 'Significant' (32%) problem, with approaching one-quarter (22%) deeming it a 'Moderate' problem.

CRIS Sector Survey respondents were asked to rank the most suitable solution to the problem. Of the available options, the most suitable solution was deemed to be *Option C: Strengthen service approval processes*, very closely followed by *Option B: Amend legislation including expert consultants, additional information, and regular review*.

Implementation requirements of the options

Legislative amendments regarding emergency and evacuation procedures for centre-based services in multi-storey buildings. Amendments to the service approval process requiring multi-storey services to consider direct egress. ACT and VIC specific service approval amendments.

Governments to develop guidance for emergency and evacuation requirements. Guidance and communications to be sent to services about any legislative changes. This will include clarification around who the change directly applies to: i.e. services that operate in higher risk multi-tenanted buildings.

Regulatory authorities need to clarify service approval processes regarding direct egress (Option C) and ACT and VIC specific changes (Option D).

Training for Authorised Officers regarding new emergency and evacuation requirements.

Revisions to the NQF Guide to include legislative and policy amendments in regards to multi-storey service requirements.

Conclusion/recommended option

It is recommended that Options B, C, D and E be pursued as the recommended option within the DRIS. Noting that Option B has been amended from the original wording in the CRIS to remove the requirement for consultation with an appropriate expert.

Option B is being progressed as it assists in providing clear and specific guidelines around the requirements for emergency and evacuation procedures. It ensures that services are adequately prepared which will help reduce the risk to children.

Option C is being progressed as it provides specific requirements about considering direct egress as part of an appropriate inspection/assessment of a building/residence by the regulatory authorities or the FDC approved provider, prior to a service commencing operation in the space.

Option D is being progressed as VIC and ACT specific allowing the approval of the building to be provided prior to building process to commence therefor increasing the children's safety.

Option E is being progressed as continuing to increase guidance and communication allows providers to be better educated around the safety of children during emergencies and evacuations.

Option A is not being progressed as it does not address the issue and assist in minimising the risk to children in an emergency or evacuation procedure.

Chapter:	4 – Royal Commission into Institutional Responses to Child Sexual Abuse
Issue:	4.1 – Embedding the National Child Safe Principles
Preferred option:	Option D – Amend the National Law and National Regulations and associated guidance to address identified gaps between the Child Safe Principles and the NQF.

Problem description

The Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) presented a final report on 15 December 2017, detailing the culmination of a five-year inquiry into institutional responses to child sexual abuse and related matters.⁷⁹ The Royal Commission made over 180 recommendations, which Australian governments have agreed to consider.

Recommendation 6.4 of the Royal Commission states that all institutions should uphold the rights of the child and act with the best interests of the child as a primary consideration. To achieve this, the Royal Commission recommended all institutions working with children should implement the Child Safe Standards. The National Principles for Child Safe Organisations (National Principles) give effect to recommendations relating to the Child Safe Standards and provide guidance on key actions and performance measures in implementing the standards. They provide a nationally consistent approach to cultivating organisational cultures and practices that foster child safety and wellbeing across all relevant sectors in Australia. The Prime Minister, and State and Territory First Ministers, endorsed the National Principles in February 2019.⁸⁰

The National Quality Framework (NQF), which comprises the National Law and National Regulations (which include the National Quality Standard (NQS)), the quality assessment and rating process and the approved learning frameworks, supports and promotes quality and safety in all facets of the provision of early childhood and school age education and care. However, there remain some opportunities to strengthen the NQF in the protection of children in education and care through further embedding a child safe environment.

Each jurisdiction is undertaking implementation of the recommendations through various new and revised regulatory requirements. Implementation is at different stages for each and the interaction of new or amended local regulatory requirements have been considered in identifying what if any action the NQF should include.

A [mapping](#) exercise was undertaken to compare the requirements under the National Law and National Regulations (including the NQS) against the 42 key action areas under the National Principles. This exercise identified that, whilst the NQF generally aligns with the National Principles, there are some areas that can be strengthened to improve alignment with all National Principles. These areas include:

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

The National Law and Regulations do not require volunteers to have Working with Children Checks (WWCC). However, many states have requirements for WWCC that includes volunteers in other legislative requirements. National regulations (regulation 84) require that providers ensure that all staff members of a service are aware of child protection laws but this does not explicitly extend to volunteers. Section 162A of the National Law requires nominated supervisors and persons in day-to-day charge of centre-based services to undergo child protection training where that is required by other laws within their jurisdiction. Each jurisdiction is at different stages of developing and requiring some form of child protection training for a wide range of sectors. This requirement is not extended under the national regulations to FDC services including the FDC co-ordinators who support educators. As a result, FDC educators may be less informed about these matters.

Regulation 168 requires all services to have policies and procedures for providing a child safe environment but does not include specific requirements such as how online environments are used/monitored, provide specific guidance on managing complaints about children exhibiting harmful sexual behaviours, or support the implementation of a child safe culture.

The number of cases relating to education and care services that were reported to the Royal Commission is low in comparison to other settings. Regardless, governments are committed to ensuring education and care services under the NQF operate in accordance with the National Principles. Children are increasingly accessing formal education and care settings, and spending a significant proportion of time attending these services. The consequences of failing to address identified gaps between the NQF and the National Principles creates potential risks to the health, safety and wellbeing of children in education and care settings.

Objective (ideal outcome of government action)

Actions implemented as outcomes of the NQF Review will increase awareness, foster positive cultural change where required, and ultimately promote and support child safe environments in education and care contexts. They will also address community expectations to implement measures to reduce the risk of children experiencing sexual abuse while attending an education and care service. Actions arising from the NQF Review will also provide an effective, nationally coherent and efficient mechanism for governments to implement the Royal Commission recommendations as they relate to the early childhood education and care sector.

Description of each option

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

Option A:

No change.

Option B:

Amend the ‘assessment guide’ in the Guide to the NQF to align with the assessment of all the National Principles.

Option C:

Amend the National Regulations so that the requirement for services to have in place policies and procedures for providing a child safe environment specifically refers to implementing the National Principles.

Amend the National Regulations and associated guidance so that approved providers will be required to:

- Ensure that policies and procedures for their service/s address the National Principles for both staff members and volunteers
- Ensure all volunteers and staff at their service/s are advised of the existence and application of the National Principles.

Option D:

Amend the National Law and National Regulations and associated guidance to address identified gaps between the Child Safe Principles and the NQF to:

- Clarify that volunteers must be aware of the existence and application of any child protection law and any obligations held under it.
- Require that all FDC co-ordinators complete child protection training prior to commencing employment and undertake annual refresher training.
- Include Working with Vulnerable People/Children Check details on volunteer staff records.
- Require that services child safe environment policies and procedures must also cover the creation of a child safe culture and the safe use of online environments.
- Require service complaint handling policies to include policies and procedures for managing complaints alleging that a child is exhibiting harmful sexual behaviours.
- Require that services’ policies and procedures for handling complaints are child focussed.

Impact (costs and benefits) of Option A

Benefits

Services and providers

Option A imposes no financial costs associated with changing practice and systems to comply with additional regulatory requirements, as there would be no additional requirements.

Community

Families will not face possible changes to fee arising from increased costs to services for compliance activities.

Costs

Community

If the status quo remains, children in education and care settings may not be afforded the safest possible environment with respect to protection from sexual abuse.

Services and providers

Public confidence in the education and care sector may fall if explicit changes are not made that address gaps in implementing the recommendations of the Royal Commission.

Impact (costs and benefits) of Option B

Benefits

Services and providers

Aligning the assessment guide in the 'Guide to the NQF' with the National Principles would offer providers and their services additional information when considering their quality practice in relation to the National Child Safe Principles. This increased information may allow providers to review and adapt existing practice to improve child safety outcomes.

Community

Families may feel more reassured about the safety of services if they understand that services are required to demonstrate how they are aligning with the national principles.

Costs

Community

Aligning the quality assessment process under the NQF with the National Principles will not guarantee consistent adherence to the National Principles, as the quality rating and assessment process only captures information about a service's performance at one point in time. Families may face increased fees as a result of increased administrative compliance costs being borne by services.

Services and providers

Providers would incur additional costs to review their policies, procedures and education and care practices and adjust to ensure they are meeting assessment requirements.

Impact (costs and benefits) of Option C

Benefits

Services and providers

This option would allow providers some autonomy and flexibility in how they implement the National Principles in a manner that is specific to their own operating context.

Community

This option may assure families and the community that service providers are committed to the National Principles and have clear processes in place to promote and ensure a child safe culture and environment.

Costs

Services and providers

Providers will incur additional costs associated with aligning their practices to the National Principles. This will vary from provider to provider depending on their existing policies and practices. However, given there is already a significant degree of overlap between the NQF and the National Principles, these revisions should be minimal for most providers and their services.

Services may find it difficult to interpret the national principles and understand exactly what elements should be contained in their policies or how to translate that into operational practice.

The implementation of Option C is expected to cost \$14 million nationally over a ten-year period⁸¹, driven largely by the assumption that additional administration will require 15 hours (2 days FTE) of work at a Co-ordinator level each year.

Community

Families may face increased fees as a result of increased administrative costs being borne by services.

Impact (costs and benefits) of Option D

Benefits

Community

This option is likely to provide families with the greatest level of assurance that service providers will operate consistently with the National Principles in the context of the NQF, as the outcomes would be embedded in the National Law.

Services and providers

This option would provide a clear and actionable pathway for service providers to better align their practice to the National Principles by outlining direct and relevant areas of action to take. This option provides clarity to providers creating a culture and environment that prioritises child safety and protects children from abuse without duplicating requirements from other regulatory regimes.

Costs

Services and providers

As with any prescriptive framework, this option would reduce the capacity for providers to decide how best to implement the National Principles in their specific circumstances. More prescriptive approaches to regulation also often have higher compliance costs. Implementation costs for this option would be incurred through providers needing to update or develop new policies and procedures to include further content on creating a child safe environment and the safe use of online environments, and training staff on their content including the implementation of new business processes. However, clarity around implementation may ultimately save time and resources for providers.

DC services

Costs would also be incurred in requiring FDC co-ordinators (where relevant) to attend training on child protection (in jurisdictions where it is available and required) and to ensure volunteers are aware of relevant laws and their associated obligations.

The implementation of Option D is expected to cost \$29 million over a ten-year period⁸², driven largely by the assumption that additional administration will require 30 hours (4 days FTE) of work at a Co-ordinator level in the first year of implementation, followed by 7.5 hours (1 day FTE) of work at a Co-ordinator level in subsequent years. This estimate also includes \$2 million associated with Child Protection Training and refresher courses for FDC co-ordinators over the ten-year period.

Consultation feedback

Consultation findings indicate that respondents considered embedding the National Principles as an important problem that should be addressed, with 86% considering it to be in the range of a ‘moderate’ to ‘very significant’ problem (the total number of respondents for this question was 1191, which equalled 42% of CRIS sector survey respondents). As Option D is an expanded version of Option C, respondents were advised that Options C and D were mutually exclusive. There was no clear preferred options with preferences almost equally distributed across Options B (26.3%), C (29.3%) and D (29.6%).

There was a high level of support in written submissions for fully incorporating the National Principles within the NQF through the comprehensive measures covered by Option D. Many respondents commented that it is essential that the NQF fully reflects community expectations and the recommendations of the Royal Commission.

Respondents indicated that Option D provides the strongest assurance of creating environments in early childhood and school age education and care that are safe for children, creates clear and specific requirements for all service staff including educators, and promotes children’s rights and the visibility of the specific issue of child sexual abuse prevention. Respondents noted that Option C also sets clear guidance and expectations for the sector in creating a child safe environment.

The approach of embedding a child safe organisational culture across all facets of services, and the service system more broadly, was considered necessary to achieve the desired outcome of the prevention of child sexual abuse. One written submission noted:

We know that children’s development is influenced by many factors including the immediate and wider environments they interact with, including the early childhood education and care and the broader early childhood development systems, which is why embedding child safe organisation culture is so important across our whole service system. Extending the reach of child safe organisation culture, as outlined in the National Principles will help amplify the prevention, identification and response to abuse, neglect and or harm for children as well as amplify and promote the voice and rights of children within our communities.

– Australian Childhood Foundation

Support to assist educators to implement the changes recommended in Option D, including nationally available training and resources, was raised as essential to support the implementation of legislative change.

Respondents also recognised that work to prevent child sexual abuse already occurs through a range of regulatory requirements, systems and agencies. Therefore, respondents noted that harmonisation of regulatory requirements around the child safe principles (or standards) and the roles and responsibilities of these regulatory bodies should be considered in the NQF Review response.

Respondents typically did not support implementing Option B in isolation because it was seen as insufficient for the National Principles to be considered at the time of quality assessment only. However, respondents considered that the action described in Option B could be a useful tool in combination with the suite of changes proposed in Option D to fully embed a child safe organisational culture across services, and the education and care regulatory system.

Implementation requirements of the options by government

Amendment to the National Regulations may require an amendment to the National Law.

Communication from RA in regards to the implementation of the updated requirements and guidance.

Additional training for authorised officers and field officer that are conducting assessment and rating.

Allow transitional period for Child protection training. As well as developing policies and procedures relating to Child Safe Principles.

Conclusion/recommended option

Option D is the preferred option.

Children's education and care is already subject to a robust regulatory scheme to ensure and promote the health, safety and wellbeing of children. Through identifying gaps in implementation and practice, Option D introduces specific measures to improve child safety in education and care settings, as well as meeting community expectations for the safety of children.

Maintaining the status quo and not introducing changes to better align to the National Principles is likely to result in some services not having a strong child safe culture.

Accordingly, broader community and sector expectations about child safety in the sector not be met.

Expected costs for service providers of the implementation of Option D include the costs of updating and developing new compliance and support documents such as policy and procedure documents, ensuring staff and volunteers are aware of their obligations, roles and responsibilities, and ensuring FDC co-ordinators complete child protection training. However, as noted, the anticipated costs are not expected to be overly burdensome for the sector given the existing significant overlap between the NQF and the National Principles. Further, the consequences of child sexual abuse for children, families, communities and providers – which the National Principles seek to prevent – outweigh these costs. Through using the National Principles to fill gaps in the existing regulatory system for children's education and care, Option D provides a nationally coherent, familiar framework to protect children from the risk of sexual abuse.

Chapter:	4 – Royal Commission into Institutional Responses to Child Sexual Abuse
Issue:	4.2 – Updating record keeping requirements
Preferred option:	Option B – Improved guidance to assist providers on record keeping, utilising existing best practice instructions developed by relevant Commonwealth, State and Territory Archive Authorities (for example, the National Archives of Australia General Records Authority 41) as per Recommendation 8.3, along with the five high-level record keeping principles recommended by the Royal Commission in Recommendation 8.4.

Problem description

The Royal Commission found that many survivors of sexual abuse could not access the institutional records of incidents and/or allegations during their time in care settings, either as a result of poor recordkeeping practice, retrieval processes, or because the records no longer existed. This meant that survivors had to seek alternative solutions to obtain basic information about themselves or simply were never able to recover such information, which therefore reduced their ability to seek redress.⁸³

The Royal Commission recommended institutions engaged in child-related work retain records relating to child sexual abuse that has or is alleged to have occurred for at least 45 years (Recommendations 8.1 and 8.2)⁸⁴. In addition to this, it recommended that records identified as relevant to child safety and wellbeing, including child sexual abuse, be clear, objective and thorough, be maintained in an indexed, logical and secure manner, and be retained and disposed of in a consistent manner (Recommendations 8.3 and 8.4)⁸⁵.

While records alone do not secure convictions or successful civil claims, contemporaneous records kept by staff members at the service can assist in substantiating claims of child abuse, particularly where other types of evidence (i.e. physical evidence such as DNA) are lacking.

Overall the number of cases relating to early childhood education and care discussed by the Royal Commission was low.

Currently under the National Law, approved providers are required to keep records relating to any incidents, illness, injury or trauma suffered by a child while being educated and cared for by the service in a safe and secure place until the child is aged 25 years⁸⁶. However, the Royal Commission found that it takes on average 23.9 years for survivors to disclose childhood abuse.⁸⁷ This means that a survivor over the age of 25 is currently not able to access records from when they attended education and care and may need to find alternative solutions to obtain information about themselves (for example other government agencies including child protection, police and health records). Where individuals are not able to access information their ability for redress is significantly reduced.

All jurisdictions are currently working to implement recommendations from the Royal Commission including addressing record keeping issues across a wide range of sectors and industries working with children.

In the event that record keeping requirements for providers is extended to 45 years, there remains the question of how records should be maintained when a service closes. There are also ongoing questions about the technology used to keep records. A 20 year period has traditionally seen vast technological changes to record keeping systems, and it can be assumed that this will continue into the future. There may be privacy issues with third party software being utilised to hold sensitive records.

Objective (ideal outcome of government action)

Actions implemented as outcomes of the NQF Review will improve storage of records so that if sexual abuse occurs within education and care settings, the individual will be able to access their records within 25 years, if required. This also relates to circumstances where education and care services become aware of abuse indirectly.

Description of each option

The change options proposed are as follows:

Option A:

No change.

Option B:

Improved guidance to assist providers on record keeping, utilising existing best practice instructions developed by relevant Commonwealth, State and Territory Archive Authorities (for example, the National Archives of Australia General Records Authority) as per Recommendation 8.3, along with the five high-level record keeping principles recommended by the Royal Commission in Recommendation 8.4.

Option C:

Amend the National Regulations to increase record keeping requirements to 45 years (in relation to relevant records regarding actual or alleged instances of child sexual abuse) in line with the Royal Commission recommended minimum.

Option D:

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

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

Impact (costs and benefits) of Option A

Benefits

Services and providers

Option A 'no change' would result in no changes to the current record keeping practices of education and care services and impose no additional costs on providers.

Costs

Services and providers

Compared to other changes proposed for this issue, Option A would not result in any additional financial costs.

Community

Individuals will continue to experience difficulties accessing records and this may impact their ability to seek redress through the National Redress Scheme.

This will not meet survivors' needs in the future.

Impact (costs and benefits) of Option B

Benefits

Services and providers

Services will receive guidance relevant to the jurisdiction in which they operate and the specific regulatory requirements being introduced. Each State is using different regulatory approaches and framework to tackle royal commission implementation. A guidance approach will ensure that services are not given advice that may conflict with local requirements

Community

Improved guidance will assist providers to create and maintain relevant, accurate and detailed records to assist with ease of access. Moving forward, this could assist survivors to access information and enable them to seek redress in a way that many past survivors have been unable to do.

Option B may have future benefits for those who experience child abuse where it is combined with State-specific legislation targeting the recommendations of the Royal Commission.

Costs

Community

Guidance for best practice records management will not introduce penalties for non-compliance and services may lag in their implementation until other regulatory schemes for record keeping related to abuse come into effect. As a result this option may be less effective at improving record keeping as envisioned by the Royal Commission.

However other regulatory frameworks are being developed in each jurisdictions that aim to address this issue, which may negate the need for the NQF to include prescriptive approaches.

Services and providers

There may be some costs associated with updating policies and procedures, and relevant training for staff.

Cost-benefit analysis for the entire sector

Option B is assumed to require between 0.5 to 2 days of labour per year per service in centre-based, FDC, and OSHC services across all jurisdictions. The hourly rate for administrative tasks associated with Option B is set at \$26.01 for all states and services.

Assuming Option B will require 1 day of administrative labour per service, the Net Present Value (NPV) of implementing Option B is \$16 million over 10 years. This compares to \$8 million over ten years when assuming 0.5 days per service and \$31 million when assuming 2 days.

These costs assume that larger service centres may take longer to update record keeping practices than smaller services.

Impact (costs and benefits) of Option C

Benefits

Services and providers

As providers are currently required to keep records for 25 years, the change would impose an additional 20 year term on the record keeping requirements within the National Law. It would limit problems associated with States and Territories adopting separate (and potentially inconsistent) legislative arrangements and create a national approach to record keeping requirements in education and care settings.

All providers are required to keep records to meet existing requirements so new systems would not necessarily be needed.

Community

This option may assist survivors to access records, particularly those older than 25 years. It takes into account the limitation periods for civil action for sexual abuse, and the 23.9 year delay on average between childhood abuse and disclosure of that abuse.

Costs

Services and providers

If there is a legislative requirement to substantially extend record keeping requirements, providers will incur additional costs associated with maintaining records and providing access to these records for an additional 20 years.

Additional costs associated with extending record keeping requirements to 45 years may be significant and would have a greater impact on not-for-profit and community services. Additional costs may affect long term financial viability, which may in turn affect access to education and care.

Impact (costs and benefits) of Option D

Costs

Services and providers

Adopting stronger record keeping practices will incur a cost on providers as they will be required to store records to a particular standard, and for a longer duration.

The financial impacts may be more significant for not-for-profit and community services where they may not have the financial resources to manage extending the current legislative requirements.

An unintended consequence of this option is that the cost of meeting such requirements may affect providers' financial viability, which may create access issues for children and their families looking for an education and care service in their area.

Without defined and explicit guidance, providers may be uncertain as to what the standards are and how to comply with them adequately, leaving them at risk of regulatory action.

Consultation feedback

Just under one-third (32.3%) of **CRIS Sector Survey** respondents that chose to answer questions about Issue 4.2 viewed *updating record keeping requirements* as a ‘Very significant problem’ (10.2%) or ‘Significant problem’ (22.1%), with a further 34.9% indicating that it was a ‘Moderate problem’ (the total number respondents for this question was 1103).

Legislative change to increase record keeping requirements (Option C and D) was well-supported across the board, however concerns were raised about the ability of organisations to store records for the period recommended by the Royal Commission, particularly in relation to the cost and availability of secure storage space. Other concerns were raised about corporate memory over that period of time, and challenges associated with service transfer, sale or closure. A whole-of-government solution was recommended to address these challenges, in the form of a centralised digital storage solution.

Written submissions noted that Option B ‘Guidance’ may support best practice record keeping, however any guidance provided would need to be practical and accessible for the community, for example accessible for culturally and linguistically diverse communities.

Likewise, comments relating to Option C ‘Legislative change’ included that it would ensure better access to information to evidence complaints, it would empower individuals to raise allegations as adults and would meet community expectations.

Legislative change to increase record keeping requirements (Option C and Option D) was well-supported, as was improved guidance (Option B). There was less support for making no change (Option A).

Implementation requirements of the options

Option B

Detailed work will be required to develop and agree on national guidance that is of use to the sector. Guidance will need to be accessible for a diverse range of communities.

Guidance will need to include the principles in Recommendation 8.4:

All institutions that engage in child-related work should implement the following principles for records and recordkeeping, to a level that responds to the risk of child sexual abuse occurring within the institution:

- *Principle 1: Creating and keeping full and accurate records relevant to child safety and wellbeing, including child sexual abuse, is in the best interests of children and should be an integral part of institutional leadership, governance and culture.*
- *Principle 2: Full and accurate records should be created about all incidents, responses and decisions affecting child safety and wellbeing, including child sexual abuse.*
- *Principle 3: Records relevant to child safety and wellbeing, including child sexual abuse, should be maintained appropriately.*
- *Principle 4: Records relevant to child safety and wellbeing, including child sexual abuse, should only be disposed of in accordance with law or policy.*
- *Principle 5: Individuals' existing rights to access, amend or annotate records about themselves should be recognised to the fullest extent.*

Option C/Option D

Further work would be required to determine how records should be held in the event that a service closes. A transition period would be required so that providers could arrange appropriate storage solutions. Consideration of a whole-of-government solution to record keeping may be required to support a proposal for legislative change, as this will not be achieved through the current legislative settings within the National Law. Further guidance and support for the sector will be required.

Conclusion/recommended option

Governments have considered this issue and agreed that Option B should be implemented.

The legislative change proposed in the other options would have difficulties for implementation due to their varying degrees of complexity, and may impact on or conflict with other record keeping requirements under State and Territory legislation that are out of scope of the 2019 NQF Review.

Furthermore, having guidance in place as proposed in Option B ensures any changes to current recordkeeping requirements are consistent across all education and care services. This consistency is crucial to ensure that providers and services are clear of their requirements under the National Law and Regulations, and that all persons seeking redress are able to access adequate records regardless of the type of education and care service they may have attended.

This option would also address the issue that jurisdictions may have different requirements depending on their relevant Archives Acts. It may be the case that record keeping requirements are addressed separately through State-specific legislation.

Chapter:	5 – Family Day Care
Issue:	5.1 – FDC Register and notification requirements
Preferred option:	Option B – Changes (legislative or otherwise) to the FDC Register requirements to enable regulatory authorities to have timely access to FDC service level data that will enable risk-based proactive approaches to regulation and allow regulatory authorities, particularly during emergency situations such as bushfires, to support service providers in meeting their obligations to ensure the safety of children.

Problem description

The National Law requires FDC providers to keep a register of information about their service(s) including all educators, co-ordinators and assistants employed or engaged by the service, and take reasonable steps to ensure that the register is accurate⁸⁸. The FDC Register must be kept at the principal office of the service and contain the information prescribed under regulation 153, including (but not limited to)⁸⁹:

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

Upon request by a regulatory authority, FDC providers must provide this register (or any changes to the register) within 24 hours to the regulatory authority⁹⁰. Failure to do so results in a penalty ranging from \$2,000 to \$20,000. However, this lack of immediate access to information limits aspects of risk-based proactive approaches to regulation available to regulatory authorities. It would also prevent regulatory authorities from providing time-critical and necessary support to FDC educators during emergencies (such as bushfires and COVID-19). In this regard, limited direct oversight of FDC educators may pose a risk to the health, safety and wellbeing of children.

Fraud within the FDC sector has also been an ongoing issue that poses a high cost impost on taxpayers. It also presents risks to children, by exposing children to providers and other parties focused on profit over their wellbeing, as well as exposing children to persons involved in serious criminal activity⁹¹. Under the (FAL), FDC educators (and some co-ordinators) of a Child Care Subsidy (CCS) approved service can be identified using a unique PRODA (Provider Digital Access) registration number. The PRODA number remains with the educator even if they move between services or jurisdictions. However, PRODA credentials are not required to be collected by approved providers as part of the FDC Register required under the NQF.

In the regulatory context of the NQF, the absence of access to live educator registers with unique educator identifiers (such as PRODA numbers) limits regulatory authorities from being able to appropriately identify and track FDC educators who were previously found to be non-compliant with their obligations under the NQF. This lack of transparency may pose a risk to the safety, health and wellbeing of children.

Objective (ideal outcome of government action)

Actions implemented as outcomes of the NQF Review will improve the timely accessibility of information contained in the FDC Register by regulatory authorities, better enabling risk-based proactive approaches to regulation. This will support efficient, effective and more proactive monitoring and compliance activities by regulatory authorities. They will also allow regulatory authorities to identify and provide time-critical support during emergency situations to ensure the safety of children. The FDC Register will be kept in an online format accessible by both the FDC provider and the relevant regulatory authority.

Description of each option

The proposed options are as follows:

Option A:

No change.

Option B**:

Changes (legislative or otherwise) to the FDC Register requirements to enable regulatory authorities to have timely access to FDC service level data that will enable risk-based proactive approaches to regulation and allow regulatory authorities, particularly during emergency situations such as bushfires, to support service providers in meeting their obligations to ensure the safety of children.

***Note: Option B in Issue 5.1 of the CRIS has been revised to reduce impact to the sector, particularly to remove additional administrative burden the original Option B may impose on service providers (see Consultation Feedback section below). For example, providers of FDC services having to input data through both the Child Care Subsidy System (CCSS) and the NQA ITS concurrently is burdensome.*

The original Option B (in the CRIS) is as below:

“Amend the register requirements so that the FDC Register is kept within the NQA ITS, and records information such as:

- Names and Dates of Birth of children attending the service.
- Names and contact phone numbers of educators, co-ordinators and educator assistants.
- Days and hours of care and number of children attending per session.
- Relevant dates (e.g. residence assessment date, educator commencement/end dates).
- Educators operating above ratio (and the applicable approved provider approved exceptional circumstance as per proposal 5.2).
- FDC educators’ and co-ordinators’ PRODA numbers.”

Impact (costs and benefits) of Option A

Benefits

FDC providers

Option A imposes no additional costs and administrative burdens as there would be no additional requirements.

Costs

Families and community

The lack of timely access to the FDC Register will continue to limit risk-based proactive approaches to regulation and prevent satisfactory responses by regulatory authorities during emergencies. Without up-to-date access to information, regulatory authorities may have difficulties in contacting FDC educators in the event of an emergency, posing unacceptable or hazard to children in care. Limited access to the FDC educator details (e.g., PRODA number) may also pose risks of fraudulent activity.

Limited access to accurate FDC educator details and FDC Register may result in children being exposed to persons who were previously found to be non-compliant with their obligations under the NQF, as well as persons who may be engaged in fraudulent activity. This lack of direct regulatory oversight may pose a risk to the health, safety and wellbeing of children.

Impact (costs and benefits) of Option B

Benefits

Families and community

This option will allow regulatory authorities to directly access information required to be kept in the FDC Register. Improved access to the FDC Register for regulatory authorities will enhance risk-based proactive approaches to regulation, supporting FDC educators in meeting their duty of care and safety obligations for children. Regulatory authorities will also be able to provide improved support during emergency situations.

FDC providers

FDC educators will be able to receive support during emergency situations, such as during large scale bushfire events.

Costs

FDC providers

Option B seeks to allow opportunities to explore alternative integrations and data sources during implementation phase to enable live access to information while minimising additional administrative burdens to the FDC sector.

Consultation feedback

***Note: below information outlines feedback on the original Option B in Issue 5.1 of the CRIS. Considering the potential impacts on the FDC sector, Option B has been revised from its original wording in the CRIS.*

Approaching half (47%) of **CRIS Sector Survey** respondents that chose to answer questions about Issue 5.1 considered *family day care register and notification requirements* a ‘Very significant’ (20%) or ‘Significant’ (28%) problem, with a further 30% deeming it a ‘Moderate’ problem (the total number of respondents for this question was 514).

In comparison, just over one-quarter (27%) of **CRIS Sector Survey** respondents who indicated that the main type of education and care service they provide was family day care felt that *family day care register and notification requirements* was a ‘Very significant’ (8%) or ‘Significant’ (19%) problem (the total number of respondents for this question was 88).

Both quantitative and qualitative findings indicated fairly strong support for Option B (Amend the register requirements so FDC Register is kept within the NQA ITS). One CRIS sector survey respondent noted:

“By ensuring records are kept with NQAITS it will help promote accountability and transparency within FDC services which is really important given that there have been several cases of fraud within FDC schemes which unfortunately taint those carers who are doing the correct things.”

Respondents were in general supportive of moving the FDC Register onto the NQA ITS, suggesting it would promote accountability, transparency and improve oversight. However, they also noted the additional administrative workload this would entail for service providers, especially given they already record this information in the Child Care Subsidy System (CCSS). To overcome this, it was suggested that governments seek to harmonise systems, including the NQA IT System, CCSS/PRODA and service provider systems where possible.

Implementation requirements of the options

Option B

This option will require amendments to the National Law and/or Regulations to allow regulatory authorities to access the information required to be kept in FDC Register in a timely manner and introduce the new additional requirements to the register (which are: PRODA number and educators operating above ratio due to exceptional circumstances).

Detailed work by governments will be required to enable improved access to the information required to be kept in the FDC Register. Implementation planning may include the creation of an online portal for FDC Register information or integration within third party software.

Conclusion/recommended option

It is recommended that Option B be adopted.

This option will allow regulatory authorities to access accurate information about FDC services, including co-ordinators and educators, in a proactive manner. Improved access to information will support effective monitoring and compliance activities by regulatory authorities and better enable risk-based proactive approaches to regulation to safeguard the health, safety and wellbeing of children. They will also allow regulatory authorities to identify and provide appropriate support during emergency situations to ensure the safety of children.

Chapter:	5 – Family Day Care
Issue:	5.2 – FDC exceptional circumstances
Preferred option/s:	Option B – Require approved providers to include details of FDC educators operating above ratio due to exceptional circumstances on the FDC Register.

Problem description

Current provisions under the National Law allow approved providers of family day care (FDC) services to approve in writing an FDC educator to operate above the educator to child ratio in ‘exceptional circumstances’. The details of FDC educators operating above ratio are held by the approved provider.

According to regulation 124, Exceptional circumstances exist if—

- A all the children being educated and cared for by the FDC educator are siblings in the same family; or*
- B a child to be educated and cared for is determined to be in need of protection under a child protection law and the FDC educator is determined to be the best person to educate and care for the child; or*
- C the FDC residence or approved FDC venue is in a rural or remote area and no alternative education and care service is available⁹².*

Issue 5.2 in the Consultation Regulation Impact Statement (CRIS) pointed to a lack of direct timely and proactive access by regulatory authorities to details of FDC educators operating above ratio due to exceptional circumstances. This lack of direct access to critical information may impact on regulatory authorities engaging in effective compliance activities. For example, regulatory authorities must first request the educator details from the approved provider prior to investigating and that could potentially cause delays in ensuring a timely outcome.

Operating above ratio due to ‘exceptional circumstances’ may lead to inadequate supervision given most FDC residences operate with a sole educator. Further, there may be educational and developmental risks for children who attend services operating above ratio for extended periods of time.

Ongoing monitoring of the sector has found FDC educators operating above ratio through the ‘exceptional circumstances’ clause, despite not being eligible. The CRIS noted that *“there have been instances where FDC educators have continued providing education and care to more than seven children in situations that would not meet the exceptional circumstances test outlined in the National Regulations”⁹³.*

Given the risks to children’s safety, health and wellbeing as a result of lack of direct access to critical information on the FDC Register, greater transparency is needed in relation to FDC educators operating above ratio due to ‘exceptional circumstances’.

Objective (ideal outcome of government action)

The objective of this issue is to allow regulatory authorities to obtain information about FDC educators operating above ratio due to 'exceptional circumstances'. Access to this information is expected to support children's health, safety and wellbeing by providing regulatory authorities with greater oversight of services that operate above ratio and support efficient and effective monitoring and compliance activities by regulatory authorities.

Description of each option

Considering the nature of the proposal, there are only two proposed options for change. These are:

Option A:

No change.

This option would maintain the current 'exceptional circumstances' provisions under the National Regulations, granting approved providers the power to allow FDC educators to operate above ratio due to 'exceptional circumstances.' This information would be kept by the approved provider and not shared with the regulatory authority, unless specifically requested.

Option B:

Require approved providers to include details of FDC educators operating above ratio due to exceptional circumstances on the FDC Register.

This option would require approved providers who have approved FDC educators to operate above ratio due to 'exceptional circumstances' to record the details of such approvals in the FDC Register.

Impact (costs and benefits) of Option A

The first option, Option A, is for no change.

Benefits

Approved providers of FDC services

This option would impose no additional administrative burdens on approved providers FDC services, as current arrangements would remain in place.

Costs

Families and community

As regulatory authorities would have limited information about FDC educators operating above ratio due to 'exceptional circumstances', maintaining the status quo for this issue may impact on the overall safety, health and wellbeing of children in care. This is because a child may be cared for by an educator who would be reasonably considered incapable of adequately supervising the number of children in their care, and regulatory authorities would not have the information required to take appropriate regulatory action impacting on the quality and overall risk attributed to the care.

Impact (costs and benefits) of Option B

Benefits

Children, families and community

Requiring approved providers of FDC services to inform the regulatory authority of educators operating above ratio due to 'exceptional circumstances' may increase confidence for families that governments have increased oversight over the health and wellbeing of children being cared for in family day care residences.

It may also increase FDC educator consciousness of operating over ratio and regulatory authority ability to regulate instances of ratio being exceeding, which will in turn improve safety, health and wellbeing of children.

Costs

Approved providers of FDC services

There may be some additional administrative burden imposed on approved providers of FDC services to ensure information is recorded in the FDC Register.

Consultation feedback

When asked about the issue, over two-fifths (43%) of **CRIS Sector Survey** respondents considered the issue a 'Very significant' (20%) or 'Significant' (23%) problem, with a further 30% deeming them a 'Moderate' problem. Of those respondents that provided an FDC service, the majority felt that issue was either 'not a problem' (11.1%) or a 'minor problem' (43.1%).

Qualitative findings through written submissions and survey comments noted that while exceptional circumstances approval is currently rarely granted, the nature of the provision is perceived to allow non-compliant activity to occur.

Feedback on Option B suggested that the change would promote accountability and transparency, increase adequate care and supervision, and increase alignment of the family day care sector to requirements of centre-based services. It was noted, however, that Option B would lead to an additional administrative workload for approved providers of FDC services.

Option B under this issue was supported by a national peak for approved providers of FDC services and its members.

"[We] consider it entirely appropriate and reasonable that Regulatory Authorities are notified in the event that additional children are cared for during emergency placements in exceptional circumstances and this position is supported by an overwhelming majority of our service members (94%). However for this to work efficiently, [peak body] would also recommend further guidance to be developed"

– National FDC peak organisation

Considering this feedback, it is expected by the sector that updated guidance would be developed to support the implementation of Option B.

Implementation requirements of the options

Implementation of Option B would require an amendment to the National Regulations to require FDC approved providers to record information in relation to FDC educators operating above ratio due to 'exceptional circumstances' on NQA ITS.

The process by which information would be provided to regulatory authorities, such as through a notification on NQA ITS, would need to be considered further by the implementation working group that will address the outcomes of Issue 5.1 in the CRIS concerning access of regulatory authorities to the register.

As noted in the consultation feedback, updated guidance, such as in the 'Guide to the NQF' would need to be provided to ensure that approved providers of FDC services are aware of their responsibilities under the updated requirements.

Conclusion/recommended option

Considering the lack of timely, proactive access by regulatory authorities to information about FDC educators operating above ratio due to 'exceptional circumstances' and the associated impacts on effective compliance activities, **Option B is recommended.**

Chapter:	5 – Family Day Care
Issue:	5.3 – Safety around swimming pools in FDC residences
Preferred option:	<p>Option B – Swimming pools allowed with improved oversight.</p> <p>Option D – Regulatory authorities to provide additional guidance and resources in relation to water safety to FDC educators.</p>

Problem description

Family day care services and approved providers must comply with children’s health and safety regulations under the NQF. This includes compliance with water safety provisions in the National Regulations. The National Regulations require approved providers to ensure that FDC providers and their services have policies and procedures in place to manage water safety, including safety during any water-based activities, and to ensure that children are protected from harm and hazard around swimming pools. Currently, FDC services with a pool are required to include a copy of their proposed water safety policy in a service approval application⁹⁴. Approved providers are also obliged to include any water hazards, including swimming pools, in their assessment of each approved FDC residence⁹⁵. These assessments must be conducted before education and care are provided and then at least annually.

Issue 5.3 in the Consultation Regulation Impact Statement (CRIS) highlighted an ongoing lack of safety around swimming pools in FDC residences. In spite of existing provisions around water safety in the National Regulations, regulatory authorities continue to investigate incidents where educators have failed to provide adequate supervision to children around a pool, and where approved providers have failed to conduct proper risk assessments of water hazards in FDC residences with a pool. The CRIS noted ‘there were 69 instances where regulatory authorities confirmed children have been exposed to harm or hazard related to swimming pools’ in the period between January 2017 and June 2019. Fourteen incidents involved a lapse in active supervision of children around a pool⁹⁶.

The full extent of the risk to children is difficult to determine from the existing data. There is currently no data available around the number of swimming pools in FDC residences in Australia. Moreover, drowning deaths are a rare occurrence in FDC. However, where drowning does occur, it is frequently the result of a lapse in active supervision. The risk of such a lapse is arguably increased by the single educator model of FDC. Some FDC educators, particularly if they are inexperienced, may become overwhelmed or distracted when attempting to manage multiple children and prevent or respond to incidents at the same time. The number of incidents that continue to be investigated by regulatory authorities suggest that the risk of a catastrophic outcome like drowning remains high.

Please note, Tasmania currently prohibits swimming pools and there are no changes to this prohibition being proposed.

Objective (ideal outcome of government action)

The objective of government action is to improve the safety of children at family day care residences with swimming pools.

Description of each option

There are four proposed options for Issue 5.3:

Option A:

No change.

Option A would entail no change from current water safety requirements under the National Regulations.

Option B:

Swimming pools allowed with improved oversight.

FDC residences with swimming pools would continue to operate with additional safeguards to ensure active supervision and regular review of risks. Approved providers must ensure that residences comply with fencing requirements and conduct monthly inspections of swimming pools and surrounds.

Option C:

Prevent the registration or engagement of new FDC educators at residences or venues with a swimming pool to operate from a specified date.

Option C entails a ban on new FDC residences with swimming pools, to operate from a specified date. This option would support a gradual reduction of pools in FDC by limiting or removing the registration or engagement of new residences with a pool.

Option D:

Regulatory authorities to provide additional guidance and resources in relation to water safety to FDC educators.

Option D supports the delivery of improved safety information and guidance to FDC educators operating in residences with water hazards.

***Note Western Australia is exempt from these proposals. Western Australia is due to introduce State specific legislation around swimming pools in FDC residences shortly. Tasmania has a general prohibition on swimming pools already in place. Options B and C would not apply, but Option D would be applicable for Tasmania in relation to water hazards (for example, this would affect FDC educators operating on a property with a dam or other water hazard).*

Please note also that Option B was revised from the original CRIS option, which was:

Swimming pools allowed with improved oversight.

- Enable new and existing FDC educators with swimming pools to continue to operate with children under five years of age, with requirements for:
- Fencing (consistent with existing laws)
- Monthly monitoring by the approved provider (checklist assessment of pool and surrounds – with training; differentiated from compliance checks by council).

Impact (costs and benefits) of Option A

Option A is for no change.

Benefits

Approved providers and FDC services

Option A would involve no additional administrative or financial burden on approved providers of FDC services beyond current requirements for swimming pools. This is the least cost prohibitive option.

Families and community

Allowing swimming pools in new and existing FDC services does not constrain the market and may allow for greater accessibility and affordability of care to families. This option also avoids additional financial cost imposts for families seeking care.

Costs

Approved providers and FDC services

Option A would mean that the risks posed by swimming pools in FDC residences remain unchanged. This option would not improve the safety of children. Providers and services may face compliance or other legal action if harm occurs to a child as a result.

Families and community

Under Option A, children receiving education and care in an FDC residence with a pool would likely remain at high risk of harm and hazard.

Impact (costs and benefits) of Option B

Option B would continue to allow swimming pools in FDC residences with improved oversight. This includes compliance with fencing requirements consistent with existing laws and monthly monitoring of pools and surrounds by the FDC approved provider.

Benefits

Approved providers and FDC services

Option B would likely increase awareness and knowledge of water safety requirements among FDC approved providers and educators. Enhanced awareness and knowledge may lead to improvements in active supervision and oversight of children by FDC educators.

Families and community

Improved oversight is likely to result in increased safety of children.

Costs

FDC providers and services

By requiring the provision of training to staff conducting monthly inspections, this option increases financial and administrative burden for approved providers and FDC educators. Approved providers may choose to reduce the number of FDC residences with a pool as a result, and educators may be encouraged to leave the FDC sector.

- Three-hour staff training is estimated to cost **\$78.03** per educator (diploma level).
- Drafting of training materials is estimated to require 14 hours of FDC Director time and to cost a total of **\$452**.
- Providing additional guidance materials is assumed to require 1 hour of labour for FDC educators at the diploma level. This is assumed to be paid at the 3.4 award level of \$26.01 per hour.

The Net Present Value (NPV) of implementing Option B is \$765,000 over ten years.⁹⁷

Families and community

Option B may increase the attrition rate of FDC services with a pool due to enhanced financial, administrative and compliance costs. This outcome has the potential to reduce accessibility of services to families and may impact the supply of available education and care services, particularly in regional areas. It is noted the impact would be variable across Australia, given varied seasonal / climate contexts. Costs associated with staff training may lead approved providers to increase service fees, potentially making FDC less affordable for some families.

Impact (costs and benefits) of Option C

Option C would prevent the registration or engagement of new FDC educators at residences or venues with a swimming pool from a specified date.

Benefits

Families and community

Option C would prohibit entry of new FDC residences with pools to the sector and may lead to a gradual decline in the number of pools in FDC. This would likely reduce the risk of drowning to children in FDC.

Costs

FDC providers and services

By creating barriers to sector entry for new FDC services, this option could potentially restrict accessibility and availability of care for families who need it and may be unviable in States and Territories with a high proportion of pools. The extent to which Option C would reduce existing safety risks around pools in FDC is unknown, as this depends on natural attrition of educators leaving the sector. Furthermore, this option does not resolve current problems around inadequate supervision and risk assessment in services already in the sector. Option C therefore does not mitigate existing risks posed to children's safety by swimming pools in FDC.

***Note: As noted in the CRIS, Options C and B (described above) are mutually exclusive.*

Impact (costs and benefits) of Option D

Under Option D, regulatory authorities would provide the FDC sector with additional guidance and resources related to water safety.

Benefits

FDC providers and services

Option D would likely enhance FDC educators' knowledge of water safety requirements under the National Regulations and increase their awareness of water hazards. Increased awareness among educators may ultimately improve their ability to respond effectively to emergencies. Option D is also relatively low cost, and would not entail a substantial increase in financial or administrative burden for approved providers and educators in FDC.

Costs

FDC providers and services

Option D permits swimming pools in FDC services and therefore does not eliminate the risk of drowning to children. For this option to be effective, it requires FDC educators to remain aware of best practice guidance and resources provided by the regulatory authority and other relevant agencies in relation to pool safety. It is ultimately unknown if the provision of guidance and resources would be sufficient to lower the risk of a drowning incident in FDC.

Compliance with Option D would require an estimated 1 hour of labour from educators to review guidance and resources, to be paid at the diploma rate of \$26.01⁹⁸.

The NPV of implementing Option D is \$255,000 over ten years.⁹⁹

***Note: Option D could be introduced in conjunction with any other option. Whilst Tasmania and Western Australia are exempt from the proposals in Options B and C for Issue 5.3, Option D would still apply in those States as it proposed an information-based approach to water safety that may be broadly applicable to any form of water hazard.*

Consultation feedback

Nearly half (49%) of CRIS Sector Survey respondents who chose to answer questions about Issue 5.3 considered *safety around swimming pools in family day care residences* a ‘Very significant’ (25%) or ‘Significant’ problem (24%). Just over one-third (31%) deemed it a ‘Moderate’ problem (the total number of respondents for this question was 428).

Both quantitative and qualitative findings suggest fairly strong support for Option B, with Option D as the next preferred option. Many respondents noted benefits to Option C whilst also emphasizing a similar number of costs. A small number of respondents preferred Option A.

Many respondents noted benefits to Option C while also emphasizing a similar number of costs. A small number of respondents indicated a preference for Option A.

Qualitative feedback emphasized the importance of improved oversight and supported providing FDC educators with additional guidance and resources around water safety. One respondent noted:

“The risk of deep water being at the usual place of service operation is too high when only one adult is in attendance for supervision...[I]ncreased safety checks and regular education/training for FDC educators would be vital to ensure safety of children...[E]xtremely clear guidance and requirements around water safety and effective fencing and barriers is required.”

– CRIS Sector Survey respondent

A national peak organization for FDC providers expressed support for Option D, and also acknowledged the benefit of managing risks through improved oversight of swimming pools in FDC.

“[Peak organization]’s preferred option is therefore Option D (Regulatory authorities provide additional guidance and resources in relation to water safety), a position strongly endorsed by our members. This option would likely improve overall awareness of the sector in relation to risks associated with water hazards and how to respond in an emergency. However, there is also support among members for Option B in principle which allows family day care educators to continue to provide care for children under 5 with requirements for additional oversights and safety measures (such as fencing specifications and monthly monitoring).”

– National peak organisation for FDC providers

Implementation requirements of the options

Option B

This option will require amendment to law and/or regulations to specify the new water safety requirements for FDC.

Following regulatory amendments, further guidance and communication by the regulatory authorities will be required. New and revised guidance, resources and other communications materials may be required to raise awareness of, and support provider compliance with, the new requirements. Regulatory authorities and ACECQA may need to provide additional resources to support awareness and compliance across the sector.

Please note, Tasmania already prohibits swimming pools and no changes to this prohibition are proposed.

Option C

In order to restrict the entry of new educators with pools, new regulations will need to be created under the National Law. Updates to the NQF information and guidance material may also be needed.

This option would not apply to Tasmania, given the current swimming pool prohibitions.

Option D

Regulatory authorities and ACECQA will be required to develop and distribute guidance and resources related to water safety across the FDC sector. Detailed work will be required to agree on national guidance that is of use to providers and services, and that is accessible to a diverse community.

Option D could be implemented in Tasmania to the extent that it affects services operating with water hazards.

Conclusion/recommended option

The preferred options are Options B and D.

Option A is not recommended as maintaining the status quo would result in an ongoing unacceptable risk of harm and hazard to children attending an FDC residence with a swimming pool.

Option C is not recommended as it carries prohibitive costs to the sector and is likely unviable in States and Territories with a high proportion of swimming pools.

It is recommended that Options B and D be adopted.

Swimming pools in FDC residences currently pose a significant risk to the health and safety of children receiving care. Implementation of Options B and D would likely reduce this risk by improving oversight and monitoring of water hazards in these residences. It would also enhance awareness of, and compliance with, water safety requirements by approved providers and educators across the FDC sector.

As noted above, Tasmania currently prohibits swimming pools. The proposed changes would only apply to the extent of FDC educators operating in areas with water hazards. No changes are proposed to the Tasmanian prohibition on swimming pools.

Chapter:	5 – Family Day Care
Issue:	5.4 – Safety of glass used by services in family day care
Preferred option/s:	<p>Option B – All FDC residences and venues to comply with 0.75m height requirement.</p> <p>Option E – Regulatory authorities to provide additional guidance and resources in relation to glass safety requirements for FDC services.</p>

Problem description

FDC residences are required to comply with safety requirements under the NQF.

This includes ensuring that all glass within floor height (either within 0.5 or 0.75m of the floor) is treated with safety glazing (if required by the Building Code of Australia), treated with a product that prevents glass from shattering if broken (such as safety film), or guarded with barriers that prevent a child from hitting or falling against the glass.¹⁰⁰

Issue 5.4 in the Consultation Regulation Impact Statement (CRIS) pointed to inconsistent height requirements across FDC sector, with residences complying with either 0.5 or 0.75m requirement, depending on the date of approval. The CRIS noted that “there have been 61 instances of confirmed breaches relating to glass requirements as at May 2019”¹⁰¹.

Regulation 117 of the National Regulations specifies the glass safety requirements for FDC services. It was previously amended in June 2014 to bring the National Regulations in line with the Australian Standard (AS 1288–2006) for glazing, in all States and Territories with the exception of Western Australia, which has jurisdiction-specific legislation for glass in FDC residences and venues. However, this amendment inadvertently lowered safety requirements for approved FDC services operating from residential settings, reducing the height requirement to 0.5 metres (0.5m) from 0.75 metres (0.75m). As a result, services approved after 1 June 2014 are required to meet the 0.5m height requirement stipulated under AS 1288–2006, while residences approved prior to the amendment are expected to comply with the previous 0.75m height requirement.

Current inconsistencies in height requirements mean that approved providers may face increased administrative burdens in managing the compliance of residences across a number of different height requirements.

There may also be an informational gap present for providers and educators seeking to understand their relevant regulatory requirements. At the present time, the Australian Standard AS1288-2006 can only be purchased for commercial use from Standards Australia, meaning there is an inherent information barrier for FDC providers to ensure best practice and comply with regulatory requirements.

This issue does not apply to WA as WA has specific legislation requiring all FDC residences approved since 2014 to comply with the 1m minimum standard which also aligns to requirements for centre based services.

Objective (ideal outcome of government action)

As described in the problem description, changes seek to:

- Reverse a previous decision to align FDC safety glass requirements to Australian Standard 1288-2006, which inadvertently led to the lowering of safety glass height requirements for FDC residences.
- Establish consistent height requirements for safety glass across the FDC sector, thereby reducing ambiguity about glass requirements for FDC providers and educators.

Description of each option

There are five proposed options for Issue 5.4. These are:

Option A:

No change.

Option B:

All FDC residences and venues to comply with 0.75m height requirement.
(This reverts to previously superseded version of regulation 117).

Option C:

FDC residences and venues that are approved on or after the date the regulation comes into effect will be required to comply with 1m height requirement.

Existing FDC residences will retain current requirements as follows:

- a. FDC residences/venues approved before 1 June 2014 to comply with 0.75m requirement
- b. FDC residences/venues approved between 2 June 2014 and [date regulation comes into force] to comply with 0.5m requirement, as currently specified by AS 1288–2006.

Option D:

All new FDC residences and venues to comply with 1m height requirement from [date regulation comes into force].

FDC residences/venues approved before [date regulation comes into force] subject to the 0.5m and 0.75m requirements to be transitioned into the new 1m requirement by [sunset date].

(This will eventually require all approved FDC residences and venues to comply with a height requirement of 1m by putting in place an expiry date for the 0.75m and 0.5m requirements to allow these residences and venues time to comply with the 1m requirement).

Option E:

Regulatory authorities to provide additional guidance and resources in relation to glass safety requirements for FDC services.

Impact (costs and benefits) of Option A

Benefits

Approved providers and FDC educators

This option would create no additional burden to approved providers and FDC educators complying with the current height requirements for safety glass. Therefore, maintaining the status quo is ultimately the least cost prohibitive option for FDC educators.

Costs

Approved providers and FDC educators

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

Families and community

There have been minimal impacts to children from glass related causes since the implementation of the NQF, however, some have been serious.

Impact (costs and benefits) of Option B

Benefits

Approved providers and FDC educators

By aligning FDC residences to a 0.75m height requirement for safety glass, this option would reduce unintended complexity and potential confusion around providers' requirements under the National Regulations. This benefits FDC providers by reducing administrative costs associated with ensuring their services comply with their respective height requirement.

Families and community

This option may reduce the overall risk of harm or hazard associated with glass for children receiving care in residences if all services comply with the higher standard of 0.75m height requirements for glass, comparative to the current 0.5m standard.

Costs

Approved providers and FDC educators

This option is expected to increase costs to providers currently complying with the 0.5m height requirement, as the option would increase the requirement under the National Regulations to 0.75m. Providers and their services operating in residences with the 0.5m requirement would incur financial costs associated with additional glazing or safety film on relevant glass panels to ensure compliance with the updated 0.75m requirement. However, as the new requirement of 0.5m only replaced the previous requirement of 0.75m for new services from 2014 onwards, the impact of changes required to glass may not be significant.

Nationally, the associated cost incurred for the FDC sector nationally is \$2 million to comply with the 0.75m height requirement. These costs are modelled using the application of safety films with an assumed FDC venue size.

Impact (costs and benefits) of Option C

Benefits

Approved providers and FDC educators

By requiring only new residences to comply with a 1m height requirement, existing providers will not be expected to make changes to glass in their residence. Therefore, Option C would not be cost prohibitive to providers for their existing services.

Families and community

This option may reduce the risk of harm or hazard associated with glass in new FDC residences, which would otherwise have to comply with the current 0.5m height requirement, noting the benefit from this option is limited to new residences only.

Costs

Approved providers and FDC educators

This option may introduce additional complexity to the monitoring of residences by FDC services, as it would create three different height requirements for approved residences depending on when they were approved. This may introduce additional administrative costs for providers associated with ensuring residences remain compliant across three different height requirements.

Families and community

As this option would not increase height requirements for existing services, maintaining the current height requirement of 0.5m for services approved after June 2014 may result in avoidable risk and hazard to children in care at a FDC residence.

(This option is unable to be costed as it relates to costs associated with new services approved after the date of regulatory change. Therefore, there would be no costs associated with the change for existing services.)

Impact (costs and benefits) of Option D

Benefits

Approved providers and FDC educators

Requiring all FDC residences to comply with a 1m height requirement may reduce complexity for FDC providers in ensuring that residences comply with height requirements for safety glass.

Families and community

This option may reduce the risk of harm or hazard for children associated with glass in new FDC residences through the requirement to comply with a 1m height requirement.

Costs

Approved providers and FDC educators

Option D would place significant financial and administrative burdens on FDC providers and their residences nationally. As FDC residences are currently aligned to 0.5 and 0.75m height requirements for glass, a shift to a 1m requirement would require FDC providers and educators to purchase and install additional safety glass or relevant safety film products to reach compliance with the updated 1m height requirement. These increased burdens may also deter new FDC providers from entering the market.

Nationally, the associated cost incurred for the FDC sector is \$11 million to comply with the 1m height requirement. This figure includes the cost of safety film products and installation, as well as the administrative costs associated with FDC providers researching and identifying suppliers for installation. Noting, this costing is an estimate as there is no data available on the number of FDC services currently meeting the existing standards.

Impact (costs and benefits) of Option E

Benefits

Approved providers and FDC educators

Developing guidance for approved providers and FDC educators around requirements for safety glass in FDC residences may increase awareness of best practice around glass and increase overall compliance with requirements under the NQF.

Families and community

This option may provide additional confidence to parents and families that best practice guidance around safety glass is being relayed to approved providers and FDC educators, and empower them to choose services that comply with the relevant standards.

Costs

Family day care providers and residences

While providing guidance to the FDC sector in relation to safety glass may improve overall knowledge of best practice and increase compliance, the option would not address inconsistent height requirements across FDC residences.

Enacting guidance without changes to ensure consistent height requirements for all residences would likely result in continued administrative costs for providers associated with ensuring compliance across residences with different height requirements. Nationally, the associated cost incurred for the FDC sector is \$300,000 to adequately engage with updated guidance in relation to safety glass, assuming time spent by FDC services.

Consultation feedback

Just over one-fifth (22%) of FDC sector respondents to the **CRIS Sector Survey** felt that *safety of glass used by services in family day care* was a ‘very significant’ (4%) or ‘significant’ (18%) problem. A further 39% described the issue as a ‘moderate’ problem.

Qualitative feedback emphasised the importance of consistent national requirements around glass. One respondent noted:

“National regulations should be consistent across all States. Educators moving interstate and operating FDC would then understand the requirements around safety glass.”

– CRIS Sector Survey respondent

Feedback from a national peak for FDC providers acknowledged current inconsistencies around regulatory requirements, and noted support for Options B and E.

“[Peak organization] supports increased safety in family day care settings and would support a consistent national approach to glass safety in family day care. Option B will resolve the discrepancy in standards caused by the amendment that took place in June 2014. This option is also the most preferred option of our members. Option E (Regulatory Authorities provide additional guidance and resources in relation to glass safety requirements for FDC services) was also strongly supported by our members.”

– National peak for FDC providers

Furthermore, it was noted that Options C and D may result in substantial additional costs to existing FDC educators, as well as placing additional workforce pressures on the FDC sector.

“It is important to note that Option C (FDC residences and venues approved on or after a date will be required to comply with 1 m height requirement) and Option D (all new family day care residences and venues to comply with 1 m height requirement from a specified date) would both entail significant additional costs to family day care educators, as well as present a further barrier to workforce entry and for these reasons we do not support them.”

– National peak for FDC providers

Respondents to the CRIS sector survey reiterated concerns about the financial viability of FDC educators if Option D were adopted:

“For FDC as the height for our scheme has recently moved from 0.5 to now 0.75, it would be a significant cost for educators already practicing to move again to a 1 metre height. A financial strain that could impact on whether FDC educators continue operating.”

– CRIS Sector Survey respondent

Implementation requirements of the options

Options B, C and D would require an amendment to regulation 117 of the National Regulations to stipulate the new height requirements for safety glass in FDC residences.

Option D in particular would require governments to agree on a transition period. The length of this period would need to acknowledge both the size of the FDC sector, as well as ensuring a reasonable level of time to enable residences to be informed of updated requirements.

Option E would require the development of detailed guidance to help the sector and providers understand which high requirement currently applies to them.

In addition, the sector will need to be provided guidance explaining the changes to the glass requirements.

Conclusion/recommended option

Considering the objective of the issue in establishing consistent height requirements for safety glass across the FDC sector, in a way that is proportionate to the risk and costs associated with changes required to be implemented by approved providers, **Option B is recommended.**

Option C would introduce additional complexity through requiring varying height requirements across the sector depending on the date of service approval, likely increasing overall administrative and regulatory burden to FDC providers and educators in managing overall compliance across the three different height requirements. **Therefore, Option C is not recommended.**

While Option D may also deliver consistency in regards to the height of safety glass in FDC residences, as providers of all existing services will have to make changes to meet the new requirements, the associated cost with installing safety glass or film across the entire FDC sector nationally may be overly cost prohibitive. Furthermore, considering incidents which have occurred, there is limited evidence to suggest that a 1m height requirement would significantly reduce the level of risk associated with glass compared to 0.75m. **Therefore, Option D is not recommended.**

Finally, developing effective and best practice guidance in relation to safety glass requirements will support the sector in reaching compliance and understanding their responsibilities under the NQF. Furthermore, any changes to height requirements would require additional guidance for the sector to inform them of changes. **Therefore, Option E is recommended.**

Chapter:	6 – Centre-based care – Outside School Hours Care
Issue:	Issue 6.1 – Assessment and rating of OSHC services
Preferred option:	Option B – Review and consider changes to the assessment and rating methodology for services whose main purpose is providing education and care to children over preschool age.

Problem description

OSHC services offer a stimulating and challenging environment for school age children that is designed to provide play and leisure opportunities. Some providers of OSHC services perceive the NQF – notably, some aspects of the NQS - to be more difficult to meet and/or exceed than providers of education and care in the prior to school space. This is because the older age of children attending means their educational and developmental needs differ from younger cohorts, as well as what is needed and expected to ensure their safety. Reasons for seeking OSHC, and families’ expectations on how they will engage with a service, often differ to that of younger children as well.

Children attending OSHC services have significantly varying enrolment and attendance patterns, and often shorter hours of education and care, compared to children attending other centre-based services.

It is noted that, OSHC services are more likely to be rated as ‘Working Towards’ the NQS (18% of services) than long day care or preschool and kindergarten services (13% and 5% of services respectively). OSHC services are also less likely to achieve an ‘Exceeding’ rating (12% of services) when compared to long day care (25%) or preschool and kindergarten services (57%).¹⁰²

Approximately 82% of OSHC services are rated as ‘Meeting’ or ‘Exceeding’ the NQS, suggesting that the current quality standard is both achievable and appropriate for this service type¹⁰³. Initial consultations for the 2019 NQF Review have shown that, while OSHC stakeholders remain committed to the NQF, they also wish to work with governments to modify some aspects of the NQF to better suit the OSHC context. Most OSHC providers and peak bodies support a greater distinction between OSHC and other centre-based services in the National Regulations, particularly in terms of programming documentation requirements.

While assessment and rating is an essential tool for monitoring compliance and driving continuous quality improvement of services, some elements of the NQS may be less applicable to an OSHC setting. There may be opportunities to streamline assessment and rating against the NQS for OSHC services, and/or to adapt the process so it is better targeted to this specific service type.

Objective (ideal outcome of government action)

Ideal outcomes of change under Issue 6.1 include:

- ensuring an appropriate assessment and rating process for OSHC services, including giving adequate consideration to the unique features of this service type and ensures the quality of OSHC services is better reflected, and;
- overall improvement in quality outcomes for OSHC services when assessed against elements of the National Quality Standard (NQS).

Description of each option

There are three options for change under Issue 6.1.

Option A:

No change.

Option B**:

Review and consider changes to the assessment and rating methodology for services whose main purpose is providing education and care to children over preschool age. **Responsibility for the review must be determined and taken into account for implementation.*

Option C:

Development of additional guidance to support the OSHC sector and regulatory authorities with assessment and rating.

*** Please note that Option B has been amended. The original Option B in the CRIS was:*

“Modify assessment and rating methodology for services whose main purpose is providing education and care to children over preschool age.”

Following further consultation and review of the issue by governments, this option has been revised to allow for a broader analysis around the assessment and rating process for OSHC services.

****Note: Option B and Option C are not mutually exclusive.*

Impact (costs and benefits) of Option A – No Change

Benefits

OSHC services and providers

By retaining the status quo, OSHC providers and their services will continue to operate in line with existing regulatory requirements. While sector feedback has pointed to some elements of the assessment and rating process for OSHC services as being not well-aligned with the school age care context, retaining the status quo would signal that the expectations for all aspects of OSHC service delivery should remain the same as for other types of children’s education and care.

Costs

Services and providers

Under the status quo, the assessment and rating process may continue to be not as reflective of the distinct quality characteristics of OSHC services. As a result, some OSHC services may receive quality ratings that do not adequately reflect the quality of these services.

Families and community

Without a more contextualised assessment and rating process relevant to OSHC services, families may have difficulties in comparing quality across services and service types, and to make an informed choice about which service best meets their child’s needs. Families may continue to rely more heavily on availability, especially in metropolitan areas.

Impact (costs and benefits) of Option B

Benefits

Services and providers

This option would involve a future comprehensive review of assessment and rating processes for OSHC services.

Depending on the findings of the review, Option B may help to ensure that the assessment and rating process better aligns with the distinct quality characteristics of OSHC services provisions to school age children. For example, sector feedback has pointed to child-level documentation and physical environment requirements as potential areas for review by governments. Modification of the assessment and rating process after a comprehensive review may decrease administrative burden for providers, while also increasing their capacity to focus on the core educational program and practice needs of children.

Families and community

There is unlikely to be any immediate benefits or costs for families, however in the future, depending on Review outcomes, information about the quality of OSHC services may be increasingly accurate for families, as a service rating would more likely reflect the unique characteristics of an OSHC program. This contextually-driven service rating may support families to make more informed decisions when choosing a service for their child.

Costs

Services and providers

Option B may require further consultation with the OSHC sector regarding potential changes to the assessment and rating process.

Impact (costs and benefits) of Option C

Benefits

Services and providers

The provision of guidance under Option C would support providers of OSHC services in meeting the requirements of the NQS and assessment and rating process. The development of additional guidance would not place greater regulatory burden on providers.

There may be associated benefits for providers and their services being more informed about the assessment and rating process.

As any new guidance would also guide regulatory authorities in considering the distinct characteristics of OSHC services when conducted assessment and rating, OSHC services may receive more accurate quality ratings as a result.

Costs

Services and providers

There may be a minor cost to providers associated with reviewing guidance, including adapting existing practice at the service to reflect requirements of the assessment and rating process.

Consultation feedback

Approximately three-fifths (57%) of CRIS Sector Survey respondents that chose to answer questions about this issue considered assessment and rating of OSHC services a 'very significant' (17%) or 'significant' (40%) issue, with a further 28% deeming it a 'moderate' problem.

Both quantitative and qualitative findings indicate the highest level of support for the Option B as described in the CRIS (Modify assessment and rating methodology for services whose main purpose is to provide education and care to over preschool aged children), followed by Option C, and less support for Option A.

There was a strong sentiment in the qualitative feedback that a tailored approach is necessary that is applicable to the unique context of OSHC. However, many sector peak bodies and large providers emphasised the importance of maintaining the professionalism of the sector, while acknowledging the challenges experienced by OSHC providers in meeting the requirements of the National Quality Standard.

Not all respondents felt that major changes were necessary. Rather, they suggested any modified approach should recognise these challenges, and be more in keeping with the revised approach adopted by New South Wales, Queensland and the Northern Territory in 2017¹⁰⁴ that achieved reduction in paperwork burden that have not been associated with any evidence in a decline in service quality.

Implementation requirements of the options

Option B

This option would require governments to review and evaluate the current assessment and rating process to ensure it is better suited to the OSHC context. Findings from this review would then be incorporated into the assessment and rating process. This may also identify potential amendments to relevant regulations.

Option C

Governments and ACECQA would develop additional guidance to support the assessment and rating of OSHC services, and to communicate this guidance to regulatory authorities and the OSHC sector.

Guidance would also need to be developed for regulatory authorities in relation to the assessment and rating process for OSHC services.

Conclusion/recommended option

Considering the significant level of feedback received from the sector, along with collected data suggesting some misalignment between existing aspects of the NQS and unique characteristics of OSHC services, **Option B is recommended.**

While the original Option B as described in the DRIS stipulated the ‘modification’ of the assessment and rating process, it is recommended that an additional review be undertaken into the scope of misalignment between the nature of OSHC services and assessment and rating for all centre-based services under the NQF.

Considering the complex nature of identifying any policy, practice and/or regulatory misalignment, this additional review will be tasked with identifying refinements that best support quality assessment of OSHC services in a way that is best tailored to their unique context.

As Option B is recommended, **Option C** would not be appropriate to progress prior to this review, considering requirements relating to the assessment and rating of OSHC services would be likely to change.

In connection with this issue, SA, Tasmania, WA and VIC will introduce a jurisdiction-specific application of Regulation 74(1)(b) that exists in NSW, Queensland and the Northern Territory, and progress with program level documentation for children over preschool age. This has been included as a technical amendment (11.8) in this DRIS.

Chapter:	7 – Workforce
Issue:	7.1 - Restrictions on short-term relief for early childhood educators
Preferred option:	<p>Option C – Extend the provision enabling short-term staff replacements by allowing primary teachers to replace certificate III and diploma qualified educators for a period of up to 30 days.</p> <p>Note: In addition, governments have agreed that regulation 135 will be amended to include resignation and practicum as allowable reasons for short term absences.</p>

Problem description

Workforce challenges in children’s education and care have existed for some time, with an increasing prevalence of significant workforce shortage issues. One specific example where this manifests is when providers attempt to recruit other educators to relieve their staff on short-term absences due to illness or leave.

Currently, if an ECT is absent due to short-term illness or leave, they can be replaced by a person with an approved diploma or primary teaching qualification for up to 60 days in a 12-month period, pursuant to regulation 135. This flexibility allows service providers in limited circumstances to draw from a larger pool of suitably qualified educators to meet staff ratio and qualification requirements. However, the same rules do not apply for the short-term replacement of diploma and Certificate III educators, which reduce the number of relief educators available to draw upon in some scenarios. In circumstances where a suitable educator is not able to be sourced, the approved provider may apply for a staffing waiver or temporarily reduce the number of children for whom they educate and care.

Objective (ideal outcome of government action)

The ideal outcome of government action is to provide flexibility for staffing arrangements for short-term absences of diploma and Certificate III level staff while reducing the need to apply for service waivers for staffing.

Description of each option

The proposed options for change are as follows:

Option A:

No change.

Option B:

Extend the requirements for 'short-term' absences to 80 days.

Option C:**

Extend the provision enabling short-term staff replacements by allowing primary teachers to replace certificate III and diploma qualified educators for a period of up to 30 days.

Option D:

Allow Suitably Qualified Persons (SQPs) to replace a third or fourth ECT to address workforce shortages (NSW only).

Please note, Option C has been reworded to better capture the scenarios for which short-term absences may be covered:

****Option C in the CRIS:** Broaden the qualification requirements for short-term staff replacements. For example, by allowing primary teachers and/or Certificate III qualified educators to replace diploma qualified educators on a short-term basis.

Impact (costs and benefits) of Option A

Benefits

Services and providers

There will not be any additional regulatory burdens or costs associated with retaining the status quo.

Costs

Services and providers

Retaining the status quo will continue to limit the flexibility of providers and services to cover short-term absences.

Impact (costs and benefits) of Option B

Benefits

Services and providers

Extending the 'short-term' time period from 60 to 80 days means education for the children is not compromised as diploma-qualified educators have sufficient knowledge and skills in education and care services. This would help address the issue relating to short-term replacements and it would be expected that there would be a decrease in temporary staff waivers.

Community

This option promotes continuity for the children enabling them to have education and care in the interim

Costs

Services and providers

This option may be counter to current workforce initiatives aiming to strengthen status and retention of ECTs. This change does not address the core issue of workforce shortages and with decreased enrolment numbers for educators this issue could potentially continue to increase.

Community

Whilst primary teachers may have the professional knowledge and skills in general education and care, they may not be suitable to provide education and care in the early childhood setting. The quality of care will be impacted if the replacement teacher has less experience working with younger children and of pedagogical approaches specific to early learning such as play based learning.

A move from 60 to 80 days consists of a large portion of the school year, and therefore may limit children's access to early education provided by a qualified ECT.

Impact (costs and benefits) of Option C

Benefits

Services and providers

This option provides more flexibility for service providers, enabling them to better comply with educator to child ratios, which may be particularly beneficial for rural and remote areas.

Families and community

This option may slightly mitigate issues of workforce availability and promote continuity for children, as having an educator replaced with a suitable staff member for a short-term is far more beneficial for the children's education and care over the use of a staff waiver or reduction in the availability of education and care.

Costs

Services and providers

This option could have an unintended outcome of encouraging providers to continually hire people without the appropriate qualifications to cover short-term relief, noting that this may be an unlikely outcome. This change does not address the core issue of workforce shortages and with decreased enrolment numbers for educators this issue could continue to increase.

Families and community

In the case where a primary teacher is used they may not have the appropriate pedagogical knowledge and skills to care for infants and young children.

Impact (costs and benefits) of Option D

Benefits

Services and providers

This option may provide more flexibility for the service providers, enabling them to better comply with educator to child ratios, which may be particularly beneficial for rural and remote areas. It may have a moderate impact in assisting addressing the with the workforce shortages.

Families and community

Having an educator replaced with a suitable staff member is far more beneficial for the children's education and care over the use of a staff waiver or a reduction in the availability of education and care.

Costs

Services and providers

This option encourages national inconsistency for ECT requirements, however NSW already has different ECT ratio requirements in place than other States and Territories. This option could encourage providers to save on costs by using lower-qualified educators for short-term relief.

This change does not address the core issue of workforce shortages and with decreased enrolment numbers for educators this issue could potentially continue to increase.

Consultation feedback

1084 or 64% of CRIS Sector Survey respondents considered restrictions on short-term relief for early childhood educators a 'Very significant' (32%) or 'Significant' (32%) problem, with a further 28% deeming them a 'Moderate' problem.

CRIS Sector Survey respondents ranked the most suitable solution as: **Option C – Broaden qualification requirements for short-term staff replacements.**

Respondents indicated overall support for the NSW-specific solution to allow suitably qualified persons to replace a third or fourth ECT to address workforce shortages, with just over 62% indicating strong, 37% for moderate and 25% for support.

It should be noted however that 14% of respondents indicated strong opposition to the proposed solution.

Implementation requirements of the options

Legislative change will be required if Option C is adopted, to specify the number of days that may be backfilled, and by whom.

Associated guidance will need to be developed and distributed to the sector, including updating The Guide to the NQF.

Conclusion/recommended option

Option A is not recommended as current workforce shortages limit services' ability to backfill roles for short-term absences.

Option B is not recommended as a change to the number of days for an ECT absence will not resolve underlying workforce issues.

A modified version of Option C is recommended as this will increase flexibility for service providers to backfill Certificate III and diploma qualified educators for a period of up to 30 days per FTE educator (equal to 4 weeks of annual leave and 2 weeks of personal leave). This may also result in lower applications for staffing waivers.

Option D is not recommended.

Additional notes or comments *(not included in DRIS)*

Evidence has shown that enrolments in the Diploma of Early Childhood Education and care have decreased 22.39% from 67,307 in 2015 to 52,237 in 2018¹⁰⁵. The impact on the sector can be seen by an increase of 3.9% 2019 to 4.5% of services that held a staffing waiver. With the services in remote and very remote areas having the most difficulty recruiting and retaining qualified staff and the highest portion of staffing waivers.¹⁰⁶

Chapter:	7 – Workforce
Issue:	7.2 – Educators who are ‘actively working towards’ a qualification
Preferred option:	<p>Option A – No change.</p> <p>Option C**– Develop guidance for providers to ensure staff who are ‘actively working towards’ qualifications are making satisfactory progress.</p> <p><i>**Note: Option C would be progressed once data from the 2021 National Workforce Census is available.</i></p>

Problem description

The ‘actively working towards’ provision was introduced to allow flexibility in staffing arrangements, to alleviate some of the effect of workplace shortages on service providers.

While regulation 10 requires educators to make ‘satisfactory’ progress towards completing a relevant course, there is no stipulated time limit in the National Regulations associated with ‘actively working towards’ a qualification. Furthermore, there are also no specific requirements that staff must meet to be considered making ‘satisfactory’ progress through their course.

Objective (ideal outcome of government action)

To ensure that all educators have the adequate knowledge to perform in their role as an early childhood educator, including identifying and reducing the likelihood of a child being put at risk.

Description of each option

The proposed options for change are as follows:

Option A:

No change.

Option B:

Limit the ‘actively working towards’ provision by:

- i) Introducing a minimum proportion of educators with a completed qualification (as opposed to 50 per cent of educators required within ratios to be qualified or ‘actively working towards’ a qualification); or
- ii) Introducing a timeframe in which staff ‘actively working towards’ a qualification must complete their qualification in order to be counted in ratios; or
- iii) Specifying a threshold staff must meet to make ‘satisfactory’ progress through their course in order to be counted in ratios.

Option C:

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

Impact (costs and benefits) of Option A

Benefits

Services and providers

Retaining current provisions, this option would allow providers to hire staff that are ‘actively working towards’ a qualification and continue to fulfil ratio requirements in the National Law. It is assumed that this flexibility would continue to alleviate some of the impacts of qualified workforce shortages, promote entry of educators into the education and care sector, and minimise the administrative burden of applying for staffing waivers.

Cost

Services and providers

The reputation of the service and/or educator may be compromised if educators are found to be not completing their qualifications within a reasonable timeframe.

Families and community

Educators not having the necessary qualifications may have a negative impact on the learning outcomes for children in education and care. Increased risks to child safety may occur if the educator has not received formal training relation to child safety.

Impact (costs and benefits) of Option B

Benefits

Services and providers

This option may increase the rates of completion of educator qualifications which may support the professionalisation of the education and care workforce.

Families and community

This option may increase the quality of education and care being provided to children, as there is expected to be an overall increase in the proportion of educator and care staff with completed qualifications.

Families may also have increased confidence that risks associated with children's safety and wellbeing are addressed when placing their child in education and care, as it is expected that staff will have increased minimum qualification requirements as a result of the regulatory change.

Cost

Services and providers

Providers may also incur increased staffing costs to attract qualified staff, especially for services located in rural and remote areas where recruitment and retention of educators is an ongoing issue. Limiting the 'actively working towards' provision would likely increase the demand for qualified educators, which would exacerbate the problems associated with qualified workforce shortages. Applications for staffing waivers may also increase, resulting in an additional administrative burden for providers.

Families and community

This option may cause an increase in demand for qualified employees and result in an increase of staff waivers affecting staffing ratios. As a result, changes to staff qualifications and increase in administrative burden and may increase overall fees charged at the service to account for these additional regulatory burdens.

Impact (costs and benefits) of Option C

Benefits

Services and providers

This option would provide further assistance and guidance to providers to track and encourage course completion. Guidance could provide clarity to services providers regarding the expected time for course completion, and could suggest processes for tracking staff progression.

Cost

Services and providers

There may be a minor administrative burden associated with incorporating relevant aspects of the updated guidance within service providers' policies and procedures.

The estimated financial cost of implementing Option C is \$3M over ten years.

Consultation feedback

Nearly 48% of CRIS Sector Survey respondents that chose to answer questions about Issue 7.2 considered *educators who are 'actively working towards' a qualification* a 'very significant' (21%) or 'significant' (27%) problem, with a further 35% deeming them a 'moderate' problem.

When asked what was the most suitable solution to the stated problem, survey respondents were relatively evenly split across four possible solutions in the CRIS:

- Option B(ii): Introduce a timeframe in which staff must complete their qualification
- Option C: Develop guidance for providers
- Option B (iii): Specify a threshold staff must meet to make 'satisfactory' progress
- Option B(i): Introducing a minimum proportion of educators with a completed qualification.

Qualitative findings generally mirrored the quantitative findings, in that there was strong support for guidance for providers. Of the three options for change to limit the 'actively working towards' provision, Option B(ii) was most supported, followed by Options B(iii) and B(i).

Implementation requirements of the options

Prior to making regulatory changes, governments are expected to analyse workforce data to identify the scope of the issue and the relevant measures required for reform.

To address Option B, legislative amendments would be required to regulation 126 to stipulate the updated qualification requirements. This legislative amendment would also need to stipulate the definition of 'satisfactory progress' in relation to progress towards completing a qualification.

In progressing Option C, governments would develop guidance for providers to help ensure the actively working towards provisions are being used in line with the expectations of regulatory authorities and the NQF.

Conclusion/recommended option

Option A is recommended as there is currently limited evidence in relation to this issue. Data from the National Workforce Census is expected to support additional review of this issue and future regulatory changes.

Option C is recommended once the workforce data from the National Census is available. Guidance would be provided to providers to help them to ensure effective monitoring that staff who are 'actively working towards' qualifications are making satisfactory progress towards their qualification.

Option B is not recommended as there is currently limited evidence to warrant significant regulatory changes at this time.

Chapter:	7 – Workforce
Issue:	7.3 – Minimum qualification requirements for educators in FDC
Preferred option:	Option B – Remove the ‘actively working towards’ provisions for FDC educators and require these educators to hold an approved Certificate III qualification prior to commencing their role in an FDC service.

Problem description

According to the National Workforce Census, the number of FDC educators without a qualification has reduced substantially, from 75% in 2004 to 4% in 2016¹⁰⁷. This number is consistent with a 2019 survey conducted by FDC Australia, showing that 4% of FDC educators did not hold a completed early childhood education and care qualification¹⁰⁸.

While 4% is a relatively small proportion of the FDC workforce in Australia, there are significant risks associated with unqualified educators caring for young children in FDC residences, as FDC educators may lack adequate knowledge to address potential concerns to a child’s safety, health and wellbeing while in care.

In centre-based care, educators who are ‘actively working towards’ their qualification are supported by fully-qualified staff at the service. In the operating context of FDC, however, educators who are ‘actively working towards’ their qualification may not be supported by qualified colleagues on a day-to-day basis. This may put children’s health and safety at risk.

While all educators are expected to align education and care programs with the approved learning framework, learning outcomes may also be impacted as unqualified FDC educators may lack the necessary knowledge to identify and implement best practice knowledge within the educational program.

Objective (ideal outcome of government action)

To ensure that all FDC educators are appropriately qualified to provide an adequate level of education and care for children, including adequate knowledge to ensure all children in an FDC residence are protected against risks impacting on safety, health and wellbeing.

Description of each option

The proposed options for change are as follows:

Option A:

No change.

Option B:

Remove the ‘actively working towards’ provisions for FDC educators and require these educators to hold an approved Certificate III qualification prior to commencing their role in an FDC service.

Option C:

Require educators in FDC services to have completed at least an approved Certificate III qualification within 24 months of commencement in an FDC educator role. Not applicable to South Australia.

Option D:

Require educators in FDC services who are ‘actively working towards’ their Certificate III qualification to have completed at least 50% of their qualification, including child protection elements, prior to commencing employment. Not applicable to South Australia.

Impact (costs and benefits) of Option A

Benefits

Approved providers and FDC educators

By retaining the status quo, approved providers of FDC services will continue to have flexibility to hire FDC educators that have not yet completed a Certificate III qualification.

This option may also reduce barriers to workforce entry and encourage FDC educators to complete their studies and gain a qualification while working in the sector.

As FDC co-ordinators have a responsibility to provide support and guidance to educators, it could be assumed that FDC co-ordinators are already providing ongoing support and guidance for educators that are working towards their Certificate III qualification.

Families and the community

Maintaining current qualification requirements is likely to support ongoing access to education and care for families in regional and rural areas where workforce shortages are prevalent.

Cost

Approved providers and FDC educators

This option means that FDC educators will be able to operate without completing a qualification, ultimately placing children at risk of harm if an unqualified educator is unaware of risks associated with children’s safety, health and wellbeing.

Families and the community

This option may place children at risk of harm due to an unqualified FDC educators’ potential lack of awareness of risks to a child’s health, safety and wellbeing.

Impact (costs and benefits) of Option B

Benefits

Approved providers and FDC educators

This option would mandate a minimum qualification for FDC educators, which would likely support the quality of education and care being provided at FDC. This option also aligns with current requirements in South Australia where FDC educators must hold their qualification before they commence their role, increasing national consistency under the NQF.

This option would also help to ensure FDC educators are qualified to identify and address risks to a child's safety, health and wellbeing.

Families and the community

This option would provide assurance to parents and families that children attending family day care services are being cared for by qualified education and care staff. Considering the increased qualification requirement, parents may be more confident that risks associated with children's health and wellbeing are adequately addressed at the FDC residence.

Cost

Approved providers and FDC educators

This option may mean that providers encounter difficulty recruiting new, fully qualified educators for FDC services, especially in rural or regional areas where recruitment and retention of educators is an ongoing issue.

This regulatory change may also increase administrative burdens on services due to regular recruiting or applying for a staffing waiver.

Families and the community

It is expected that any additional costs associated with recruiting qualified staff or applying for a staffing waiver would be reflected in increased fees for families. Furthermore, a potential reduction in FDC educators from the sector due to qualification requirements may reduce access to education and care services for families.

Impact (costs and benefits) of Option C

Benefits

Approved providers and FDC educators

Requiring FDC educators to complete their qualification within 24 months of commencing their role would provide approved providers the flexibility to hire FDC educators, while also ensuring FDC educators are maintaining satisfactory progress in completing their qualification.

Families and the community

This option would stipulate that FDC educators must complete their qualification within 24 months, which would likely improve the overall quality of education and care provided to children. Mandating the completion of qualification requirements is also expected to reduce the overall risk of harm to children due to increased awareness of child safety measures.

Cost

Approved providers and FDC educators

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

Families and the community

This option may have an impact on service availability if FDC educators do not meet the 24 month timeline requirement for obtaining their qualification.

Impact (costs and benefits) of Option D

Benefits

Approved providers and FDC educators

This option would result in increased minimum qualification requirements for FDC educators providing education and care for children.

However, considering the relatively small proportion of FDC educators nationally who have not completed a qualification, increasing the 'actively working towards' requirement to 50% of the course is unlikely to pose a burden for the majority of approved providers and FDC educators.

Families and the community

This option would require a higher level of educator qualification, as well as the completion of child protection elements. This is expected to reduce the risk of harm to children in FDC services.

Cost

Approved providers and FDC educators

Unless legislated in conjunction with Option C, this option may not ensure FDC educators complete their qualification, as they would be only required to have completed 50% upon employment.

There may also be some administrative burden for approved providers and FDC educators to demonstrate that educators have completed at least half of their qualification before commencing their role.

Families and the community

This requirement would likely pose a barrier to employment for some prospective FDC educators and may have a larger impact on availability of education and care services in rural and remote areas. Reducing provider flexibility may reduce access to quality education and care by limiting the number of places they are able to offer.

Any costs associated with this option may be reflected in higher fees, which would have impacts on the affordability and access to FDC services for families.

Consultation feedback

Half (50%) of all CRIS Sector Survey respondents that chose to answer questions about Issue 7.3 considered *minimum qualification requirements for educators in family day care* a ‘very significant’ (19%) or ‘significant’ (31%) problem, with a further 32% deeming it a ‘moderate’ problem.

In comparison, just under one-quarter (24%) of FDC respondents felt that *minimum qualification requirements for educators in family day care* was a ‘very significant’ (5%) or ‘significant’ (19%) problem.

CRIS Sector Survey respondents were asked to rank the most suitable solution to the problem. Of the available options, the most suitable solution was deemed to be *Option B: Remove the ‘actively working towards’ provisions for FDC educators*.

In the CRIS Family and Carers Survey, more than two-thirds (70%) of respondents indicated that family day educators should have a *completed qualification*, with a further 12% indicating that educators should have *completed at least of 50% of their qualification*.

More than four-fifths (82%) of respondents stated that they would be ‘not at all confident’ (64%) or ‘slightly confident’ (18%) to place their child in the care of a family day educator who does not hold an education and care qualification.

Implementation requirements of the options

To mandate minimum qualification requirements for FDC educators, amendments to the National Regulations would be required. Furthermore, governments would need to confirm a transition period for educators currently working in FDC services.

If legislative changes were to be progressed, communication and guidance would need to be developed and sent to FDC educators and service providers around the changes to qualification needed to become/continue to be a FDC educator.

Any legislative changes in relation to qualification requirements would require a transition period to allow existing FDC educators to complete a minimum qualification.

Conclusion/recommended option

Option B is recommended as it is expected to address the issue of FDC educators not completing their qualifications before commencing education and care service provisions. This legislative change will ensure that all persons have an adequate qualification prior to commencing employment as an FDC educator.

Option A is not recommended as it has been identified that change is needed.

Option C is not recommended as it would not adequately promote the timely completion of a minimum qualification before providing education and care to children. This option would mean that a proportion of FDC educators may still continue to provide education and care to children without completing a qualification.

Option D is not recommended as it would not adequately promote the timely completion of a minimum qualification before providing education and care to children. This option would mean that a proportion of FDC educators may still continue to provide education and care to children without completing a qualification.

Chapter:	8 – Understanding the quality rating by families
Issue:	8.1 – The quality ratings system
Preferred option:	<p>Options A –No change.</p> <p>Option B – Review the quality rating terminology.</p> <p>Option D – Provide further guidance and advice to the community about the purpose of quality ratings.</p>

Problem description

A key objective of the National Law is to improve public access to information about the quality of education and care services. However, despite efforts to raise public awareness, community understanding of the quality ratings system remains lower than ideal.

Families sometimes find the current National Quality Standard (NQS) difficult to engage with and struggle to interpret quality ratings labels. For example, families may mistakenly assume that services rated as ‘Working Towards’ the NQS fall below the minimum government standards required for a service to operate.

These problems suggest that the quality ratings labels may not support families’ understanding of service quality. The 2019 NQF Review presents an opportunity to refine the use of the quality ratings labels to better support families’ understanding of the value of quality in education and care settings, and to enable families to make informed decisions when seeking education and care for their children (where choice is available).

Objective (ideal outcome of government action)

Government action seeks to:

- Improve families’ understanding of service quality and the quality ratings system
- Support families in making informed decisions when choosing a service – where choice is available
- Enhance children’s access to quality early childhood education and care.

Description of each option

There are four options for change under Issue 8.1.

Option A:

No change.

Option B:

Review the quality rating terminology.

Option C:

Introduce a national visual representation for communicating and promoting the quality ratings.

***Note: Option C in Issue 8.1 of the CRIS has been revised to support consistency of the quality ratings label system across jurisdictions. The revised Option C aims to introduce a nationally consistent visual representation of service quality to communicate and promote the quality ratings. The intended outcome of this change is enhanced community engagement with the quality ratings.*

The original Option C (in the CRIS) is as below:

“Introduce a visual representation for communicating and promoting the quality ratings.”

Option D:

Provide further guidance and advice to the community about the purpose of quality ratings.

***Note: The proposed options are not mutually exclusive.*

Impact (costs and benefits) of Option A

Benefits

Providers and Services

Retaining the status quo would result in no increase in cost or administrative burden for providers and their services.

Costs

Families and community

Retaining the status quo may continue to confuse the public regarding the use and meaning of quality ratings labels. This option will not significantly improve public understanding of the quality ratings system without other government communications campaigns in place.

Impact (costs and benefits) of Option B

Benefits

Services and providers

This option may support providers and services to better promote the importance of quality in education and care settings, and also provide an opportunity for providers and services to promote their services.

Families and community

This option may increase families' understanding of the quality ratings system. It may also enable families to make informed decisions when choosing a service. There are likely to be some flow on effects for service quality across the sector, which children are likely to benefit from.

Costs

Services and providers

This option would result in some increased financial and administrative burden for providers and their services. To implement new or modified ratings labels, providers and their services would need to update their policies and procedures, distribute promotional material, and make all educators aware of the changes. The overall cost of this change depends on the level of modification to existing labels.

If new terminology is not effectively communicated or easily understood by families, the existing problems may continue.

****Please note:** Further research is required for this option to determine the most effective terminology. Research on how best to communicate varying levels of quality to families, taking into account different education levels and cultural understandings, is also required.

Impact (costs and benefits) of Option C

Benefits

Families and community

This option would support recognition of the quality rating labels by families and assist their understanding of overall quality. Improved awareness may result in greater community engagement with the rating system and better understanding of the importance of quality.

Costs

Services and providers

Option C may involve minor implementation costs for providers and their services. Providers would be required to incorporate the new or modified visual graphic onto any branding or marketing materials already used.

****Please note:** Further research is required to determine effective visual graphics. Research on how best to communicate varying levels of quality to families, taking into account different education levels and cultural understandings, is also required.

Impact (costs and benefits) of Option D

Benefits

Families and community

Option D will likely enhance the community's understanding of the importance of quality in education and care settings. This option may support families to make more confident and informed decisions when choosing a service. Children will be more likely to receive quality education and care, and all associated benefits, as a result.

Costs

Service and providers

The estimated cost of implementing Option D is \$452,000 over ten years. This is a result of all services requiring 30 minutes of labour at the diploma level to become aware of enhanced guidelines in the first year of implementation, and 7.5 minutes for all subsequent years.

Families and Community

Option D is unlikely to impose costs on families and the community.

Consultation feedback

Nearly half (45%) of CRIS Sector Survey respondents who chose to answer questions about Issue 8.1 considered the quality ratings system naming conventions a 'Very significant' (21%) or 'Significant' (24%) problem, with just over one-third (32%) deeming it a 'Moderate' problem. The total number of respondents to this question was 1121.

Quantitative and qualitative findings showed strong support for Option D (Provide further guidance and advice to the community), followed by support for Option B, more moderate support for Option C, and low levels of support for Option A.

Qualitative feedback widely acknowledged that parents' knowledge and understanding of the quality rating system is limited and only one factor in parental choice. Many suggested a national communication plan was needed to raise public awareness of the NQF and the benefits to children's outcomes. Many respondents also raised the issue of the frequency of assessment and rating and the currency of the quality rating at any point in time, with many suggesting this makes it less meaningful as a decision-making tool for families.

It is noted that ACECQA's third wave of our families' research, which explores public awareness of service quality under the NQF, shows that the level of awareness of quality ratings has increased in recent years, from 40% in 2017, to 46% in 2019, to 55% in 2021.

Major themes in relation to the terminology for the 'Working Towards NQS' quality rating in particular are that it is difficult for families to understand, is in some ways misleading, and can invoke negative connotations about a service, when the true meaning of the rating is that the service provides a safe education and care program. Suggestions to overcome these misconceptions include simplifying the terminology, emphasising the compliant aspects of the rating and/or provide further differentiation within the 'Working Towards NQS' rating. One national peak organisation noted:

“Rating labels, such as working towards, are difficult for families and carers to understand. A clearer articulation of whether services do or do not meet quality standards would support parents to better understand the ratings system.”

While respondents also expressed support for visual representations of quality ratings, there were mixed responses to the NSW Quality Ratings Initiative, with those not in support suggesting it would devalue the profession, be potentially confused with other star rating systems, over-simplify the rating and be easily misinterpreted. Those in support of the NSW Quality Ratings Initiative suggested that it complemented the existing system while supporting families’ improved understanding and awareness of quality.

Implementation requirements of the options

Option A entails no change and require no implementation.

Option B requires further work among governments to determine appropriate modifications to the quality rating terminology. Detailed research may be required to determine which modifications will be most useful to families and the community. Governments must ensure the modified terminology is accessible to a wide range of cohorts, including culturally and linguistically diverse cohorts.

Option D will require governments to develop guidance and advice that is of use to families and the community. Guidance will need to be accessible to a wide range of cohorts, including culturally and linguistically diverse cohorts. If governments opt for nationally consistent guidance, detailed work across jurisdictions will be required to develop and agree on appropriate guidance.

Conclusion/recommended option

Further research and evaluation are required to better understand why family and community engagement with the quality ratings systems remains low. Currently, it is assumed that the quality ratings labels are overly complex, which makes it difficult to families to determine service quality when seeking care. For this reason, **no change is recommended** (option A) in response to Issue 8.1.

Modifying the existing quality ratings terminology may help families and the community to better understand the quality ratings system. This may assist families in choosing quality services when seeking care for their children. For these reasons, **Option B is recommended. However, Option B should be progressed after further research and evaluation are undertaken.** Further research and evaluation are required to determine effective modifications to the existing quality ratings terminology.

Further guidance and advice about the quality ratings system may help families understand the importance of quality when seeking care for their children. It may also clarify the differences between the quality ratings and other standards required under the National Law, which evidence has shown to be a source of confusion for some families. For these reasons, **Option D is recommended. However, Option D should be progressed after further research and evaluation are undertaken by governments.** Further research and evaluation are required to help determine what guidance and advice will be most useful to the community.

Chapter:	9 – Change in fees within the NQF system
Issue:	9.1 – Changes in fees to regulatory authorities
Preferred option:	<p>Option B – Create a fourth category of application/annual fee for centre-based services with 101 or more places and FDC services with 61 or more educators.</p> <p>Option C– Increase fees for the following:</p> <ol style="list-style-type: none"> 1. Annual fees 2. Application for provider approval 3. Application for service approval 4. Notification of intended transfer of service approval <p>Option D– Introduce a new fee for applications for amendment to service approval (which is currently free).</p>

Problem description

Issue 9.1 in the CRIS noted that fees charged by regulatory authorities is quite small in comparison to comparable regulatory schemes. Fees within the NQF system have not changed since its introduction in 2012, except through the annual consumer price index (CPI). At the same time, the cost of regulating has increased as the sector has continued to grow over the last nine years. The number of approved services under the NQF has increased from 14,435 as of 30 June 2014 to 16,516 as of 30 September 2021¹⁰⁹. Although fee revenue has increased due to the growth of approved services, cost recovery remains disproportionate.

In line with government guidelines for cost recovery, fees should seek to recover some or all of the efficient costs associated with the regulatory effort of regulatory authorities which are providing a service directly to organisations.

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

According to the Australian Department of Finance, the Australian Government Cost Recovery Guidelines (RMG 304) promotes “consistent, transparent and accountable charging for government activities and supports the proper use of public resources”¹¹⁰. Under these guidelines, effective cost recovery can “improve the efficiency, productivity and responsiveness of government activities and accountability for those activities”¹¹¹.

Given the limited real increase in regulatory fees compared to the substantially expanded size and nature of regulatory activities provided by regulatory authorities to the sector, increasing regulatory fees is needed to ensure that activities are more accurately charged for in line with principles of efficient cost recovery.

In a number of jurisdictions, fee revenue is not received directly by the regulatory authority and instead is incorporated into central revenue. This implies that most regulatory authorities would not have direct line-of-sight regarding revenue accrued through fee activities, and therefore would be unable to attribute cost recovery to fee increases, however this would still be counted as cost recovery for whole of government purposes. Likewise, increased fees for the sector will not necessarily correlate to an increase of funding to regulatory authorities, depending on State and Territory Treasury mandates.

The current proportion of regulatory costs that are returned to governments in the way of fees levied on approved providers and the services they operate, or are seeking to operate, under the NQF is very small (7% nationally)¹¹². Modelling within the Consultation Regulation Impact Statement suggested that 10–15% would be an appropriate figure for fee collection nationally¹¹³.

It is also important to note that regulatory authorities, under section 227(2)(c), have the discretionary power to waive, reduce, defer and refund fees that can be used to lessen this impact, if appropriate.

Objective (ideal outcome of government action)

Any increases in fees charged by regulatory authorities seeks to increase cost recovery within the NQF system according to Australian Government principles for cost recovery.

Description of each option

There are six proposed options for Issue 9.1. These are:

Option A:

No change.

This would result in the status quo for fees remaining the same into the future.

Option B:

Create a fourth category of application/annual fee for centre-based services with 101 or more places and FDC services with 61 or more educators.

This would establish a fourth category of application and annual fees, increasing fees for larger services.

Option C:

Increase fees for the following:

1. Annual fees
2. Application for provider approval
3. Application for service approval
4. Notification of intended transfer of service approval

This option would increase the level of fees charged for the above fees.

Option D:

Introduce a new fee for applications for amendment to service approval (which is currently free).

This option would introduce a fee payable upon application to amend an existing service approval.

Option E:

Introduce an annual fee for approved providers that is scaled by the number of services operated by the provider.

This option would introduce an annual provider fee which is charged based on the number of services operated by the provider.

Option F:

Change legislation to allow States and Territories to set their own fees (except for provider application fees).

This option would substantially change the way in which fees are currently set. While existing regulations prescribe the level of fees chargeable by regulatory authorities, this option would allow State and Territory regulatory authorities to set their own fees for regulatory activities.

This option would not affect provider application fees, which would remain nationally consistent.

Impact (costs and benefits) of Option A

Benefits

Services and providers

This option would bear no additional cost to education and care providers above the current regulatory fees prescribed under the National Regulations

Costs

Governments

Government will continue to bear a significant portion of the costs of providing a range of services to the early childhood sector. Existing services that are currently free of charge would continue with no cost recovery or contribution by the sector.

Impact (costs and benefits) of Option B

Benefits

Governments

It is expected that these fee increase would increase cost recovery within the NQF system nationally.

Costs

Larger centre-based providers and FDC services

Services with more than 101 places would pay higher application and annual fees, and these increases may then pass on additional costs on to families through fee increases. However, providers of larger services may be more capable of absorbing additional costs with these affecting their financial viability.

The estimated cost of implementing Option B is \$1M over ten years. This is expected to increase service and providers fees by an additional \$100,000 nationally per year, on top of existing regulatory fees charged to the sector.

Families and community

Consultation feedback from the sector noted that any additional regulatory fee increases will likely be passed onto families through fee increases.

However, economic analysis for the Consultation Regulation Impact Statement, published in February 2021, indicated that the adoption of Options B to E would amount to “approximately \$4.40 per child per year, or less than 10 cents per child per week, on average”¹⁴. This indicates that the increased cost per child is substantially small in relation to the overall costs associated with providing education and care.

Impact (costs and benefits) of Option C

Benefits

Governments

It is expected that these fee increase would increase cost recovery within the NQF system nationally.

Costs

Services and providers

These fee increases across these four categories would increase overall regulatory costs to extra-large approved providers when applying for provider and service approval, and also on an annual basis. Additional costs would also be incurred when a service is transferred from one provider to another. These costs would likely be transferred onto families through fee increases.

The estimated cost of implementing Option C is \$9M over ten years.

Families and community

Consultation feedback from the sector has noted that any additional regulatory fee increases will likely be passed onto families through fee increases. Although, as noted above under Option B, this is likely to equate to less than 10 cents per child per day.

The implementation of Option C is expected to increase service and provider fees by an additional \$900,000 nationally per year on top of the existing regulatory fees charged to the sector.

Impact (costs and benefits) of Option D

Benefits

Governments

It is expected that these fee increase would increase cost recovery within the NQF system nationally.

Costs

Services and providers

The current proposed option would apply the same fee amount across all service sizes. This may result in greater relative financial burden on smaller services compared to large-scale providers.

This is a discretionary fee and would only affect services that apply for amendment of service approval, which calculates to approximately 14.02% of services on an annual basis¹¹⁵.

Furthermore, the magnitude of the fee (\$111) is relatively low compared to other fees charged on an annual basis, such as annual service and application fees.

The estimated cost of implementing Option D is \$1M over ten years.

Families and community

Consultation feedback from the sector has noted that any additional regulatory fee increases will likely be passed onto families through fee increases. Although, as noted above under Option B, this is likely to equate to less than 10 cents per child per day.

The implementation of Option D is expected to impose \$100,000 per year nationally. This is calculated based on the current amount of applications per year (2,300) and a proposed fee of \$111.

Impact (costs and benefits) of Option E

Benefits

Governments

It is expected that these fee increase would increase cost recovery within the NQF system nationally.

Costs

Services and providers

This would result in additional costs to providers, and similar to Option B, is expected to have a greater impact on larger providers.

The estimated cost of implementing Option E is \$18M over ten years.

Families and community

Consultation feedback from the sector has noted that any additional regulatory fee increases will likely be passed on to families through fee increases. Although, as noted above under Option B, this is likely to equate to less than 10 cents per child per day.

Preliminary analysis of Option E undertaken in the CRIS noted that the introduction of an annual provider fee would impose \$1.8 million on an annual basis across the sector.

Impact (costs and benefits) of Option F

Benefits

Governments

The ability for governments to unilaterally set regulatory fees charged to education and care providers and services would allow State and Territory governments to increase or reduce current regulatory fees as deemed appropriate. This would allow jurisdictions to increase their revenue from regulatory activities, or reduce their fees as required to address policy measures such as sector viability.

Costs

Services and providers

This option may result in education and care providers facing increased regulatory costs, dependent on jurisdictions.

More broadly, there may be adverse outcomes associated with adopting this option. If regulatory authorities were able to set the level of fees charged in their jurisdiction, providers may face differing costs across eight different jurisdictions. This may incentivise national approved providers to direct resources towards opening services in jurisdictions with lower regulatory costs.

The estimated cost of implementing Option F is \$37M over ten years.

Families and community

Consultation feedback from the sector has noted that any additional regulatory fee increases will likely be passed on to families through fee increases. Although, as noted above under Option B, this is likely to equate to less than 10 cents per child per day.

Option F proposes changes to the National Regulations to allow regulatory authorities to set their own fees. Option F imposes \$3.7 million on an annual basis across the sector, which represents the highest cost impost of all available options. This is driven by Option F's introduction of four separate fee types. This amount also assumes an average increase in cost of \$4.40 per child.

Consultation feedback

Feedback from the national sector survey and written submissions was largely unsupportive of any increased regulatory fees, apart from the current indexation measures in line with CPI.

Nearly half (46.3%) of sector respondents considered that Issue 9.1 was either ‘Not a problem’ (26.8%) or a ‘Minor problem’ (19.5%). Furthermore, only 22.8% of sector respondents felt that the issue was a ‘significant’ (14.8%) or ‘very significant problem’ (8%).

Almost two-thirds (64.9%) of sector respondents indicated that there would be a ‘Substantial negative impact’ (17.1%) or ‘Negative impact’ (47.8%) if all proposed fee increases for regulatory authority functions were to be adopted (Options B-E). Only 8.1% of sector respondents believed that implementing the proposed fee increases would have a ‘positive’ (4.3%) or ‘substantially positive’ impact (3.8%).

Qualitative findings from the sector survey and written submissions indicated that increased fees would impact on provider viability, in particular for providers operating services in rural, remote and disadvantaged areas. It was also expressed that providers of smaller and not-for-profit services may be adversely affected compared to providers of larger, for-profit services.

Many services noted that the current economic climate (due to the ongoing impact of COVID-19) meant that the decision to increase regulatory fees may be inappropriate. Services also reiterated that fees would likely be passed on to families.

The sector also noted that increased transparency was required to justify fee increases, including the role of regulatory authorities in supporting the sector to meet the requirements of the NQF.

Implementation requirements of the options

Any changes made to the level of fees charged by regulatory authorities (side from indexation in line with CPI) would require amendments to Schedule 2 (Prescribed Fees) of the National Regulations.

When considering any additional fee increases, importance should be placed on ensuring that services and families, are not faced with unreasonable additional costs that would impact on services’ viability and families’ access to affordable education and care. It is recommended that fee increases be phased in over a three-year period, with a larger proportion of the fee increase occurring in Year 3. This approach will give providers time to prepare for the increases. It would also give regulatory authorities time to communicate the rationale for the change.

Any changes to the fees charged by regulatory authorities would require communications to the sector outlining the rationale of increased fees.

Conclusion/recommended option

While governments do not intend to achieve full cost recovery for regulatory activities within the context of the NQF system, an increase in the fees charged to education and care providers is expected to go some way to ensuring that the sector contributes a greater amount nationally to the costs of regulation.

It is proposed that fee increases be gradually introduced over a number of years to reduce the overall cost impact on education and care providers and services. Furthermore, staging the rate of increase as a proportion of current fees will take into account the needs of the sector to maintain financial viability, and in conjunction, the needs of families and children to easily access education and care programs.

Sector feedback suggested that any fee increases may impact the overall viability of services, and therefore any decision should be considered in the context of the overall operating costs of education and care providers and their services.

It is recommended that Options B, C, and D be adopted, resulting in a gradual increase in the current fee schedule over a period of three years.

Option B is recommended. Only providers that have centre-based services with 101 or more places and FDC services with 61 or more educators would be affected by this fee change, and it would have no impact on providers of smaller and not-for-profit services.

Fee increases under Option C are recommended, however this option should be introduced over a period of three years. This approach will allow time for regulatory authorities/governments and ACECQA to communicate fee changes to the sector.

Following consultation with the sector, **it is recommended that fee increases are limited to a 25% overall increase.**

Option D is recommended considering the limited number of providers with services affected by the fee introduction. As the fee relates to an application for amendment of service approval, this fee is not a recurring fee and would only impact on providers making a specific application.

Chapter:	9 – Changes in fees within the NQF system
Issue:	9.2 – Changes in application fees for ACECQA functions
Preferred options:	<p>Option B – Increase application fee for a review by the Ratings Review Panel of rating level (section 145(2)(c)).</p> <p>Option D– Increase application fee for assessment of a course to be included on the list of approved qualifications (regulation 138).</p>

Problem description

ACECQA performs a range of statutory functions under the National Quality Framework that supports the quality and consistency of education and care across Australia. The National Law and Regulations prescribe the payment of fees for the majority of regulatory services that ACECQA provides to approved providers, educators seeking to be approved under the NQF, and tertiary education providers seeking to have their programs / courses approved under the NQF.

The functions include:

- administering Ratings Review Panels under section 144(2) of the National Law;
- determining individual qualification equivalency under regulation 139 of the National Regulations;
- assessing a course of study to be included as an approved qualification under regulation 138; and
- assessing and awarding the Excellent rating to services under section 152 (no application fee applies).

Similar to the fees charged by State and Territory regulatory authorities for their regulatory services, the application fees payable to ACECQA for administering these functions are low compared to the costs associated with their administration.

Aside from CPI indexation these application fees have not increased since the introduction of the National Quality Framework in 2012.

Similar to State and Territory regulatory authority proposals for modest fee increases in 9.1, it is not intended to move to a full cost recovery model for all application fees charged by ACECQA. Under general government guidelines, however, application fees should seek to recover costs associated with an authority providing an efficient, effective and responsive service directly to the organisation or individual making the application.

The options below aim to increase cost recovery for ACECQA in carrying out its function in a similar manner as the proposed increases for regulatory authority fees. It is noted that ACECQA has the same discretionary power as regulatory authorities under section 227(2)(c) of the National Law to waive, reduce, defer and refund fees that can be used to lessen this impact, if appropriate.

Objective (ideal outcome of government action)

Any increases in application fees would seek to increase the recovery of costs associated with ACECQA carrying out a function, especially when the organization making the application for the function is likely to derive a future benefit from a successful application.

Description of each option

Option A:

No change.

Option B:

Increase application fee for a review by the Ratings Review Panel of rating level (section 145(2)(c)).

Option C:

Increase application fee for determination of equivalent qualification (regulation 139).

Option D:

Increase application fee for assessment of a course to be included on the list of approved qualifications (regulation 138).

Option E:

Introduce a fee for an application for the highest rating (Excellent rating).

Impact (costs and benefits) of Option A

Benefits

Services and providers

The individuals and organisations who pay application fees for these regulatory services would not have to bear any increase in application fees.

Costs

Governments

Fees associated with ACECQA's regulatory functions of administering Ratings Review Panels, determining qualification equivalency, approving qualifications under the National Law and assessing and awarding the Excellent rating will continue to account for only a small proportion of costs (what is this small proportion e.g. 10–15%) associated with administering these functions.

Impact (costs and benefits) of Option B

Benefits

Governments

The proposed fee increases would increase partial levels of cost recovery to ACECQA and better reflect the resources required to administer this function.

Costs

Services and providers

This option would involve a modest increase in application fees for approved providers of education and care services who choose to seek a Review of Ratings under section 144(2). This fee is for a discretionary application.

The implementation of Option B would be expected to result in an increased total cost to the sector of approximately \$22,000 over a ten-year period.

Impact (costs and benefits) of Option C

Benefits

Governments

The proposed fee increases would increase partial levels of cost recovery to ACECQA and better reflect the resources required to administer this function. It is noted that a function assigned to ACECQA in November 2019 – migration skills assessment – involves a comparable level of regulatory effort to undertake that assessment. Based on cost recovery, the current fee for these applications is approximately ten times the fee for individual qualification equivalence assessments under the NQF.

Costs

Services and providers

This option would involve a modest increase the application fee for an educator seeking to have their qualification assessed for equivalency under regulation 139 of the National Regulations. This could act as a barrier for some educators with a qualification that is equivalent to an approved qualification from being able to work as a qualified educator under the NQF.

The implementation of Option C would be expected to result in a total increased cost to the sector of \$170,000 over a ten-year period.

Impact (costs and benefits) of Option D

Benefits

Governments

The proposed fee increases would increase partial levels of cost recovery to ACECQA and better reflect the resources required to administer this function. It is noted that the Tertiary Education Quality and Standards Agency (TEQSA), which has a legislated function to assess courses of study by registered higher education providers, has a legislated fee structure that has been developed in accordance with the [Australian Government Cost Recovery Guidelines](#).¹¹⁶ The combined fee levied by TEQSA for preliminary and substantive assessment of a course of study for accreditation is approximately four times the fee currently set under the National Regulations for a higher education institute seeking to have its program/course of study recognised as an approved qualification by ACECQA.

Costs

Services and providers

This option would involve a modest increase in application fees for tertiary education providers seeking to have their programs / courses approved by ACECQA under the NQF.

The implementation of Option D would be expected to result in an increased cost to the sector of \$97,000 over a ten-year period.

Impact (costs and benefits) of Option E

Benefits

Governments

The re-introduction of a fee for the Excellent rating would increase partial levels of cost recovery to ACECQA and better reflect the resources required to administer this function.

Costs

Services and providers

This option would involve a new application fee for approved providers of eligible education and care services seeking assessment for the Excellent rating under section 152. This may act as a small disincentive for approved providers who choose to seek this rating from ACECQA. This fee is for a discretionary application, so any increase would only apply to approved providers who choose to seek the rating, and who subsequently enjoy the economic value it delivers if they are successful in gaining the Excellent rating.

The implementation of Option E would be expected to result in an increased cost to applicants / revenue to ACECQA of \$62,000 over a ten-year period.

Consultation feedback

Consultation findings indicated that respondents did not consider changes in application fees for ACECQA functions to be a significant issue. 43% of respondents viewed it as either not a problem or a minor problem, with the remaining 57% split between the 32% who deemed it a moderate problem, and the 25% who deemed it as either a significant or very significant problem. However, almost two thirds indicated their view that there would be a substantial negative impact (19%) or negative impact (46%) if all proposed fee increases for ACECQA functions were to be adopted.

While the majority of written submissions received supported no change in the application fees (other than in line with CPI) for reasons such as the transfer of fee increases from providers to families, and impacting provider/service viability, as well as hesitancy to add to economic burden in the current climate of the COVID-19 pandemic, respondents recognised that fee increases, if introduced, should be differentiated based on service and provider characteristics such as service and provider type.

There was notable opposition to the reintroduction of an application fee for the Excellent rating, with a view expressed about its potential to act as a financial disincentive to apply, and for the inequity in requiring a fee for a service rating when all other ratings are given without charge. This financial disincentive argument also was seen to be relevant to increasing the fee for applications for ratings review, through acting as a potential barrier to services receiving an accurate rating decision.

Respondents also considered that increases in fees for qualification and course assessment may reduce the opportunities for new educators to enter the sector.

Implementation requirements of the options

Any changes made to the level of fees charged by ACECQA (aside from indexation in line with CPI) would require amendments to Schedule 2 (Prescribed Fees) of the National Regulations and national communications to advise of the changes.

Conclusion/recommended option

Fees within the NQF system – including those charged by ACECQA – have not changed since their introduction in 2012, except for increases in line with the annual consumer price index. The prescribed fees for ACECQA do not reflect the level of resourcing required to effectively assess applications for its relevant functions, and are lower than for regulatory agencies with similar roles in comparable sectors. If implemented, fee increases could be phased in over a number of years to reduce the overall cost impact on the organisations that would bear these costs.

It is recommended that Options B and D be adopted, resulting in a gradual increase in the current fee schedule of 30% over a period of three years (in addition to CPI increases).

Option B is recommended as it is considered a modest increase to approved providers for a discretionary application that better reflects the resources involved in administering this function.

Option D is recommended as it is considered a modest increase for applications by tertiary providers that better reflects the resources involved in administering this function.

Option C is not recommended as it may act as a disincentive for educators seeking to have their qualification assessed for equivalency under regulation 139 of the National Regulations. Governments are concerned about any potential barriers to ensuring a suitably qualified workforce under the NQF, in particular noting current and predicted workforce challenges.

Option E is not recommended as it may act as a disincentive for approved providers who choose to seek the Excellent rating from ACECQA.

Chapter:	10 – Oversight and governance of services and providers
Issue:	10.1 – Assessing suitability of individuals to work directly or indirectly with children
Preferred option:	<p>Option B – Clarify the definition of ‘person with management or control’ (PMC) of a service in the National Law to align with the definition of PMC of an approved provider body in the Commonwealth Family Assistance Law to capture persons who have authority or responsibility for, or significant influence over, planning, directing or controlling the activities of the service (whether or not they are employed by the approved provider of the service).</p> <p>Option C– Specify in the National Law that the regulatory authority can administer questions to an applicant in any format, including an assessment of their knowledge of the NQF, in addition to the already existing powers to ask the person to provide further information and undertake inquiries in relation to the person.</p> <p>Option E– Include an explicit obligation for FDC educators to notify the approved provider of circumstances arising that pose a risk to the safety, health or wellbeing of children of the service and that approved providers use this information in a risk assessment.</p>

Problem description

There are three problems within this chapter.

Firstly, State and Territory governments and the Australian Government – under the National Law and Family Assistance Law (FAL) respectively – have a shared interest in ensuring that the individuals in certain, influential roles in managing the provision of children’s education and care are suitable to do so.

The current National Law definition of person with management or control (PMC) differs from the definition of PMC in the FAL, in particular to the extent that it is based on specific, defined roles within the corporate structure of the approved provider entity. It refers to an officer of a body corporate (within the meaning of the Corporations Act 2001), a partner in a partnership, a member of the executive committee of an eligible association and, in any other case, a person who has the responsibility, alone or with others, for managing the delivery of the service. This definition does not clearly capture other persons in influential management roles who are responsible for directing, or who have significant influence over, the delivery of a service (who are not ‘officers’ of the body corporate and not formally nominated or appointed as PMCs). For example, it currently does not include people who work for third party management companies or who act as ‘shadow directors’ but have a large amount on influence over the control of service/s

Further, this difference can create confusion for prospective and current providers around who is considered a PMC, and the requirements and obligations of PMCs, under the two legislative schemes, while placing an additional administrative burden on providers in meeting two sets of regulatory requirements, where overlapping regulatory objectives exist.

Secondly, the National Law makes no reference to the methods that regulatory authorities may use to assess fitness and propriety, including the capacity to test a person's knowledge of the NQF to ensure their suitability (nor does it explicitly specify that knowledge is a factor pertaining to fitness and propriety). As such, there are differing approaches to assessing fitness and propriety taken by regulatory authorities nationally. While regulatory authorities administer questions and otherwise test applicants to assess an individual's suitability to be fit and proper to be involved in the provision of an education and care service, it would be preferable to set clearer provider applicant expectations by clarifying the legislative basis for certain types of assessment.

Thirdly, while FDC educators are required to satisfy fitness and propriety requirements, the current requirements regarding ensuring residents are fit and proper do not expressly apply to young residents under 18 that are not required to hold a working with children check (WWCC). This issue aims to address circumstances where the young person resident is no longer suitable to be around children. Furthermore, there is no explicit requirement for FDC educators to notify the approved provider of any matters that may affect the suitability of residents in their home to be in the presence of children.

Objective (ideal outcome of government action)

There is an expectation in the broader community that individuals who work with children, either directly or indirectly, will be assessed in terms of their suitability. This system is designed to protect children by identifying potential risks to their health, safety, and wellbeing, and to screen out individuals who pose such a risk. The ideal outcome of government action is to ensure that regulatory authorities assess the right people for Person with management or control – i.e. those who have a significant influence in the provision of an education and care service (Option B). Likewise for options C to E the ideal outcome is to ensure that children's safety is maintained through robust assessment and notification processes.

Description of each option

The original options consulted within the CRIS were as follows:

Option A:

No change.

Option B:

Clarify the definition of ‘person with management or control’ (PMC) of a service in the National Law to align with the definition of PMC of an approved provider body in the Commonwealth Family Assistance Law to capture persons who have authority or responsibility for, or significant influence over, planning, directing or controlling the activities of the service (whether or not they are employed by the approved provider of the service).

Option C:**

Specify in the National Law that the regulatory authority can administer questions to an applicant in any format, including an assessment of their knowledge of the NQF, in addition to the already existing powers to ask the person to provide further information and undertake inquiries in relation to the person.

Option D:**

This option has been removed as it has been combined into Option C.

Option E:

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

****Please note**, following analysis of the consultation material and intergovernmental policy discussions, Option B has been reworded and Option C and D have been combined into one option. The previous Option D assumed that regulatory authorities have a right to assess an applicant’s knowledge of the NQF prior to them submitting an application for approval, and this was incorrect. Regulatory authorities cannot ask for this assessment of knowledge until the applicant has engaged in the approval process by submitting relevant documentation to the regulatory authority, so the options have been combined and amended to reflect such.

The below options are the original from the CRIS.

Option B: Align the matters that must be taken into account in a fitness and propriety assessment under the National Law to be the same as the FAL, including in defining who is a PMC.

Option C: Specify in the National Law that the regulatory authority can administer questions to an applicant in any format, in addition to the already existing powers to ask the person to provide further information and undertake inquiries in relation to the person.

Option D: Make provision in the National Law to require applicants to undertake an assessment of their knowledge of the NQF prior to making an application, if requested by the regulatory authority.

Impact (costs and benefits) of Option A

Benefits

Providers and services

Option A imposes no financial costs associated with changing practice and systems to comply with additional regulatory requirements, as there would be no additional requirements.

Costs

Providers and services

In a base case scenario, the definition of PMC within the NQF will continue to be narrower than the FAL and therefore unable to capture all individuals who direct or significantly influence the management of a service.

Community

There may be instances where FDC educators do not notify of situations involving young person residents posing a risk to health, safety and wellbeing of children.

If the status quo remains, children in education and care settings may not be afforded the safest possible environment with respect to workers vetted and deemed suitable to work directly or indirectly with children.

Impact (costs and benefits) of Option B

Benefits

Providers and services

This reform will improve alignment across the legislation, clarifying the regulatory requirements that apply to individuals holding roles that direct, or significantly influence, service operations. For example, the amended PMC definition would include the ability to capture roles such as 'state managers' in larger, multi-jurisdictional / national providers, who have the power to direct the actions of nominated supervisors, or senior managers who make substantive resourcing decisions affecting the operations of services.

The reform would also clarify the application of regulatory requirements to individuals holding an influential role, but who do not have a formal role within the approved provider entity or who are part of a management company contracted by the approved provider.

The reform would be supported by national regulatory policies that set out a consistent, risk-based approach to how regulatory authorities apply relevant discretionary aspects of fitness and propriety assessment.

Community

This reform will reduce the confusion created by the two parallel PMC definitions. It would clarify and improve the consistency, and more coherent / streamlined application, of the relevant regulatory requirements that apply to both prospective and existing providers across both legislative schemes. Families may also be better assured that the government processes by which individuals are deemed fit to work directly or indirectly with children are nationally coherent and robust

Costs

Providers and services

The reform is expected to have little impact on providers where the company directors or members of the executive committee run the service and are already identified as PMCs. However, as alignment will result in a wider number of individuals being captured as PMCs, there could be a moderate increase in administrative burden involved in some of these individuals with influential roles in the management of an education and care service(s) needing to provide evidence of their fitness and propriety to the regulator, noting that these are typically obligations already existing under the FAL. These impacts could be ameliorated by regulatory systems, practices and smart technology that deliver improvement in application and assessment processes that simplify and streamline requirements for providers overall.

The reform is expected primarily to impact on larger providers, by drawing into the scope of the National Law definition of PMC some additional individuals in roles that direct and/or significantly influence the management of the delivery of a service within the context of each approved provider entity. For example, this may include 'state managers' who have the power to direct the actions of nominated supervisors, or senior managers who make substantive resourcing decisions affecting services.

The reform would also ensure the definition clearly captures influential individuals who do not have a formal role within the approved provider entity, or who are part of a management company contracted by the approved provider.

Impact (costs and benefits) of Option C

Benefits

Providers and Services

Regulatory authorities would have greater confidence in their range of methods available to assess fitness and propriety, and ultimately gather evidence that the applicant is suitable to be involved in the management of education and care service delivery.

Community

This option has the potential to more accurately identify inappropriate providers and exclude them from the sector before they can pose a risk to children.

Costs

Providers and Services

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

Testing to establish fitness and propriety may pose a time impact on applicants and a cost impact where the applicant is unable to pass the assessment. Such an assessment is also limited to capturing an individual's performance at a particular point in time, and may not reflect their overall performance over time.

Community

Administering an assessment may create barriers to entry for individuals from non-English speaking backgrounds however as applicants are expected to understand the Law and Regulations which are in English, any assessment would be consistent with this expectation.

Any other accessibility barriers would need to be considered and addressed separately and as appropriate to expectations of capacity to be a PMC.

Impact (costs and benefits) of Option D

Please note, this option is no longer being progressed as it has been combined with Option C (above).

Impact (costs and benefits) of Option E

Benefits

Providers and Services

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

Community

This option may help to better ensure children's health, safety and wellbeing in FDC services.

Costs

Providers and Services

There may be some costs associated with providing guidance to educators on how to meet this obligation. This option would impose further administrative requirements on educators and approved providers in FDC settings.

Consultation feedback

A large proportion of CRIS sector survey respondents felt that this issue was at least a 'Moderate' problem (45.8%) or greater (35.3%) (the total respondents for this issue was 832).

Options B, D and E were well supported as preferred options within the CRIS sector survey.

Option B

The community identified that a new PMC definition would likely create consistency between the NQF and Family Assistance Law (FAL), streamline the approvals process and would be easier to understand. However, other considerations included excluding volunteer committee members

Implementation requirements of the options

Legislative change will be required to enact any changes to the definition of the PMC, testing suitability of applicants and the new FDC notification requirement. Likewise, an educational campaign and guidance will be required to inform providers and services of the changes.

Conclusion/recommended option

It is recommended that the amended Options B, C and E be progressed.

Option B

It is recommended that the definition of 'person with management or control' (PMC) of a service in the National Law should be amended to align with the definition of PMC of an approved provider body in the Commonwealth Family Assistance Law to the extent necessary to capture the individuals who direct and/or have significant influence over managing the delivery of an education and care service (whether or not they are employed by the approved provider of the service). Amendment will be supported by regulatory policies setting out a nationally consistent, risk-based approach to how regulatory authorities apply relevant discretionary aspects of fitness and propriety assessment.

Options C

It is recommended that the legislation be clarified that regulatory authorities may test or administer questions to an applicant to assess their fitness and propriety.

Option E

It is recommended that a notification requirement is adopted to capture situations involving FDC educators with young person residents who may pose a risk to the health, safety and wellbeing of children.

Chapter:	10 – Oversight and governance of services and providers
Issue:	10.2 – Cancellation of provider approval under Family Assistance Law
Preferred option:	<p>Option B – Legislative change that provides for FAL cancellation to be explicit grounds for cancellation of provider approval under the NQF in circumstances where the FAL cancellation relates to fitness and propriety and/or a breach of the NQF.</p> <p>Option C – Legislative change that provides for refusal of provider approval under the FAL as explicit grounds for cancellation of provider approval under the NQF, where the FAL refusal relates to fitness and propriety and/or a breach of the NQF.</p>

Problem description

As part of their responsibilities under the NQF, a National Law regulator may refuse an application for provider approval, or cancel an existing approval, if there are sufficiently serious grounds to do so. These grounds include issues of fitness and propriety, unacceptable risk, to the safety, health or wellbeing of any child at a service, or criminal history¹¹⁷.

The Australian Government may also refuse to grant or may cancel provider approval under the Family Assistance Law (FAL) if relevant and sufficiently serious grounds exist to support this refusal or cancellation. However, at present, cancellation of provider approval under the FAL, while a factor that may prompt review of National Law approval by a State or Territory regulator, is not explicit grounds for cancellation of provider approval under the NQF.

This conflicts with a reasonable community expectation that both systems establish similar minimum standards of probity, and that cancellation under one system would, in certain relevant circumstances, automatically establish grounds for cancellation under the other.

Currently, when the Australian Government notifies a regulatory authority of a provider cancellation under the FAL, the regulatory authority will then need to identify if there is sufficient evidence to establish grounds to progress a cancellation under National Law. The time taken to do so may pose a significant risk to the safety, health and wellbeing of children in the interim, as providers found to be unsuitable under FAL may nonetheless continue to operate for an unacceptable period of time.

Objective (ideal outcome of government action)

The objective of government action is to provide for the cancellation or refusal of provider approval under the FAL (relating to certain circumstances) as explicit grounds for cancellation of provider approval under the National Law. This would improve the responsiveness and efficiency of regulatory responses, by minimising the process that regulatory authorities must follow, and the time taken, to build a case for cancellation under the National Law following a provider's refusal or cancellation under the FAL.

For example, fraudulent service providers cancelled under the FAL would efficiently have their National Law approvals cancelled as well. This would ensure children are not being cared for at services being run by unfit persons.

Description of each option

Option A:

No change.

Option B:

Legislative change that provides for FAL cancellation to be explicit grounds for cancellation of provider approval under the NQF in circumstances where the FAL cancellation relates to fitness and propriety and/or a breach of the NQF.

Option C:

Legislative change that provides for refusal of provider approval under the FAL as explicit grounds for cancellation of provider approval under the NQF, where the FAL refusal relates to fitness and propriety and/or a breach of the NQF.

Impact (costs and benefits) of Option A

Benefits

Families and communities

Maintaining existing settings could potentially have some small benefit to families in areas where immediate access to an alternative source of education and care may be limited.

Costs

Services and providers

No change could lead to continuing delays in refusal or cancellation of provider approval decision making under the National Law. This allows providers found to be unsuitable under the FAL to continue operating for a period whilst a case for refusal or cancellation under the National Law is being developed.

Families and communities

Approved providers could potentially still be operating a business after the FAL cancellation which would impose the full fee rate on families as they would not be able to claim the Child Care Subsidy. This would likely only affect families for a short period of time, and many families may withdraw their children if the Child Care Subsidy is not available.

Impact (costs and benefits) of Option B

Benefits

Services and providers

FAL cancellation as explicit grounds for National Law cancellation can improve the responsiveness and coherence of the regulatory scheme(s), by removing the need for regulatory authorities to gather evidence to inform a case for National Law cancellation on fitness and propriety grounds common to the FAL.

This option also prevents unsuitable providers from continuing to operate while evidence to support appropriate cancellation under the National Law is being gathered. This option would also increase visibility and providers' accountability to both National Law and FAL regulators, ultimately reducing the risks to child health, safety and wellbeing.

Costs

Services and providers

Approved providers could potentially still be operating a business after the FAL cancellation.

Families and community

Families would be paying full fee rates as they would not be able to access the Child Care Subsidy through that provider. This would likely only affect families for a short period of time, and many families may withdraw their children if the Child Care Subsidy is not available. However, families that are not eligible for the subsidy may continue to maintain their enrolment.

Impact (costs and benefits) of Option C

Benefits

Services and providers

Making FAL refusal grounds for cancellation of a National Law approval will ensure that unfit providers don't start operating. This will reduce the risks to child health, safety and wellbeing by preventing unsuitable providers from entering and remaining in the market where sufficiently serious grounds supporting a refusal exist that are common to both regulators.

Costs

Services and providers

Approved providers could potentially still be operating a business after the FAL cancellation which would impose the full fee rate on families as they would not be able to claim the Child Care Subsidy.

Families and communities

This would likely only affect families for a short period of time, and many families may withdraw their children if the Child Care Subsidy is not available.

Consultation feedback

Consultation findings indicated that respondents find the disconnect between the National Law and FAL in relation to cancellation or refusal of provider approval a problem. Of the 17% of sector survey respondents that answered questions in relation to this issue, four-fifths (80%) deemed it a problem. Of these respondents, 10% deemed it a 'Very Significant' problem, 27% deemed it a 'Significant' problem, and 43% deemed it a 'Moderate' problem.

Feedback indicated that Options B and C were the most suitable solutions to the problem, with both options receiving moderate support.

Respondents noted that the National Law and FAL are separate legislative frameworks that effect different regulatory objectives. Therefore, grounds for cancellation under one framework may not warrant cancellation under the other in all cases. Respondents also noted that grounds for cancellation under the FAL must be sufficiently serious to warrant cancellation under the National Law, and that there must be appropriate measures in place to ensure due process is available (for example, that an avenue of appeal is maintained).

Implementation requirements of the options

The implementation of Options B and C will require legislative changes to the National Law, to enable the grounds for refusal or cancellation of provider approval to include refusal or cancellation under the FAL. Both options will also each require that guidance is developed by Regulatory Authorities and ACECQA to advise prospective applicants and existing providers of the changes to the grounds on which an application may be refused or cancelled.

Conclusion/recommended option

The two legislative frameworks governing market entry and service provision could be better aligned to allow for refusal or cancellation of provider approval under either framework, if relevant and sufficiently serious grounds are established in circumstances where the two frameworks intersect.

It is recommended that both Options B and C be adopted, resulting in amendment to the National Law to establish cancellation or refusal of provider approval under the FAL as grounds for refusal or cancellation where the FAL cancellation relates to fitness and propriety.

Option B is recommended as it improves alignment between the National Law and FAL in terms of managing risk. It will support more responsive and efficient action by National Law regulators. This includes reduction of time taken to gather evidence to develop a case, and meets a community expectation that an unsuitable provider will be prevented from operating as quickly as possible if sufficiently serious grounds are identified by a FAL regulator that would warrant the cancellation of approval under the National Law.

Option C is recommended as it will support improved alignment between regulators in the approval process, reducing the risk to children. It will improve joint regulatory screening of unsuitable providers at the application stage, and prevent them from entering the education and care services market and/or remove them from the market if sufficiently serious grounds are identified by a FAL regulator that would warrant the refusal or cancellation of an approval under the National Law.

Chapter:	10 – Oversight and governance of services and providers
Issue:	10.3 – Arrangements to transfer a service to another approved provider
Preferred option:	<p>Option B – Develop guidance for services and providers about the service transfer process and how to best advise families about the transfer (for example, in relation to storage of children’s records).</p> <p>Option C – Minor legislative changes to address challenges associated with timeframes including:</p> <p>(1) Increasing the notification period from 42 to 60 days;</p> <p>(3) Making it mandatory for transferring and receiving providers to notify the regulatory authority of any change or delay to the intended date of transfer.</p> <p>(4) Increasing the notice period to families from 2 days to 7 days before the transfer takes effect.</p>

Problem description

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

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

The need for both the transferring and receiving providers to give 42 days¹¹⁸ notice to the regulatory authority of the transfer has in the past created delays to the receiving provider being able to commence providing education and care to families, especially in instances where the service is located on a government site and the provider is determined through a tender process. This may occur due to the transferring provider having no incentive to complete this obligation in some jurisdictions such as ACT.

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

The current process for transfer of services to another approved provider is not well suited to OSHC services. In many cases, a ‘tender’ process takes place instead of a ‘settlement’, which may trigger a new service approval rather than a transfer (due to the outgoing provider surrendering their approval).

Objective (ideal outcome of government action)

Adjustments to the service transfer process will address current issues with timeframes and notification requirements. It will allow families to be better informed of transfers of services that may affect them.

Description of each option

Option A:

No change.

Option B:

Develop guidance for services and providers about the service transfer process and how to best advise families about the transfer (for example, in relation to storage of children's records).

Option C:

Minor legislative changes to address challenges associated with timeframes including:

- Increasing the notification period from 42 to 60 days;
- Allowing the regulatory authority to refuse or delay a transfer if a significant issue arises after the intervention period has ended (intervention period is at least 28 days prior to intended transfer date) but before the transfer date; and/or
- Making it mandatory for transferring and receiving providers to notify the regulatory authority of any change or delay to the intended date of transfer.
- Increasing the notice period to families from 2 days to 7 days before the transfer takes effect.

Option D:

Amend the National Regulations to 'deem' the transfer to have occurred based on the advice of the receiving provider only, with receipt of the receiving provider's right to occupy.

Impact (costs and benefits) of Option A

Benefits

Services and Providers

There would be no cost impact as no changes would occur.

Costs

Services and Providers

In a base case scenario, incoming and outgoing service providers may experience delays to the transfer.

Community

Regulatory authorities may be unable to adequately assess the impacts on the safety and quality of service provision for children pursuant to the transfer, resulting in services operating that do not meet acceptable standards. There may be a lack of sufficient time for families to assess the impact of the transfer and make an informed decision for the education and care of their children.

Impact (costs and benefits) of Option B

Benefits

Services and Providers

The guidance will provide greater clarity and assist provider understanding of the processes for transfers.

Community

Services and providers will be better supported to provide advice to their families about the implications of the service transfer. This understanding may assist families to make more informed decisions about their child's education and care.

Costs

Services and Providers

There is unlikely to be a large impact from additional guidance, however the costs have been calculated with an assumed administrative time of 0.5 days per service in the first day, and 0.125 days per service for ongoing years.

The net present value of implementing Option B (with a 7% real discount rate) is \$3.4 million over 10 years. This is a cost attributed to the whole sector on a national basis, assuming services all engage with the new guidance.

Impact (costs and benefits) of Option C

Benefits

Services and Providers

Where managed appropriately, any additional delays for the transferring and receiving providers may be mitigated.

Community

The changes will help regulatory authorities to better scrutinise transfer applications, resulting in a higher quality of education and care provided to children. Families will be better informed about upcoming service transfers. This may assist in their choices for education and care.

Costs

Services and Providers

Option C will likely increase administrative burden for transferring and receiving providers, who are subjected to additional notification periods, and notification requirements. The additional notification periods and notification requirements may slow down the transfer process, and where unforeseen delays are experienced may discourage some transfers from occurring.

The net present value (assuming a 7% discount rate) has been costed at \$0.4 million over 10 years nationally. This figure is based on previous transfer rates nationally.

Impact (costs and benefits) of Option D

Benefits

Services and Providers

Deeming the transfer to have occurred may save time for the receiving provider.

Community

Deeming the transfer to occur may also limit unintended disruptions to service provision, and any associated affects for families.

Costs

Services and Providers

The deeming provisions are only relevant to the OSHC sector, and may make transfers more confusing for other service types as OSHC services are not separately defined under the National Law to centre-based services.

Families and Community

The regulatory authority would have limited powers to intervene in cases where it may not be appropriate for a transfer to occur.

Consultation feedback

Over 50% of CRIS sector survey respondents who answered this question felt that this issue was a “moderate” problem only (total respondents for this question was 505).

The most preferred options identified within the CRIS sector survey were Option B (develop guidance about the transfer process), shortly followed by Option C (legislative changes to address timeframes).

Families indicated that a longer timeframe would be appropriate with the most common answer being 7 days or above (CRIS Family and Carers’ Survey).

Common feedback received through the process included that more guidance would be helpful and would support services and providers to understand the complexities of the process.

Adjusting the timeframes may give families more time to make informed decisions about their child’s education and care, however it may create unnecessary and unreasonable delays to the transfer process which would likely have commercial impacts on the transferring and receiving providers.

Option D was well supported by OSHC participants including providers of OSHC services in some jurisdictions.

Implementation requirements of the options

Legislative change for Option C will be required to amend the timeframes for notifications to regulatory authorities and for families. A notification process will need to be established through NQA ITS alongside associated guidance to providers of their obligations to notify of delays to the transfer date.

The guidance would be contained within the Guide to the NQF.

Conclusion/recommended option

Options B and C(1), (3) and (4) are recommended as the change options.

Option B is recommended as improved guidance may better help providers and families to understand the transfer process.

Options C(1),(3) and (4) are recommended as increased notification periods may assist the transfer process to run more smoothly, and increase the period by which families are informed about the change. Regulatory authorities may be better able to intervene where necessary, and to prevent transfers that would not be in the best interests of the community.

Option C(2) is not recommended as this would create large administrative and legal burdens if late interventions by the regulatory authority occurred.

Option D is not recommended as it is not experienced broadly across the education and care sector, and may be better managed through direct contractual negotiations by tendering parties.

Chapter:	10 – Oversight and governance of services and providers
Issue:	10.4 – Maintaining current information about service delivery
Preferred option:	<p>Option B – Amend the National Regulations to require notification of changes to the ages of children being cared for and nature of care provided to the regulatory authority, with an associated offence for failing to notify.</p> <p>Option D – Regulatory authorities to provide guidance and resources in relation to age-appropriate programs and facility requirements.</p>

Problem description

To maintain an up-to-date system record, the National Law requires approved providers to notify certain information to the regulatory authority. However, the National Law and Regulations do not require approved providers to notify the regulatory authority of changes in the ages of children cared for, nor the nature of care provided by the service.

When initially applying for service approval, the provider is required to provide details such as ‘the proposed ages of children to be educated and cared for’¹¹⁹. For example, the Queensland regulatory authority puts the approved ages as a condition on service approval. Providers may apply for an amendment to service approval, but the National Regulations do not stipulate the required details for amendment applications.

Approved providers of FDC services are required to keep a register of information about their educators, co-ordinators, assistants as well as other information about the service including the names and dates of birth of each child cared for by an educator, and the days and hours the educators usually cares for the child. Providers are required to provide the information on the register, and any changes, to the regulatory authority within 24 hours of the regulatory authority’s request. However, they are not proactively required to notify regulatory authorities of this information.

Providers could be operating services without the facilities, staffing qualifications or knowledge specific to the current age group of children attending them. Thus, children could be placed in service settings that operate with approval but are in fact inappropriate for their needs and may pose a risk to their safety, health and wellbeing.

Without up-to-date information about service delivery, regulatory authorities are unable to identify and prevent potential risks within services. Outdated information may also result in inaccurate information about services on ACECQA’s national registers and on the Starting Blocks website, which contain information about the nature of care provided. Inaccurate information carrying over from NQA ITS to these resources would misguide families relying on the ACECQA service search for information about services, and potentially, adversely affect their decision-making.

Objective (ideal outcome of government action)

The objective is to ensure that care offered by services is appropriate to the age groups of children and does not pose a risk to the children's safety, health and wellbeing. To have an updated ACECQA register will allow families to have more accurate information when selecting a service for their child.

Description of each option

There are four proposed options for change:

Option A:

No change.

Option B:

Amend the National Regulations to require notification of changes to the ages of children being educated and cared for and the nature of care provided to the regulatory authority, with an associated offence for failing to notify.

Option C:

Amend the National Regulations to introduce an approval requirement, which obliges providers to apply to the regulatory authority to change the ages of children educated and cared for and the nature of care delivered by a service.

Option D:

Regulatory authorities to provide guidance and resources in relation to age-appropriate programs and facility requirements.

Impact (costs and benefits) of Option A

Benefits

Services and providers

This option does not increase administrative burden on services and providers.

Cost

Community

Regulatory authorities are not automatically afforded the opportunity to take any regulatory action required relating to the care environment/nature of care offered by an approved provider on a change to child numbers and ages that may affect this, with the potential for a lower quality of care as a result.

Families may be limited in their knowledge of the provider due to inaccurate and out of date information being provided to them, and this may limit their ability to make an informed decision on the service and provider that they are selecting to send their children to. Children may be exposed to care that is not age appropriate, which may have negative developmental impacts.

Impact (costs and benefits) of Option B

Benefits

Services and providers

It would improve the accuracy of data in reports and other resources such as the national registers relied upon by services and providers.

Community

This option will ensure that regulatory authorities have access to accurate information about the type of care provided by a service, and allow them to engage more proactively with services to safeguard the health, safety and wellbeing of children where risk is identified.

This option may create an incentive for providers to ensure they have adequate knowledge of the different requirements of different service types, and that their services cater for the needs of the current age group, leading to a higher quality of care.

This option would ensure that families have access to information that is current and accurate.

Cost

Services and providers

This option means there will be a small increase to the administrative burden for providers. This would require only minimal time to lodge the change notification (estimated at under one hour).

Impact (costs and benefits) of Option C

Benefits

Services and Providers

This option would ensure that providers and their services can be certain through their assessment that they are compliant in providing care to a wider range of ages than initially included in their service approval. As a result they may face less future compliance issues.

Community

This option would ensure that providers and their services are assessed regarding their ability to provide alternative service types to differing ages prior to operation. This option allows regulatory authorities to conduct compliance visits catering to the environment of the service. More appropriate and effective regulation helps to ensure a higher quality of care.

Families would have certainty that the service is approved to offer appropriate care to different ages of children when enrolling their children into an education and care service.

Cost

Services and providers

This option will incur application and processing costs for providers and the regulatory authority, as well as create longer timeframes to change service type and age group due to an application process of at least 28 days.

Providers will also likely need to invest 1–5 hours to complete the application and provide information throughout the application process.

Community

This option would restrict flexibility for service providers which could negatively impact families, potentially leaving families temporarily unable to access the service that they require.

Impact (costs and benefits) of Option D

Benefits

Community

This option will provide extra support for service providers, potentially resulting in a more suitable learning environment for children in care.

This option would enable providers and their services to have a better understanding of age-appropriate programs needed before making changes and result in a more positive learning environment for children.

Cost

Services and providers

The absence of notification requirements may affect the accuracy of data in reports and national registers relied upon by services and providers.

Community

The risk that children attend care that isn't age specific would still exist without a regulatory requirement to notify or apply for changes to their service records.

Consultation feedback

694 or 25% of total CRIS sector Survey respondents answered questions about issue 10.4.

23% of CRIS Sector Survey respondents chose to answer questions about Issue 10.4 considered maintaining current information about service delivery a 'Very Significant' (6%) or 'Significant' (17%) problem, with a further 36% deeming it a 'Moderate' problem.

More than two-fifths (42%) of respondents viewed the issue as 'Not a problem' (19%) or a 'Minor problem' (23%)

Of the available options, the most suitable solution was deemed to be *Option D: Guidance and resources in relation to age-appropriate programs and facility requirements*, closely followed by *Option B: Require notification of changes to the ages of children being cared for and nature of care*.

Implementation requirements of the options

Amendment to the National Regulations requiring providers to notify the regulatory authority of changes to the ages of children in care and the nature of the service, with an associated offence for failing to comply.

Guidance and resources to be provided within the Guide to the NQF around the impact and decisions to be made when considering changes to children's ages and nature of care provided.

Additional field in NQAITS to be made to allow providers to notify the changes to children's age and nature of services being provided.

Sector guidance on the changes to the notification requirements around the children's ages and nature of services. Transition period to be allowed for providers to update their records in relation to these changes.

Conclusion/recommended option

Mandating the requirement for providers to update the ages of children in care, and nature of care provided, in NQA ITS would result in more accurate data of children in care and allow regulatory authorities to monitor services and identify potential risks within services. It would also allow the ACECQA reports and other information provided for the benefit of families and the sector to be up to date.

It is recommended that Options B and D be adopted, resulting in up to date information being recorded and guidance provided to service providers to enable a more appropriate pedagogical environment for the children in care.

Option B is recommended as it will allow accurate data while having less of an administrative burden than requiring a new assessment to change care type delivered by services..

Option D is recommended as it will provide support for the sector to promote a better learning environment for the children.

Option A is not recommended as it will not resolve the issue around inaccurate data nor address issues around age appropriate care.

Option C is not recommended as it may create issues around access to services for families and cause unnecessary administrative burden on the sector.

Chapter:	11 – Technical Amendments
Issue:	11.1 – Notice of transport in NQA ITS
Preferred option:	Amend the National Regulations to require the approved provider to notify the regulatory authority where regular transportation is being provided as part of the service.

Problem description

There have been a number of serious incidents associated with transportation, where children were inadequately supervised, or exposed to harm and hazard likely to cause injury. The consequences of leaving children unsupervised on transport, particularly on hot days, can be fatal. Regulatory authorities have limited or partial knowledge of which services provide transport as there is no mandatory obligation on approved providers to notify the regulatory authority through the NQA ITS of transport arrangements at their service(s).

Objective (ideal outcome of government action)

Providers would be required to indicate on their NQA ITS service record whether transport is provided as part of their service(s). A mandatory notification may increase regulatory oversight including assessment of policies and procedures services have relating to transport, and how risks are mitigated.

Description of each option

This regulatory change would require providers to notify the regulatory authority of transport arrangements at their services through a mandatory notification box within the NQA ITS. This requirement would apply to all providers, and a communications campaign would be required to inform providers of the need to update the regulatory authority on transport arrangements.

Impact (costs and benefits)

Costs

There is already a non-mandatory reporting option within the NQA ITS for providers with services that provide or arrange transport as part of an education and care service. Requiring providers to notify of transport arrangements would incur a one-off requirement of completing this aspect of the notification form through the NQA ITS. It is unlikely to cause any costs or burdens for compliance.

Benefits

There will be some safety benefits from the introduction of the mandatory transport notification, which arises from increased regulatory oversight of providers with services that offer transportation. For example, regulatory authorities will be better able to seek evidence of, and detect unsafe transport arrangements during compliance and monitoring and assessment and rating visits and request changes to occur to management strategies.

Consultation feedback

There was limited feedback within the CRIS consultation process about this notification change.

Implementation requirements of the options

This change could be managed through communications targeted directly at providers and their services. The NQA ITS portal will need to be updated to reflect this mandatory reporting obligation, and an associated amendment to the National Law will also be required.

Conclusion/recommended option

It is recommended that a mandatory obligation be introduced into the National Law and Regulations requiring providers to notify of their service's transport arrangements. This notification process already exists within the NQA ITS, but may require minor modification to reflect its status as a mandatory notification requirement.

Chapter:	11 – Technical Amendments
Issue:	11.2 – Implementing physical activity guidelines
Preferred option:	No change.

Problem description and recommendation of ‘no change’

There is no explicit legislative obligation imposed on approved providers or services under the National Law or National Regulations to have physical activity policies and procedures (within regulation 168).

Research conducted in the early childhood education and care (ECEC) sector by the University of Western Australia (UWA) and the Telethon Kids Institute (TKI) identified that only 12% of children¹²⁰ – aged between 2 and 5 years – meet the recommended 3 hours of physical activity in an 8-hour day spent at an Australian early education and care service.

However, physical activity is already covered within the requirements of the National Quality Standard. Specifically, Quality Element 2.1.3 of the NQS (‘Heathy eating and physical activity are promoted and appropriate for each child’) places a responsibility on services and educators to provide children under their care with appropriate physical activity conducive to their health and wellbeing.

As such, a recommendation of ‘No Change’ for this technical amendment is being recommended.

Chapter:	11 – Technical Amendments
Issue:	11.3 – FDC: Display in venue/residence
Preferred option:	Amend the National Regulations to require FDC educators to display a diagram showing the areas of the residence for which the approved provider has conducted a risk assessment.

Problem description

Before an FDC educator can provide education and care at a FDC residence or venue, the approved provider must conduct an assessment (including a risk assessment) of the residence or venue to ensure the health, safety and wellbeing of children is protected (regulation 116). There is currently no requirement that families using the FDC service are informed about the assessment and the specific areas to which it relates, or the findings made by the approved provider.

This information gap may present as a problem for some families, who may unknowingly allow their child to be cared for in areas of a FDC residence or venue that may have been excluded from being used to provide education and care as a result of the assessment. Potential risks that children may be exposed to include water hazards (e.g. swimming pools), unsafe environments (e.g. workshops), inappropriate learning areas (e.g. garages) or limited emergency and evacuation plans for the excluded areas.

Objective (ideal outcome of government action)

The objective of changing display requirements is to provide a clear indication through the use of a visual map, to show areas to parents and carers that have been assessed for education and care purposes by the approved provider of the FDC. This is to clearly show what areas of the venue or residence will be used to provide education and care, and to improve information that supports parental choice of an education and care service or FDC educator.

Description of each option

The approved spaces are currently handled through a risk assessment completed by the provider. These risk assessments are currently not shown to parents. The risk assessment would be amended to require explicit designation of areas deemed suitable for education and care in the form of a map, and to have the map displayed at the entry to the residence and venue.

Impact (costs and benefits)

This would likely have minimal costs on providers, and brings the benefit of increasing families' understanding about the FDC service, including approved spaces and ratings levels, leading to families being able to make a more accurate assessment of the suitability of the FDC educator and environment for the education and care of their child. Giving families greater access to this information at the location at which education and care is provided to their children is a clear benefit for the community.

Consultation feedback

The technical amendment sections did not receive much consultation feedback, however were located in the CRIS to give the community the opportunity to respond. It was not included in the CRIS consultation surveys for stakeholder feedback.

Implementation requirements of the options

Guidance will be required regarding placement of the map.

Legislative amendments will be required to enact the change.

Conclusion/recommended option

Minor changes to the legislation to require a map showing approved areas at each FDC residence or venue.

Chapter:	11 – Technical Amendments
Issue:	11.4 – Tasmanian specific amendment – Regulation 353
Preferred option:	Revoke regulation 353

Problem description

Currently, regulation 353 applies in limited circumstances for centre-based services operating preschool programs in non-government schools.

Regulation 353 allows a small number of services to operate **without** meeting all NQF Physical Environment requirements (National Regulations - Part 4.3 Division 1), such as those relating to fencing, indoor space, outdoor space, and shade.

This has the potential to reduce safety, health and wellbeing benefits to children attending those services.

Objective (ideal outcome of government action)

Revoking regulation 353 will optimise the safety, health and wellbeing of children being educated and cared for by services eligible to use this provision.

It is recommended that regulation 353 is revoked to ensure the small number of services currently applying this regulation, will align with all other centre-based services in Tasmania.

Description of each option

Revoke regulation 353 with immediate effect from the date of regulatory change.

Impact (costs and benefits)

The affected services will need to progress more quickly towards meeting the physical environment requirements, ensuring consistent standards for the safety, health and wellbeing of children across all in-scope services.

Improvement of quality outcomes for children in services currently eligible to use regulation 353 will increase consistent implementation of the NQF across Tasmanian in-scope services.

Costs associated with any capital upgrades will be incurred in a shorter timeframe.

It is possible that services will be required to adjust operational practices and may initially be challenged by this, particularly where current service policy and procedures do not adequately align with NQF requirements. However, the change will not be implemented until 2023 providing sufficient time for planning to ensure a smooth transition. Any challenges will be addressed through a consultative process between the service and the RA.

Consultation feedback

Regulation 353 was included in the Consultation Regulation Impact Statement (CRIS) as a technical amendment. It was not included in the CRIS consultation surveys for stakeholder feedback.

Services applying regulation 353 were contacted by the Tasmanian regulatory authority to ensure the providers were aware of the inclusion of the Tasmanian-specific technical amendment in the CRIS.

Implementation requirements of the options

This will require a **minor change** to the *Education and Care Services National Regulations 2011*.

It will not entail complicated drafting of new regulations, as the requirement will not be replaced.

The standard Physical Environment requirements (Part 4.3 Division 1) will then apply to all Tasmanian in-scope, centre-based services, improving consistent delivery of safety, health and wellbeing outcomes for children.

Conclusion/recommended option

It is recommended that regulation 353 be revoked with immediate effect from the date of regulatory change as:

- Only one service is likely to be impacted; with other services (eligible to use r353) already meeting the Physical Environment requirements (National Regulations - Part 4.3 Division 1).
- Potential adverse impacts on children and families are likely to be minimal and the service has capacity to manage these effectively.
- Costs may be incurred, but the cost is perceived to be a manageable one-off cost.

Chapter:	11 – Technical Amendments
Issue:	11.5 – Excellent rating
Preferred option:	Amend section 155(5) of the National Law to extend the validity of an ‘Excellent’ rating from a period of 3 calendar years, to 5 calendar years.

Problem description

The Excellent rating, assessed and awarded upon application by ACECQA, is the highest rating a service can achieve under the NQF. Under regulation 70A of the National Regulations, an approved provider with a service rated ‘Exceeding NQS’ in all 7 quality areas is eligible to apply.

The Excellent rating is the only quality rating that has a legislated expiry period. Under section 155(5) of the National Law, an Excellent rating applies for three years, unless otherwise revoked.

When an Excellent rated service is ‘re-assessed’ by ACECQA upon application, it can only retain that Excellent rating (up until the original expiry date) if the service remains, including through any regulatory authority ‘subsequent’ assessment, exceeding in all seven quality areas.

When an excellent rated service has approximately nine months left until expiry, ACECQA’s operational practice is to notify the relevant regulatory authority of the expiry date of the service rating. This practice works well when regulatory authorities have the resources to again assess and rate the excellent rated service prior to expiry, ensuring the rating accurately reflects the quality of the service and minimising the risk that an excellent rating has to be revoked within a short time of issue, in the event that the provider applies for a further excellent rating.

However, this can divert regulatory authority resources away from assessing ‘higher-risk’ services, by focusing effort on lower-risk excellent rated services.

Changing the expiry period for an Excellent rating from three years to five years would also reduce re-application costs (including time and effort) over the longer-term for providers of services which have an Excellent rating, and wish to retain that rating, and better reflect the NQF’s ‘risk-based’ regulatory approach.

Objective (ideal outcome of government action)

The duration of the highest quality rating under the NQF better reflects the broader risk-based approach to regulation / quality assessment and rating. An extension of rating duration will ensure it remains efficient, effective and appropriately reflective of high quality, education and care practice, while incentivising recognition of high quality.

Description of each option

The period of validity of an Excellent rating will be amended from three years to five years.

Impact (costs and benefits)

Benefits

A longer expiry period increases the likelihood that any service with an Excellent rating has gone through a subsequent assessment and rating process prior to their re-application, and better reflects governments' risk-based regulatory approach under the NQF. It may increase the incentive for – and reduce administrative burden experienced by – applicants who seek an Excellent rating, and will subsequently enjoy the value it delivers if they are successful in gaining the rating.

Extending the expiry period for an Excellent rating to five years may negatively impact the perception of the rating as being less current than under the current system. Families as consumers may pay for services that are not reflective of their quality rating. It is noted that under the change option, ACECQA would retain its current ability to revoke the rating at any time, in addition to the ability of the relevant State or Territory regulatory authority to undertake a subsequent assessment and rating of the service at any time.

Consultation feedback

The technical amendment sections did not receive much consultation feedback, however were located in the CRIS to give the community the opportunity to respond. It was not included in the CRIS consultation surveys for stakeholder feedback.

Implementation requirements of the options

Amendment to section 155(5) of the National Law.

A communications campaign relating to the Excellent rating will need to be undertaken by ACECQA.

Conclusion/recommended option

Considering better alignment of the validity of the 'Excellent' rating to all governments' risk-based regulatory approach under the NQF, it is recommended that section 155(5) of the National Law be amended to extend the validity of an 'Excellent' rating from a period of three calendar years, to five calendar years.

Chapter:	11 – Technical Amendments
Issue:	11.6 – Death of an approved provider
Preferred option:	No change.

Problem description and recommendation of ‘no change’

The issue of amendments to legislation covering circumstances in the death of an approved provider were originally recommended through the CRIS. However, further analysis and legal advice have shown that the proposed legislative amendments are unnecessary and the effect may be achieved through current regulatory powers

This section originally proposed amendments to the National Law to require notice requirements in the event of the death or incapacity of an approved provider. This also had the aim of improving notice given to families about the death or incapacity of the approved provider and implications for the service.

However current mechanisms exist, within the National Law and other State and Territory based schemes that cover off arrangements in the event of death and incapacity of the approved provider.

Chapter:	11 – Technical Amendments
Issue:	11.7 – Waivers for NQS Elements
Preferred option:	Amend the legislation to remove the ability for approved providers to apply for waivers from prescribed element/s of the National Quality Standard.

Problem description

Sections 87 and 94 of the National Law allow approved providers to apply for waivers from prescribed elements of the National Quality Standard (NQS) and the National Regulations. Some elements in the previous ‘2012’ NQS closely mirrored provisions in the National Regulations, and these sections meant that approved providers could apply for waivers of both regulations and elements that related to similar requirements. However, the ‘2018’ NQS introduced consolidated and more outcomes-focused NQS elements, standards and quality areas that removed NQS elements most duplicative of requirements already set out in legislation. This means that there is no longer any need to apply for waivers for elements and standards.

However, regulation 41(a) and 44(a) still allow providers to apply for waivers relating to the standards and elements set out in Quality Areas 3 and 4 of the National Quality Standard.

Approved providers can apply for these waivers through the NQA ITS, and data indicates that while regulatory authorities have continued to receive requests for the waiver of both regulations and related element/s of the NQS since February 2018¹²¹, in practice they have not¹²² and will not grant waivers for NQS elements or standards. This is because all support the policy position that the waiver of NQS elements and standards – under the 2018 NQS – is neither appropriate nor necessary.

Retaining the ability to apply for waivers of elements of the NQS in the National Law may create confusion for service providers.

Objective (ideal outcome of government action)

Removing the ability of approved providers to apply for these waivers will not, in practice, change the status quo experienced by approved providers. However, it will reduce confusion for approved providers by updating the legislation.

Description of each option

Amend sections 87 and 94 of the National Law to remove the ability of approved providers to apply for waivers from prescribed elements of the NQS.

Remove the associated regulations in regulation 41(a) and 44(a).

Remove the ability for services to apply for these waivers on the NQA ITS portal.

Impact (costs and benefits)

This is unlikely to have any impact on approved providers other than reducing confusion and unnecessary administrative burden. Approved providers will no longer be able to seek waivers that are no longer relevant under the current 2018 NQS.

Consultation feedback

This proposal was not part of any consultation through the recently completed CRIS process. However, it is a consequential amendment that should have been made in moving to the more 'streamlined' 2018 NQS, as a result of the 2014 NQF Review.

Implementation requirements of the options (discussion around work required, such as regulatory and legislative changes, or guidance/communication by RA/ACECQA)

In addition to regulatory amendments referred to above, the option to apply for these waivers will need to be removed from the NQA ITS.

Conclusion/recommended option

Amend the legislation to remove the ability for approved providers to seek waivers of prescribed elements and standards within the NQS.

Chapter:	11 – Technical Amendments
Issue:	11.8 – Program-level documentation for children over preschool age
Preferred option:	Introduction of state-specific regulations for Tasmania, South Australia, Western Australia and Victoria in place of Regulation 74(1)(b) requiring program-level documentation for children over preschool age rather than child-level documentation.

Problem description

This technical amendment has been established as a recommendation from Issue 6.1 (Assessment and Rating of OSHC services) in this RIS document.

According to Issue 6.1, *“the assessment and rating process does not give adequate consideration to the unique features of OSHC services. These features include OSHC’s alternative approved learning framework (My Time Our Place), their significantly varying enrolment and attendance patterns, and their often shorter hours of care compared to other centre-based services.”*

Considering these factors, the RIS recommends that a further review be undertaken into how the assessment and rating process can be modified to increase alignment with the unique features of OSHC services.

The 2014 NQF Review discussed program documentation in OSHC services, resulting in NSW, Queensland and the Northern Territory adopting program-level documentation requirements instead of child-level documentation expected for centre-based services. From consultation feedback on the 2019 NQF Review, Tasmania, South Australia and Western Australia have noted their intention to adopt the jurisdiction-specific application of Regulation 74(1)(b) that exists in NSW, Queensland and the Northern Territory. This would have the effect of requiring program-level documentation rather than individual child-level documentation for OSHC services.

Objective (ideal outcome of government action)

Amend existing regulatory requirements for OSHC services in Tasmania, South Australia and Western Australia to allow for program-level documentation rather than requiring documentation of the learning for each individual child attending the OSHC service.

Description of each option

This technical amendment would introduce additional state-specific regulations for Tasmania, South Australia and Western Australia in place of Regulation 74(1)(b), requiring program-level documentation for children over preschool age.

Impact (costs and benefits)

While there may be a minor administrative burden associated with informing staff of new regulatory requirements, the adoption of program-level documentation requirements for children over preschool age is likely to reduce administrative burden for services over the longer term.

Consultation feedback

While the technical amendment section did not receive much feedback, national consultation feedback on to Issue 6.1 highlighted services' concerns around the difficulties documenting an individual child's learning during an OSHC program. Sector feedback noted the fact that many children may attend OSHC only on certain days, of often on an ad-hoc basis, limiting the ability of educators and staff to adequately capture the ongoing development of the individual child.

Consultation feedback on Issue 6.1 is located above.

Implementation requirements of the options

Regulatory amendments will be required to enact the change. Guidance for services in Tasmania, South Australia and Western Australia will need to be provided.

Conclusion/recommended option

It is recommended that state-specific regulations be introduced for Tasmania, South Australia and Western Australia in place of Regulation 74(1)(b), requiring program-level documentation for children over preschool age.

Chapter:	11 – Technical Amendments
Issue:	11.9 – Proposed modifications to the FOI Act for the purposes of the National Law
Preferred option:	Amend the National Regulations to put beyond doubt that a determination by the National Education and Care Services (NECS) FOI Commissioner is not a Commonwealth instrument, rather that it is an instrument made under a state or territory law which has adopted the National Law, ensuring that the Commonwealth Legislation Act 2003 does not apply to the determination. In addition, an amendment is proposed so that the powers to make certain determinations by instruments under the FOI Act are included in the list of powers of the NECS FOI Commissioner that cannot be delegated.

Problem description

This issue has been introduced as a technical amendment to the 2019 NQF Review through consultation with the NCS FOI Commissioner.

Established by COAG in 2012, the role of the ‘NCS FOI Ombudsman and Commissioner’ is to provide ombudsman, privacy and freedom of information (FOI) oversight of the education and care services regulation and quality assurance system. The role includes reviewing administrative actions taken by ACECQA, as well as FOI or privacy-related actions by ACECQA and regulatory authorities.

Under Section 8 of the Commonwealth *Freedom of Information Act 1982* (FOI Act), education and care services (ECS) agencies are required to publish certain information about their operations, with certain exceptions.

This Act also allows the NCS FOI Commissioner to determine by “legislative instrument” what information they consider to be unreasonable to publish.

Section 11C of the FOI Act sets out the requirements for the ECS agencies to publish information that has been made available in response to an FOI request on a website. As with section 8, the FOI Commissioner may determine that it would be unreasonable to publish the information.

The power of the Commissioner to make such determinations by “legislative instrument” are outlined in Sections 8(3) and 11C(2) of the FOI Act.

While the Commonwealth *Legislation Act 2003* (Cth) deals with Commonwealth Acts and Commonwealth Instruments, the determination made by the NECS FOI Commissioner under s8(3) or s11C(2) of the FOI Act is an instrument made under a State and Territory Law which adopted the ECS National Law.

It has been noted through discussions with the ‘NCS FOI Commissioner’ that there is ongoing ambiguity around the term “legislative instrument” as noted under the National Law, and that an amendment to the National Law is required to emphasise that the determination by the NCS FOI Commissioner is made under State and Territory Law, rather than an instrument of the *Legislation Act 2003* (Cth).

Objective (ideal outcome of government action)

Legislative amendment to emphasise that a determination relating to the publication of information made by the NCS FOI Commissioner is made by an instrument under State and Territory Law, rather than the *Commonwealth Legislation Act 2003 (Cth)*.

Description of each option

This technical amendment will introduce a new provision under Regulation 209 (Miscellaneous Modifications of the ECS Regulations) that modifies sections 8(3) and 11C(2) of the FOI Act so as to **omit** the word “*legislative*” in the phrase *legislative instrument* for the purposes of the National Law. The purpose of this legislative amendment is to make it clear that the *Legislation Act 2003 (Cth)* and the procedures for the making of Commonwealth legislative instruments set out in the Instruments Handbook do not apply.

Impact (costs and benefits)

Considering the nature of this technical amendment, there are no unforeseen impacts (i.e. measurable costs or benefits) associated with this legislative change.

Implementation requirements of the options

Legislative changes will be required for this technical amendment. However, considering the relatively technical nature of the legislative amendment, it is unexpected that the change would have an impact education and care services.

Conclusion/recommended option

It is recommended that a new provision be introduced under Regulation 209 (Miscellaneous Modifications of the ECS Regulations) that modifies sections 8(3) and 11C(2) of the FOI Act so as to **omit** the word “*legislative*” in the phrase *legislative instrument* for the purposes of the National Law. The amended wording must clarify that the *Legislation Act 2003 (Cth)* and the procedures for the making of Commonwealth legislative instruments set out in the Instruments Handbook do not apply.

NOTES

- 1 ACECQA (2018), National Partnership Annual Performance Report. Retrieved: <https://www.acecqa.gov.au/sites/default/files/2018-12/NationalPartnershipAnnualPerformanceReport2018.PDF> p 57.
- 2 OBPR, 2021. Retrieved: <https://obpr.pmc.gov.au/about#how-can-we-help>
- 3 The policy paper relevant to each CRIS issue can be found at Appendix 2.
- 4 Council of Australian Governments (2009), Regulation Impact Statement for Early Childhood Education and Care Quality Reforms. Retrieved: <https://www.dese.gov.au/key-official-documents-about-early-childhood/resources/coag-consultation-regulation-impact-statement-early-childhood-education-and-care-july-2009-word>
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