

3 March 2026



Subject: Interpretation and Implementation of Devices Order 2026 in Family Day Care

Dear Commissioner

FDCA writes regarding the *Education and Care Services (Supply, Authorisation and Use of Devices) Order 2026* ("the 2026 Order") and its application to family day care.

As you may be aware, FDCA engaged extensively with Victorian regulators throughout 2025 regarding implementation of Parts 1 and 4 of the National Model Code in family day care. That process resulted in a proportionate and contextually appropriate outcome, reflected publicly first in Victoria's confirmed position in response to the Rapid Review, subsequently in NSW under the *Education and Care Services (Supply, Authorisation and Use of Devices) Order 2025* ("the 2025 Order") and in the *Early Childhood Legislation Amendment (Child Safety) Act 2025*

That outcome recognised the structural realities of family day care and adopted the "service-registered device" model as a lawful and workable mechanism.

FDCA also engaged constructively with NSW ECEC Regulatory Authority representatives in the during earlier stages of reform discussions. At no stage was it indicated that NSW would adopt a materially broader restriction on personal device control in family day care settings, nor were we consulted prior to the publication of the 2026 Order.

The 2025 NSW Order did not prohibit an educator from carrying a personal device while providing education and care. The 2026 Order now provides that a person must not have a personal device "under the person's control", subject to section 10. This is a significant shift.

FDCA's position is clear:

- We support strict prohibition on personal device image capture, storage and transmission involving children.
- We do not support an interpretation that effectively prevents a sole-operator family day care educator from carrying a personal device in their own residence during operating hours.

Section 10 of the Order is not incidental. It expressly provides that the restriction does not apply in circumstances including work health and safety, emergency use, essential communication with institutions or family members, and "any other essential communication."

In a sole-operator, home-based environment, essential communication and WHS obligations are inherent and unpredictable. A purposive interpretation of section 10 must recognise that in the family day care model, such communication cannot be pre-scheduled or confined to narrow scenarios. Accordingly, it is FDCA's considered view that section 10 materially qualifies the restriction in a way that permits educators to carry a personal device where necessary to discharge essential communication and WHS obligations, provided it is not used for prohibited purposes.

The Victorian outcome demonstrates that a proportionate, model-appropriate regulatory construction is achievable without compromising child safety intent. It is therefore deeply concerning that NSW has adopted an approach that appears to revert from a negotiated, risk-calibrated framework to a blanket restriction that does not adequately account for structural differences.

FDCA seeks clear confirmation from the Commission that section 10 is intended to have ongoing practical effect in the family day care context, and that the listed exceptions are realistically available to educators in their ordinary day-to-day operations.

Child safety is paramount. But regulatory design must also be coherent, proportionate and capable of lawful implementation in the settings to which it applies.

We would welcome the opportunity to meet at your earliest convenience to resolve this matter constructively.

Kind regards
Michael

Michael Farrell

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