

Submission to

The Education Council

Regulation Impact Statement for proposed options for
changes to the National Quality Framework
COAG Consultation Regulatory Impact Statement

January 2015



Family DAY CARE AUSTRALIA

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Foreword

About Family Day Care Australia

Family Day Care Australia (FDCA) is a national peak body which supports, resources and advocates for family day care services and educators. Our role is to resource and promote family day care services to ensure the strength and continued growth of the sector, to support high quality learning and developmental outcomes for children. FDCA has approximately 28,000 members, representing over 800 approved service members and over 27,000 educators. FDCA takes a rights based approach to all research, policy development and advocacy work it undertakes, underpinned by a strong commitment to the UN Convention on the Rights of the Child.

About family day care

Family day care is a form of regulated Early Childhood Education and Care (ECEC) which takes place in the educator's home. Family day care educators are ECEC professionals, registered with a family day care 'approved service' that is responsible for registering, supporting, training, monitoring and advising its educators.

The approved service administers a 'coordination unit', which employs administrative staff and coordinators, who act as field staff actively supporting and providing oversight for educators in their work. The role of the family day care coordination unit in the delivery of home-based ECEC is paramount in ensuring high quality service delivery and positive learning and developmental outcomes for children. Coordination units:

- Provide professional development opportunities to educators;
- Implement coherent service-wide continuous improvement strategies through the required Quality Improvement Planning process;
- Undertake NQS monitoring and educator home assessments/visits;
- Act as the central point of business administration, including subsidy administration (service level); and
- Facilitate educator regulatory compliance.

Family day care operates under the National Quality Framework for Early Childhood Education and Care (NQF); incorporating national regulations, quality and qualification standards, educational frameworks and an assessment and ratings process. Family day care services are Child Care Benefit (CCB) approved under Family Assistance Law and therefore parents are eligible for the Federal Government CCB and Child Care Rebate (CCR) subsidies.

The family day care sector provides flexible ECEC across both standard and non-standard hours, and is regulated under the Education and Care Services National Law and Regulations, and therefore meets the requirements defined in the National Quality Standard (NQS).

Family day care is provided across Australia, including in rural and remote communities where in some instances family day care is the only form of approved ECEC available to families. Family day care provides experiences which reflect the diversity of the communities in which they operate.

Family day care educators work with small groups of no more than four children under school age. An educator may care for an additional three school aged children outside of school hours. The majority of family day care educators are self-employed, working as sole traders, with a small percentage engaged as employees by the approved service.

Educators are required, under the Education and Care Services National Regulations, to hold (or be actively working towards) a Certificate III in Early Childhood Education and Care (or equivalent) and coordinators are required to have a Diploma in Early Childhood Education and Care (or equivalent).

Family day care services almost over 98,000 families and 165,440 children across Australia and constitutes approximately 15% of the ECEC sector.¹

¹ Department of Education (2014) *Child Care and Early Learning in Summary*, December Quarter 2013.

Overview

FDCA welcomes the opportunity to respond to the Council of Australian Governments' (COAG) Consultation *Regulatory Impact Statement for proposed options for changes to the National Quality Framework (the RIS)*.

The submission should be accepted in the context of a number of overarching considerations or requests, which are summarised below.

Outcomes for children are paramount

FDCA strongly believes that in assessing the merits of regulatory amendments to the National Quality Framework, the impact on and outcomes for children must be the paramount consideration. Regulatory reform in the ECEC sector made without adequate consideration of the centrality of children's outcomes may result in a range of unintended consequences, such as rendering some services unviable which would compound accessibility, affordability and/or service quality issues.

Cumulative impact of reforms

FDCA has concerns that the RIS has failed to assess the cumulative impact of the proposals and it has not identified the current regulatory and fiscal pressures facing the family day care sector.

If many of the proposals are adopted and further regulatory costs are imposed on the family day care sector, this will result in some family day care services becoming unviable which will have significant flow on effects to families accessing family day care services.

While the intent of some proposed reforms is to reduce regulatory burden, Section 3.7 largely is contrary to this overarching rationale, in that it imposes increased and burdensome regulatory requirements on the family day care sector. The imposition of proposals with the highest regulatory

cost and impacts would be damaging to the family day care sector.

The RIS is clearly seeking to impose a range of regulatory instruments on the family day care sector which are designed to limit growth and restrict operational freedom within family day care services, with a view of supporting increased powers of regulatory authorities to enforce compliance, or imposing restrictions that would circumvent the need for increased compliance activities. This is at a time when the family day care sector is already experiencing regulatory reform fatigue and the vast majority of services are required to be increasingly innovative to alleviate the effects of losing operational support funding, as of 1 July 2015 (detail outlined below).

FDCA respectfully requests that the final recommendations constitute a more proportionate and considered approach, taking into account a range of alternative options for solving the apparent compliance-related issues. Compliance monitoring by Regulatory Authorities may require increased resourcing, rather than the imposition of sector-wide, "blunt" regulatory tools. While recommendations on increased resourcing of Regulatory Authorities fall outside of the scope of the RIS, it must still inform any proposals relating to regulatory reform. It is the view of FDCA that operational restrictions and increased red tape are not the best solutions to regulatory problems that are apparently related to compliance.

Removing Operational Support, increasing operational requirements

As stated above, FDCA is particularly concerned by the inevitable cumulative impact of the collective raft of reforms, if imposed simultaneously and in their current form. More specifically, FDCA questions the push towards increased operational requirements (and operational restrictions) in conjunction with a dramatic decrease in Operational Support funding (under the Community Support Programme – CSP).

Under changes to the CSP announced in the 2014-15 Federal Budget, as at 30 June 2015 the Department of Education will terminate all current CSP contracts with family day care approved services. This includes services receiving both Operational Support funding and Sustainability Assistance.

The CSP provided ongoing operational support for family day care services since 2004 to assist the unique service model to meet the increased demand for child care places. Until new CSP guidelines were issued in April 2014, the CSP guidelines stated Operational Support Payments are provided to family day care services to support “the ongoing, day to day costs of delivering quality, affordable child care”. The overwhelming majority of approved family day care services have relied to varying degrees on the CSP and most significantly on the Operational Support component of funding. The Operational Support component of CSP funding, which supports the costs of administering the coordination unit, ranges from \$0.70-\$1.44 per child per hour dependent upon the location geographic classification of the family day care service.

FDCA is extremely concerned that compounding increased operational requirements or restrictions with a complete removal of Operational Support funding (for more than 80% of family day care services across Australia) may have a devastating effect on the sector. Many services have indicated the inability to increase fees in line with funding losses as their communities cannot afford the fee increases. Such circumstances will create a disproportionate impact on children with the greatest developmental vulnerabilities.

Commitment to ongoing improvement

FDCA is entirely supportive of well-considered, proportionate and reasonable policy or regulatory proposals with the aim of improving the family day care sector and reducing rates of non-compliance. As such, FDCA supports a number of the proposals, or variations thereof (or at least their overarching intent), put forward in the RIS, particularly those specifically related to the family day care sector in Section 3.7.

FDCA recognises a need for refining and tightening gaps in the policy and regulatory framework with the aim to reduce rates of non-compliance. FDCA believes targeted, collaborative work in this space will ensure the family day care sector continues to be a leader in quality home-based education and care in Australia. FDCA looks forward to continuing consultation with Regulatory Authorities, Government and relevant stakeholders to collectively overcome challenges in our sector and continue to achieve the best possible outcomes Australian children.

FDCA requests that this context be considered in formulating the final RIS to the Australian Government.

3.1 Refining the National Quality Standard and assessment and rating process

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

Options for reducing the complexity of the National Quality Standard

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

FDCA position:

Option number	Description
1.1B	Reduce the complexity of the National Quality Standard through a draft revised Standard

FDCA supports Proposal 1.1B *in principle*, which seeks to reduce the complexity of the National Quality Standard (NQS) through a draft revised Standard. This support is predicated on the revised Standard being subject to appropriate testing in relation to its capacity to reflect the original intent of all aspects of the original Standards and Elements, given that the “National Quality Standard is the NQF’s main lever for improving quality in education and care for children and families”²

“It is important to streamline, refine and simplify our NQS. The revisions are a step forward in achieving these goals. The challenge remains as to how these items are assessed and how we have consistency in the assessment of these items.”

Family day care Service Staff Member

The case for simplifying the current NQS is strong, given the perception-based evidence provided through ACECQA’s Report on the National Quality Framework & Regulatory Burden³. However, it should also be noted that the independent Evaluation of the Assessment and Rating Process under the National Quality Standard for Early Childhood Education and Care and School Age Care⁴ found that:

“The Instrument has a very high internal reliability (Cronbach’s alpha = 0.88–0.95) and is fit for purpose, with all quality areas, standards and elements working as expected. This is likely due to development of the Instrument, with a number of revisions made as the result of previous evaluations of the process. There is no need to make any further changes to the Instrument to improve its validity and reliability.”

A survey of FDCA members indicated overwhelming support for the rationale for streamlining the process; however concern was also noted around the administrative impact on approved services relating to the changes that would be required in established systems and processes. Additionally, a number of respondents also questioned the merit of the proposal if the actual outcome or goal of the combined standards and elements was not altered.

2 ACECQA b (2013) Report on the National Quality Framework & Regulatory Burden Part 2: Recommendations, Sydney.

3 ACECQA a (2013) Report on the National Quality Framework & Regulatory Burden, Sydney.

4 Rothman, S et al. (2013; ii) *Evaluation of the Assessment and Rating Process under the National Quality Standard for Early Childhood Education and Care and School Age Care*, Australian Council of Educational Research, Camberwell, Victoria.

http://research.acer.edu.au/cgi/viewcontent.cgi?article=1013&context=early_childhood_misc

"While I believe that the NQF is a fantastic step towards improving early childhood settings I also believe that the introduced NQS can be interpreted differently and overlap in many places. A clearer and simplified version should not reduce the quality of care and education provided just to make it easier for services and educators to understand the expectations."

Family Day Care Service Staff Member

"Proposed standards and elements cover the same as current NQS, but are easier to follow."

Family Day Care Educator

"With the concept column as a heading and the wording of the descriptor written clearly it is easier to understand what is required."

Family Day Care Educator

3.1.2 Proposal 1.2 – Streamlining the process for quality assessments

Options for streamlining the process for quality assessments

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

FDCA position:

Option number	Description
1.2B	Streamline the national approach to assessment and rating, including through supporting templates and documents and further rigorous training of authorised officers

FDCA supports Proposal 1.2B *in principle*, which seeks to streamline the national approach to assessment and rating, including through supporting templates and documents and further rigorous training of authorised officers. The rationales of the proposal outlined are sound; those being, promoting national consistency, reducing burden on both services and regulators, expediting the process and promoting efficiency.

However, FDCA seeks more detail relating to the process itself and how it would be applied in order to completely endorse the proposal.

It should also be noted that through this proposal, there may be a risk of the system becoming overly prescriptive. This would be antithetical to the original structure (and intent) of the assessment and ratings system, based on an outcomes-focussed model with flexible interpretation of the NQS as opposed to a compliance model, as was apparent in the previous Quality Assurance system under the National Childcare Accreditation Council (NCAC).

3.1.4 Proposal 1.4 – Significant Improvement Required rating

Options for Significant Improvement Required rating

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

FDCA position:

Option number	Description
1.4B	Remove the Significant Improvement Required rating, with the quality assessment rating process ceasing where it is determined that there is an unacceptable risk to children’s health, safety or wellbeing

FDCA supports Proposal 1.4B which aims to remove the Significant Improvement Required rating, with the quality assessment rating process ceasing where it is determined that there is an unacceptable risk to children’s health, safety or wellbeing.

As detailed in the RIS, it would be inappropriate for the obligation of an entire assessment and ratings process to remain in circumstances that give rise to risk to children’s health, safety or wellbeing. The diversion of resources in such circumstances to fulfil the standard administrative requirements of the assessment and rating process appears to be redundant and somewhat unacceptable.

FDCA would also be open to support for Proposal 1.4C, as this too prioritises actions to protect the health, safety and wellbeing of children in situations of unacceptable risk.

3.1.5 Proposal 1.5 – Exceeding the National Quality Standard rating

Options for Exceeding the National Quality Standard rating

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

FDCA position:

Option number	Description
1.5B	To be rated Exceeding the National Quality Standard at the Quality Area level, all standards in the Quality Area need to be rated Exceeding the National Quality Standard This option is linked to 1.1B

FDCA supports Proposal 1.5B which requires all Standards in the Quality Area to be rated Exceeding the NQS for the Quality Area overall to be rated Exceeding the NQS. This support is contingent upon the implementation of Proposal 1.1B.

3.1.6 Proposal 1.6 – Excellent rating

Options for Excellent rating

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

FDCA position:

Option number	Description
1.6B	Remove the Excellent rating

FDCA supports Proposal 1.6B to remove the “Excellent” rating at this point in time. The ability to apply (and pay) for the Excellent rating is unfair given that some services have been eligible to apply for the rating, while others are yet to be assessed. As the Excellent rating “indicates that a service demonstrates excellence and is recognised as a sector leader” FDCA believes all services should have the opportunity to be assessed for this in a timely manner.

Application for the Excellent rating requires additional paperwork and justification outside of the assessment and rating process, and must be accompanied by a payment/application fee. This combination is cost prohibitive for some services.

Given that a foundational principle of all structural components of the NQF is based around continuous quality improvement, the pursuit of excellence may be maintained through the existing system without a dedicated Excellent rating. Also, the implementation of Proposals 1.1B, 1.5B, 1.7c and 1.7D may bolster this consideration.

It should be noted that FDCA is not unsupportive of an Excellent rating in principle, from a conceptual perspective, as it supports an aspirational objective. However, our concerns around the merit of retaining the rating when it requires a redirection of resources (at a time when all services have not yet been through the assessment process) and the apparent administrative and application issues outweigh the retention of the rating due to largely conceptual considerations.

3.1.7 Proposal 1.7 – Ensuring ratings accurately reflect service quality

Options for ensuring ratings accurately reflect service quality

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

FDCA position:

Option number	Description
1.7C	Retain the current requirement that all elements must be met to achieve an overall rating of Meeting National Quality Standard, on the basis that clarifying or streamlining the National Quality Standard will result in ratings that are a more accurate reflection of service quality This option is linked to 1.1B
1.7D	Broaden the application of the current Minor Adjustments Policy (but not extending to those areas of the National Quality Standard that are not able to be remedied quickly) This option could be implemented together with 1.7B or 1.7C

FDCA supports both Proposal 1.7C and 1.7D.

FDCA supports Proposal 1.7C which requires all elements to be met to achieve an overall rating of Meeting National Quality Standard, on the basis

that clarifying or streamlining the National Quality Standard will result in ratings that are a more accurate reflection of service quality. This support is contingent upon the implementation of Proposal 1.1B.

While there are valid concerns raised in the RIS on the effect of one element assessed as 'not met' resulting in a rating not reflecting overall quality, it is the view of FDCA that the overall rating should remain. It is important that the rating process is accessible and easily understood by families and FDCA believes that relying solely on the seven Quality Area ratings will increase complexity for parents when making decisions on ECEC services. Further, information on the service's rating in the individual seven quality areas is accessible to parents in making informed decisions.

FDCA does however advocate for Proposal 1.7D, that is the broadening the application of the current Minor Adjustments Policy to enable services to make changes immediately following the service visit. In broadening the application of the Minor Adjustments Policy, this would temper issues on accuracy of ratings in cases where a service fails to meet to meet a small number of elements.

3.1.8 Proposal 1.8 - Length of time between assessments

Options for length of time between assessments

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

FDCA position:

Option number	Description
1.8A	No change

FDCA strongly supports Proposal 1.8A, which would result in no change to the current three-year rating cycle.

FDCA believes that in assessing the merits of any regulatory amendments to the National Quality Framework, the impact on, and hence outcomes for children must be the paramount consideration. In this instance, FDCA believes that reducing the level of scrutiny on services is detrimental to the central focus of the National Quality Framework, that is establishing a national quality ECEC system for all children.

While FDCA shares serious concerns about resourcing issues that have resulted in untimely assessments, it is our belief that it is inappropriate to lower level of scrutiny in assessing quality benchmarks.

3.2 Removing supervisor certificate requirements

3.2.1 Proposal 2.1 – Removing supervisor certificates

Options for removing supervisor certificate requirements

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

FDCA position:

Option number	Description
2.1B	Amend the National Law to remove the requirement for supervisor certificates

Family Day Care Australia supports Proposal 2.1B to amend the National Law to remove the requirement for supervisor certificates.

Given that the simplification and changes to the National Regulations in June 2014 on the requirement to the application process for obtaining a supervisor certificate was welcomed by the sector, FDCA further agrees with the recommendation that the requirement for supervisor certificates be abolished.

“Current Regulations require specific categories of staff to be on site at all times, including staff with required qualifications. There is always someone with authority on site. Supervisor certificates are not necessary.”

FDC Service Staff Member

3.3 Expanding the scope of the NQF

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

Options for additional services to be included in the NQF

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

FDCA position:

Option number	Description
3.1D	Include all BBF centre-based services, occasional care services (excluding those provided for parents attending conferences, sport and leisure activities or shopping), playschools and mobile services in the NQF.

FDCA supports in-principle Proposal 3.1D to include all BBF centre-based services, occasional care services (excluding those provided for parents attending conferences, sport and leisure activities or shopping), playschools and mobile services in the NQF.

The overriding aim of all service types should be the provision of high quality care and education to Australia's children to ensure excellent learning and developmental outcomes. To this end, FDCA believes it ideal that out of scope ECEC service types should be brought into the NQF to create a national and unified approach for all ECEC services. This would ensure greater consistency across all ECEC services subject to the regulatory structures and quality standards established under the National Quality Framework.

FDCA believes that for out of scope services to be successfully brought into the National Quality Framework considerations must be made in regard to:

- Sufficient and variable transition periods;
- Adequate consultation;
- Appropriate support mechanisms for services to transition; and
- Sufficient flexibility in the application of requirements of the NQF (and hence tailored regulatory provisions), as was afforded to the various service types currently subject to the NQF.

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

Options for application of assessment and rating processes to additional services

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

FDCA position:

Option number	Description
3.2A	Additional services included in the NQF are assessed and rated in the same way as others currently covered by the NQF This option is linked to 3.1B, C & D

FDCA provides in-principle support to Proposal 3.2A which requires additional services included in the NQF to be assessed and rated in the same way as others currently covered by the NQF.

If the aim of the NQF is to work towards and promote a nationally consistent, high quality system of ECEC which is applicable to all ECEC services, FDCA believes that all services included in the system should ultimately be assessed and rated in the same way. While FDCA acknowledges the cost and challenges for out of scope services in transitioning to the NQF system, a compliance monitoring approach only would not result in the same level of national consistency and the best educational and developmental outcomes for children accessing all ECEC services.

While FDCA believes that the 2019 Review of the NP NQA (as outlines in 3.2B) is too long a period to consider assessment and rating processes for out of scope services, it should be noted that there must be adequate considerations made in bringing out of scope services into the NQF (relating to both compliance and assessment and rating processes) including:

- Sufficient and variable transition periods;
- Adequate consultation;
- Appropriate support mechanisms for services to transition; and
- Sufficient flexibility in the application of requirements of the NQF (and hence tailored regulatory provisions), as was afforded to the various service types currently subject to the NQF.

3.5 Changes to prescribed fees

Overview of proposals relating to prescribed fees

FDCA does not support the proposed options that would see a significant increase to prescribed fees. FDCA is supportive of improving the financial sustainability of the administrative systems, however it is our strong belief that a longer-term strategy based on reasonable and incremental changes to prescribed fees would be the most appropriate approach in addressing the shortfall of required revenue.

FDCA and members have identified a number of concerns with the suite of proposals that would see an increase in prescribed fees. Significantly, the proposals clearly do not directly address the policy problems outlined that is, “insufficient consistency and clarity.” The proposed increases in prescribed fees are instead a response to administrative issues, the shortfall of required revenue.

While FDCA is supportive of maintaining the financial sustainability of the administrative systems that support the NQF, we believe that the magnitude of the suggested price increases (50-100%) is excessive. Of particular concern is the significant increase in cumulative costs to the family day care sector if all proposals for price increases are implemented.

The proposed increases in prescribed fees coincide with amendments made to the Operational Support component of the CSP for family day care, which will result in a reduction of \$157.1 million funding to the family day care sector over the next three years. As outlined above, the changes to the eligibility criteria of the Operational Support funding will mean that over 80 per cent of family day care services will no longer be eligible for CSP funding from July 2015, leading to a range of adverse impacts on services, educators, families and children.

The complete removal of CSP funding for established services will inevitably mean the closure of some services. For those services that are able to continue operating post July 2015, the funding removal will mean fee increases to families in order to replace some or all of lost operational funding.

Taken together, the proposed changes to prescribed fees and recent CSP changes will compound to increase pressure on viability. The proposed prescribed fees will exacerbate the affordability issues that families currently face in accessing ECEC.

In many areas where families do not have the capacity to pay increased fees, services face the prospect of closing their doors. Outside of the considerable workforce participation concerns, it is apparent that if services in areas of greater disadvantage are no longer financially viable due to the cumulative impact of increased regulatory or administration costs and reduced or absent Operational Support funding (and parents cannot afford the flow on fee increases), this will impact disproportionately on the most developmentally vulnerable children.

FDCA rejects the premise outlined in the RIS that increases to fees “should also help curb inefficient behaviour by services, with new providers entering the market and services expanding based on genuine grounds”. FDCA is particularly concerned for services that are most likely to suffer from such exorbitant increases in prescribed fees being not-for-profit services that provide affordable ECEC for vulnerable families and children. The cumulative impact of increases in regulatory or administrative costs and reductions in Operational Support funding will place further pressure on such services that are entirely built upon “genuine grounds”.

FDCA believes that excessive and inappropriate fee increases at this time will discourage new services entering the market at a time of high demand of ECEC services. While FDCA is entirely supportive of sustainable and reasonable market growth in the sector, we believe that such fee increases are not in the best interests of families accessing ECEC and therefore not in the best interests of children.

FDCA is supportive of maintaining the financial sustainability of the NQF and as such, improving the cost recovery through a reasonable and appropriate (indexed) fee changes over a period of several years.

3.5.1 Proposal 5.1 – Introduce fee for extension of temporary waiver

Options for introducing fee for extension of temporary waiver

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

FDCA supports 5.1A – no change to be made as an option for introduction fee for extension of temporary waiver.

3.5.2 Proposal 5.2 – Increase in provider approval fee

Options for increasing the provider approval fee

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

FDCA supports 5.2A – no change to be made as an option for increasing the provider approval fee.

3.5.3 Proposal 5.3 – Increase in service approval fee

Options for increasing the service approval fee

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

FDCA supports 5.3A – no change to be made as an option for increasing the service approval fee.

3.5.4 Proposal 5.4 – Increase in annual fee for approved services

Options for increasing the annual fee for approved services

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

FDCA supports 5.4A – no change to be made as an option for increasing the annual fee for approved services.

3.7 Improved oversight of and support within Family Day Care (FDC) services

Overview of proposals relating to FDC

FDCA is entirely supportive of well-considered, proportionate and reasonable proposals with the aim of improving the family day care sector and reducing instances of non-compliance. As such, FDCA supports a number of the proposals in Section 3.7, or variations thereof (or at least their overarching intent).

Through extensive consultation, FDCA members have expressed support for refining and tightening gaps in the policy and regulatory framework that underpin family day care with the aim to provide greater clarity and direction for the sector.

FDCA supports the general intent of Proposals 7.1B, 7.3C, 7.4B, 7.5B, 7.6B and 7.7B, with underpinning caveats and considerations. FDCA does have serious concerns with select proposals and aspects of proposals which are outlined in detail below.

FDCA and the sector strongly believe that targeted, collaborative work in this area will ensure the family day care sector continues to be a leader in quality home-based education and care in Australia, and hence continue support the best possible learning and developmental outcomes for children.

3.7.1 Proposal 7.1 – Approval of FDC services across jurisdictions

Options for approval of FDC services across jurisdictions

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

FDCA position:

Option number	Description
7.1B	Approved FDC providers be required to hold a service approval in each jurisdiction in which they operate (including paying all relevant fees in each jurisdiction in which they operate an FDC service)

The Australian Government has made amendments to the *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000 (the Eligibility Determination)* coming into effect 3 June 2015. This means that approved Family Day Care services must not provide care in a state or territory other than the state or territory in which the service has a service approval under the Education and Care Services National Law (National Law).

FDCA supports in-principle these legislative changes and as such, Proposal 7.1B. This in-principle support is contingent upon no changes to prescribed fees (as outlined Proposal 5.2).

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

Options for limiting the number of FDC educators in a service

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

FDCA position:

Option number	Description
7.2A	No change

FDCA supports Proposal 7.2A, that is, no change to the current arrangements related to limiting the number of family day care educators in a service.

FDCA strongly opposes Proposal 7.2B that would amend the National Law so that a Regulatory Authority may impose a maximum number of educators approved to be engaged or registered by a family day care service and include this on the service approval. We note that certain Regulatory Authorities are, in some cases, already imposing educator caps on service approvals however this is not legislated as yet.

Through FDCA’s member consultation, significant concerns were expressed by the majority of respondents in relation to the proposal that provides the Regulatory Authority the legislative power to impose caps on educators in a service agreement.

FDCA members have expressed concerns with the power delegated to the Regulatory Authority and how it may be applied, particularly in relation to the apparent discretionary nature and consistency of these decisions. FDCA is particularly concerned with the level of discretion that will ultimately restrict a demand driven ECEC market and curb legitimate and demand driven growth in family day care.

FDCA contends that the rationale presented for Proposal 7.2B is flawed, that is, it would “help ensure that a new family day care service grows at an appropriate pace e.g. that it has appropriate policies and procedures in place before it expands” (62), as defining “appropriate pace” is not universally applicable.

It should be noted that if implemented, this proposal would come at a time when there is significant fiscal pressure on family day care services due to the reduction of \$157 million of CSP funding in the sector over three years. Services are therefore looking to supplement their income stream through methods such as engaging additional educators (economies of scale) to compensate such a large loss in income. This proposal, while discretionary, would be restrictive and detrimental in the context of the aforementioned funding changes.

If implemented and Regulatory Authorities imposed caps, this proposal would have far-reaching impacts on the financial viability of services and as a result, will have flow on effects to parents through increased fees and restricted access to family day care services. This is highly concerning to FDCA and our members.

Proposal 7.2B would limit educators’ ability to choose a service with whom to register, though perhaps more significantly, would be the disproportionate impact upon services that engage educators who work part-time, which constitute the vast majority of family day care services.

“Most Educators in our Service choose to work part time and we encourage this as we feel it is beneficial for them and their families and the quality of care they deliver when they have a good work/life balance.. A cap on the number of educators would create a disincentive for Services to recruit Educators who wish to work part time. This is not good for the quality of care and it is yet another discriminatory blow for the sector.”

Family day care Service Staff Member

While FDCA shares the concerns with Regulatory Authorities regarding compliance issues within the family day care sector, imposing a reactive and highly discretionary new power to Regulatory Authorities is not an appropriate response to such issues, particularly when adequate information has not been provided as to the exact nature and extent of the problem the policy is attempting to solve.

“FDC is a business like any other and expanding needs to be an option. Note: Expansion can and will only happen if there is a need!!”

Family day care Service Staff Member

If this Proposal 7.2B were to be implemented, FDCA would advocate for a clear and transparent process by which services with a cap placed upon them have the ability to appeal the decision and submit a case to the Regulatory Authority demonstrating that the demand for family day care and ECEC in the local area requires there to be additional educators.

Clear guidance and guaranteed transparency would be required to successfully monitor the far-reaching impacts of the legislated power delegated to Regulatory Authorities that have the potential to severely limit the viability of the family day care sector.

Additionally, services that Meet or Exceed the National Quality Standard should not be subject to educator caps as these services demonstrate an ability to manage a high quality and efficient service providing for positive learning and developmental outcomes for children.

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

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

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

FDCA response:

Option number	Description
7.3A	No change
7.3C	Amend the National Law on conditions on service approval to include a duty for the approved provider to ensure that FDC educators are adequately supported, monitored and trained

FDCA does not support the proposed options that impose a ratio of family day care coordinators to educators.

FDCA provides in-principle support to Proposal 7.3C that would amend the National Law on conditions on service approvals to include a duty for the approved provider to ensure that family day care educators are adequately supported, monitored and trained.

The National Law currently uses an outcomes-based approach to ensure sufficient monitoring, support and training. It would be imprudent to depart from the current outcomes-based approach and impose an arbitrary ratio which would increase compliance costs significantly for the sector without evidence underpinning the chosen ratio.

There is a concerning lack of evidence supporting a specified ratio as promoting the best outcomes for children. FDCA is a strong advocate for tailored and appropriate support being provided for individual educators based on the needs of service and educators.

"This does not reflect the rest of the legislation which is outcomes based. Also, this should be risk managed for each service and the service should be able to explain the reasons for how many coordinators are employed and how the service supports educators to offer quality care."

Service rated as Excellent under the NQF, with a ratio of 1:32

Consultation with the family day care sector indicates a varied approach to ratios of coordinators to educators between services dependant on the individual needs of educators.

What is apparent from FDCA consultation was that there are many examples of services with high coordinator to educator ratios that have achieved high NQF ratings. One such service with a ratio of 1:32 was rated 'Excellent' which recognises the service as a sector leader. To restrict the ability for this service to deliver quality ECEC based on an arbitrary ratio would be at the detriment of the community and children.

Importantly, other services with a lower coordinator to educator ratio such as a self-imposed 1:15 ratio were assessed as 'Working Towards'. To this end, the unique model of family day care allows for a tailored approach to support of educators based on the individual.

"As not all coordinators work full time hours it is difficult to define a ratio. Also many educators now only work part time which limits the financial earning capacity of the scheme. However I agree with the second clause as services have a duty of care to all children and families and need to ensure that their educators are adequately trained, supported and monitored."

Service yet to be rated ratio of 1-15

"These ratios would not be a good utilization of time and resources. How would this allow for project management and utilisation of staff skills and expertise?"

Service rated as Excellent without a set ratio

FDCA is concerned with the lack of detail provided in the proposal that imposes a coordinator to educator ratio for services. There are many formative factors that require consideration in determining the most appropriate coordinator to educator ratio for individual services and educators:

- The coordinators area coverage and travel time (e.g. particularly evident in rural areas);
- The work hours of the coordinators (e.g. full time or part time);
- The support needs of the educator such as:
 - If the educator is from a non-English speaking background;
 - If the educator is caring for a high needs child (e.g. a diagnosed disability or otherwise);
 - The experience of the educator (e.g. newly engaged educators that require more support compared with experienced educators);
 - Educator qualifications (e.g. if the educator is tertiary educated or working towards certificate III);
 - The number of children that educators care for; and
 - The hours educators operate such as if they provide family day care part time or full time.

While the majority of family day care members oppose the proposals that would impose a coordinator and educator ratio, there is support for proposal 7.3C that would amend the National Law on conditions on service approvals to include a duty for the approved provider to ensure that family day care educators are adequately supported, monitored and trained. Feedback provided to FDCA suggests that alternative policy options to strengthen the duty of approved services to provide sufficient monitoring and support and increase clarity is supported through such mechanisms.

3.7.4 Proposal 7.4 - Mandating a minimum Certificate III for FDC educators

Options for mandating a minimum Certificate III for FDC educators

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

FDCA response: (Partially supports contingent upon requests)

Option number	Description
7.4B	Require all FDC educators to have an approved Certificate III (or equivalent) before being permitted to educate and care for children, rather than working towards the qualification, which is currently the requirement

FDCA supports Proposal 7.4B on the condition that there must be a uniform and consistent approach to qualification requirements for all ECEC service types regulated under the NQF. FDCA proposes this on the basis that it will produce the best quality outcomes for children accessing all ECEC services.

To this end, FDCA would support this proposal if it extended to all ECEC educators, both centre-based and family day care educators, be required to hold an approved Certificate III (or equivalent) before being permitted to educate and care for children, rather than working towards the qualification.

FDCA vehemently rejects the proposal's unsubstantiated rationale outlined in the RIS that family day care educators working towards a Certificate III working independently could be cause for concern for the wellbeing of children.

Family day care is a highly regulated, well-established, and safe educational service for children that meets the same requirements to centre-based ECEC and other specific family day care requirements. To base Proposal 7.4B on an unsubstantiated risk to children posed by newly engaged family day care educators is entirely inappropriate and ill-considered. Proposal 7.4B should instead be founded on the ongoing pursuit of excellence in nationally unified and professionalised ECEC sector.

The RIS has grossly failed to acknowledge the role of the coordination unit in providing support, guidance and contact for new educators. FDCA is a strong advocate for high quality outcomes for children provided through the best possible ECEC environment.

This is why the family day care model has the appropriate mechanisms and safeguards to ensure that educators are supported in the provision of family day care in their home. This is undertaken by coordination units and field staff which are an integral part of family day care.

The role of the family day care coordination unit in the delivery of home-based ECEC is paramount in ensuring high quality service delivery (and hence positive learning and developmental outcomes for children) through providing requisite support, training and monitoring of educators. Coordination units:

- Provide professional development opportunities to educators;
- Implement coherent service-wide continuous improvement strategies through the required Quality Improvement Planning process;
- Undertake NQS monitoring and educator home assessments/visits;
- Act as the central point of business administration, including subsidy administration (service level); and
- Facilitate educator regulatory compliance.

Family day care educators, like long day care educators, are early childhood education and care professionals registered with an approved service who engage in the principles and practices of the Early Years Learning Framework (EYLF) and work within the requirements of the National Quality Framework. Family day care educators are the leaders in regulated home-based quality ECEC in Australia.

The pursuit of quality and excellence in ECEC services has been embraced by the family day care sector. As such, FDCA would support a proposal which requires all ECEC educators working in approved ECEC services to hold a minimum Certificate III before being permitted to educate and care for children, rather than working towards the qualification, which is currently the requirement for both long day care educators and family day care educators.

It is inadequate for the RIS to propose mandatory minimum Certificate III qualifications of the family day care sector and fail to recognise this same need across the entire ECEC sector subject to the same regulatory structures and the National Quality Standard.

3.7.5 Proposal 7.5 – FDC educator assistants’ activities

Options for FDC educator assistants’ activities

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

FDCA response:

Option number	Description
7.5B	Create an offence (with attached penalty) that an approved provider must ensure the assistant’s activities are limited to the circumstances set out in Regulation 144(2) (as amended), with the penalty set at \$2,000

FDCA supports proposal 7.5B that would create an offence (with attached penalty) that an approved provider must ensure the assistant’s activities are limited to the circumstances set out in Regulation 144(2) (as amended), with the penalty set at \$2,000.

While services have policies and procedures in relation to the engagement, registration and undertaking of educator assistants, the clarified amendment to “regular appointment” as specified within the legislation is reasonable. FDCA believes that this is in the best interests of children in family day care.

3.7.6 Proposal 7.6 – Principal office notifications

Options for principal office notifications

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

FDCA response:

Option number	Description
7.6B	A FDC service must notify the regulatory authority of changes to the principal office at least 14 days before the change

FDCA supports the first component of Proposal 7.6B only, which requires that a family day care service notify the Regulatory Authority of changes to the principal office at least 14 days before the change. FDCA does not support the latter component of Proposal 7.6B, as there is not enough information provided in the RIS as to the allowable circumstances by which a Regulatory Authority can refuse to amend the service approval, which effectively equates to the power of regulatory authorities to close services that have moved premises for arbitrary and undefined reasons.

3.7.7 Proposal 7.7 – Powers of entry to FDC residences

Options for powers of entry to FDC residences

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

FDCA response:

Option number	Description
7.7B	Amend the National Law to allow authorised officers to enter FDC residences where the authorised officer reasonably believes that a service is operating at the residence at the time of entry

FDCA supports Proposal 7.7B in principle; however a stringent and clearly defined process by which the power may be applied is unequivocal.

The above caveat to FDCA’s support stems from concerns relating to the proposal allowing for overly discretionary power delegated to Regulatory Authorities and concerns relating to the consistency of the power’s application across regions and jurisdictions.

FDCA’s support would also be entirely contingent upon the regulation allowing a family day care educator to have access to a support person from the approved service or otherwise to be present during the visit.



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