

# SUBMISSION TO THE 2019 REVIEW OF THE NATIONAL QUALITY FRAMEWORK

Family Day Care Australia



# 1. INTRODUCTION

Family Day Care Australia (FDCA) welcomes the opportunity to contribute to the 2019 National Quality Framework Review ("the 2019 NQF Review") through this submission. FDCA commends State and Territory Governments and the Australian Children's Education and Care Quality Authority (ACECQA) for their ongoing commitment to continuous improvement of the NQF and the work being undertaken through the 2019 NQF Review to ensure it continues to meet its objectives.

FDCA actively supports the core objectives of the NQF, that is, to ensure the safety, health and wellbeing of children attending education and care services and to improve their educational and developmental outcomes. FDCA also supports the other key objectives of the NQF, as stated in Section 3 of the *Education and Care Services National Law Act 2010* ("the National Law"):

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

## 1.1 About Family Day Care Australia

FDCA is an apolitical, not for profit, national member association representing 13,948 family day care educators and 520 approved family day care services.<sup>1</sup> Our mission is to represent, support and promote the family day care sector in delivering high quality ECEC to more Australian children. Our aim is to ensure the strength and continued growth of the sector in Australia.

1 FDCA Family Day Care Sector Profile, March 2019

2 Pascoe, S. Brennan, D. (2017) *Report of the Review to Achieve Educational Excellence in Australian Schools through Early Childhood Interventions*

3 Department of Education and Training, *Child Care in Australia – September quarter 2018*

4 FDCA Family Day Care Sector Profile, March 2019

## 1.2 About family day care

Family day care is a form of regulated early childhood education and care (ECEC) that takes place in the educator's home and is regulated under the National Law and the Education and Care Services National Regulations ("the National Regulations"), thereby meeting the requirements defined in the National Quality Standard (NQS).

Family day care is a significant element of ECEC in Australia that responds to parents' desire for a 'home-based' and 'family-like' environment for their children.<sup>2</sup> Educators work from their own homes with small groups of no more than four children under school age, with the option to care for an additional three school aged children outside of school hours. The family day care sector provides flexible ECEC across both standard and non-standard hours, and family day care is provided across Australia, including in rural and remote communities where, in some instances, family day care is the only approved form of ECEC available to families.

Family day care is an option of choice for more than 89,160 families across Australia, responding to parents' desire for a 'home-based' and 'family-like' environment for their children. Of the 1,314,470 children who attend approved child care services nationally, approximately 10%, or 131,600 attend family day care settings.<sup>3</sup>

The family day care sector provides much needed ECEC for Australian families in areas of high disadvantage, with 22.9% of educators providing family day care in areas that are ranked in the two highest deciles on the SEIFA index (representing areas of highest socio-economic disadvantage) and over half of educators (51.5%) being located in areas ranked in the first five deciles of the SEIFA index<sup>4</sup>. Furthermore, 24.1% of family day educators operate in regional and remote areas of Australia. In some of these areas, family day care is the only option available for child care.

---

## 2. EXECUTIVE SUMMARY

This submission represents the views of FDCA and its members in response to the 2019 NQF Review Issues Paper ( "the Issues Paper"). FDCA has focused this submission on the areas of current and critical importance to our members.

This submission is also underpinned by FDCA's strongly held positions that:

- FDCA does not support any regulatory changes that will further restrict the viability of the family day care sector or limit the capacity for legitimate growth; and
- Consistency of implementation of the NQF is paramount if the validity of the NQF is to be sustained.

FDCA acknowledges that family day care has, over recent years, experienced significant numbers of fraudulent and unscrupulous operators entering the sector and utilising the service type to defraud the Australian Government. As such, FDCA remains entirely supportive of well-considered and reasonable regulatory proposals and proportionate compliance mechanisms that are designed to eradicate fraudulent behaviour from the family day care sector and that support a high quality, vibrant and responsive family day care sector. However, we maintain that it is equally important that regulatory measures taken to ensure a high quality ECEC sector do not constrain legitimate business growth so that family day care services are able to continue to meet the needs of families for whom high quality, flexible and affordable child care in a professional home learning environment is their preferred or only choice.

Section 3 of this submission comprises FDCA's response to the relevant consultation questions contained in the Issues Paper. Section 4 comprises FDCA's response to question 1 of the Issues Paper, which asks whether there are any issues not covered in this paper which significantly impact on the NQF being able to meet its objectives.

A summary of FDCA's positions on the key issues addressed is outlined below, with supporting detail in the body of the paper.

### **OVERNIGHT CARE AND PROVISION OF TRANSPORT**

FDCA does not support any changes to the ratio requirements for overnight care or regular transport in family day care as the current provisions are adequate and they allow services who have educators offering such provision to have the flexibility to provide for conditions to meet the need and requirements of the children, families and communities they support.

### **APPLICATION PROCESSES AND EFFICIENCY**

FDCA supports reviewing application processes to identify efficiencies which do not compromise outcomes for children, with a view to reducing regulatory burden. Recommended areas for review are:

- examining ease and consistency of processes across jurisdictions;
- improving consistency across jurisdictions regarding additional conditions that new services must abide by following approval;
- improving the overall guidance to prospective applicants about the process to improve transparency;
- the provision of explicit and transparent information about the timeframe between submitting an application and the resulting outcome; and
- clearer and consolidated guidance about assessing fitness and propriety to meet the requirements set down in both the National Law and Families Assistance Law.

### **SUSTAINABILITY OF THE NQF**

FDCA acknowledges that there is a clear gap in funding for the administration of the NQF since the cessation of Australian Government funding for Regulatory Authorities from 1 July 2019; however, FDCA does not support any significant increases in prescribed fees for family day care services as this may have a disproportionate impact on small and/or regional family day care services.

### **REGULATORY APPROACH**

FDCA agrees in principle that consideration should be given to alternative approaches to regulation to foster

---

quality provision. Appropriate measures may include reduced intervention, lighter reporting requirements and more lenient regulatory requirements for high quality services. FDCA would also support the abolition of the imposition of educator caps and co-ordinator: educator ratios for high quality/low risk services.

### **QUALIFICATION REQUIREMENTS**

The “actively working towards Certificate III” provision is exceptionally important for many services, especially in rural, regional and remote areas where it continues to assist services to meet workforce demands. For this reason, FDCA is strongly opposed to removal of this provision entirely, though would support a limitation on the timeframe by which an educator may be considered “actively working towards”.

### **EMERGENCY PLACEMENTS**

FDCA believes it is entirely appropriate and reasonable that regulatory authorities are notified in the event that additional children are cared for during emergency placements in exceptional circumstances.

### **FAMILY DAY CARE CO-ORDINATORS**

In relation to whether further guidance is needed on the role of family day care co-ordinators, FDCA has already commenced work in this area in the form of the development of Best Practice Guidelines for family day care co-ordinators, in consultation with the FDCA membership. As such, FDCA contends that any further work in this area would potentially be duplicative and hence should be undertaken in consultation with FDCA. FDCA does not support overly prescriptive or restrictive definitions to be defined in the regulations as the role is highly variable depending on the service size, location and community needs.

### **VALUE OF QUALITY RATINGS FOR FAMILIES**

Recent research undertaken by FDCA surveying families that currently use family day care supports the findings of previous research undertaken by ACECQA; that a families’ primary decision making factors in choosing a service do not overtly relate to quality. As such, FDCA believes that a simpler identifier of the quality rating levels could assist in deepening parents’ understanding

of the NQF and the importance of quality, if coupled with enhanced communication obligations for services in relation to their service’s quality rating. This may also assist in increasing a service’s desire to achieve a higher quality rating.

### **APPROPRIATENESS OF SANCTIONS**

FDCA contends that while it is certainly appropriate to consider the effectiveness of penalties associated with the National Law and National Regulations, given there is little evidence of a correlation between increased fines and behavioural change in the ECEC sector, FDCA would suggest that more work be done in this area prior to arbitrary increases in fines and penalties. Additionally, FDCA contends that while the current fines and penalties are certainly appropriate for approved providers if they are individuals, it is not proportionate for family day care educators to have the same level of liability as approved providers, which is currently the case under the existing fines and penalties framework.

### **PROHIBITION NOTICES**

FDCA certainly supports a comprehensive and holistic approach to assessing suitability; however, there needs to be clear and transparent guidance in relation to the threshold whereby a person is deemed “inappropriate to be involved in the provision of an approved education and care service”. Additionally, the timing of previous offences or issues that are flagged while assessing fitness and propriety should also be considered.

### **SIGNIFICANT ISSUES NOT COVERED IN THE ISSUES PAPER**

As the national peak body for family day care educators and services, FDCA has a responsibility to continue to raise additional issues associated with the implementation of the NQF that we see critical to the sustainability and future growth of our sector.

Therefore, in addressing issues of significance not covered in the Issues Paper, FDCA is also addressing a number of issues that were addressed in the 2014 NQF Review, as FDCA does not consider some of the key changes implemented from the 2014 NQF Review to be adequately resolved. While FDCA supports the intent of to 2019 NQF Review, that is, not to duplicate the work of

---

the previous review of the former National Partnership on the National Quality Agenda in 2014, FDCA does not support a blanket exclusion of consideration of the ongoing appropriateness and/or effectiveness of regulations introduced as a result of the 2014 NQF Review as this does not adhere to Principle 6 of the Principles of Best Practice Regulation outlined in the COAG Best Practice Regulation Guide for Ministerial Councils and National Standard Setting Bodies ("the Best Practice Regulation Guide"), that is, to ensure that "regulation remains relevant and effective over time".

As such, FDCA is presenting the issues of educator caps and co-ordinator to educator ratios for consideration as issues of significance to the family day care sector as FDCA retains concerns surrounding the discrepancies in implementation across jurisdictions, lack of transparency surrounding decision making and review processes, and perhaps fundamentally, that if the regulations are not administered in a fair and transparent manner, this will act as a significant barrier to legitimate growth within the sector, and hence its future viability.

In addition, FDCA has concerns regarding significant degrees of variance in the experiences of services that have undergone the NQF assessment and ratings process in the family day care sector. Variation in subjective experience is inevitable; yet if the variance in individuals' experiences stems from systemic variance in the administration of structural processes, this may call into question the validity and accuracy of the ratings system as a whole.

## 3. KEY ISSUES

In this section, FDCA responds to consultation questions raised in the Issues Paper that are most relevant to the family day care sector. The views expressed herein are primarily informed by consultation with FDCA service and educator members that occurred in April and June 2019, though also draws on other consultations with FDCA members in 2018 - 2019.

### 3.1 Overnight care and provision of transport<sup>5</sup>

This section responds to the following consultation questions:

3. Considering the range of contexts for the provision of overnight care, how should the supervision and ratio requirements in the NQF apply?
4. Considering the range of contexts where regular transport is provided by a service, how should the supervision and ratio requirements in the NQF apply?

While FDCA accepts that services such as regular transport of children and overnight care may not have been envisaged at the start of the NQF, they are services which are clearly needed by families as part of their child care arrangements, especially shift working parents. Family day care educators often provide services such as overnight care or regular transport to meet the demands of the families in their area and these additional services have in many cases become highly valued features of their business.

A majority of FDCA service members believe the current ratios around overnight care are adequate and allow sufficient scope to account for the diversity of scenarios supported. Services who have educators offering overnight care emphasise that they have policies and

procedures in place to ensure adequate care of children and address risk management, or if they wish to introduce limitations, for example, reducing the number of children under one year of age.

*“ We have policies and procedures in place and the nominated supervisor is required to be notified when this type of care occurs. We also have guidelines for where children sleep etc. ”*

INNER REGIONAL SERVICE, NSW

Similarly a significant majority of services (79%) were opposed to any change to the regulations around regular transport, noting that any restrictions would adversely affect the capacity of educators to connect with the community and offer before and after school care, especially in regional areas. Again it was emphasised that services that have educators offering this option should have policies and procedures in place to manage risks.

*“ I believe it's up to the individual service to set procedures and ensure compliance of best practice in relation to the conduct and expectations of the educator while taking children out of the family day care service. ”*

OUTER REGIONAL SERVICE, NSW

<sup>5</sup> National Quality Framework Review Issues Paper, Section 1.1

“*Restraint fittings are the biggest limitation here. Vehicles are rarely fitted for more than two pre-schoolers. Educators need to manage that process first, getting bolts etc fitted. Meeting those requirements is costly and requires a commitment from the educator. If they do that, then they are safe to transport the maximum of 7 children.*”

METRO SERVICE, VIC

For the reasons outlined above, FDCA does not support any changes to the ratio requirements for overnight care or regular transport in family day care.

### 3.2 Application processes and efficiency<sup>6</sup>

This section responds to the following consultation questions:

5. What are the experiences of providers in navigating approval under both the NQF and the Family Assistance Law?
6. What are the main difficulties encountered in the application process for service approval under the NQF?
7. What could make the application process easier?
8. How can the assessment of whether an individual is 'fit and proper' be undertaken more effectively, proportionately and efficiently?

As the Issues Paper points out, application processes under the National Law and the National Regulations involve significant regulatory and administrative effort for

applicants and Regulatory Authorities. FDCA supports reviewing the processes to identify efficiencies which do not compromise outcomes for children, with a view to reducing regulatory burden.

Feedback from our members indicates that areas for improvement may include:

- Improving the consistency of processes across jurisdictions;
- Improving the overall guidance to prospective applicants about the application process so it is clear and straightforward;
- Providing explicit and transparent information about the timeframe between submitting an application and receiving an outcome;
- Clearer and consolidated guidance about assessing fitness and propriety to meet the requirements set down in both the National Law and Families Assistance Law and a more consistent and transparent approach across jurisdictions. A significant proportion of FDCA service members report that they have encountered difficulties with fitness and propriety assessments, which is of concern to FDCA, considering the importance of this determination in the approval process.

Finally, FDCA would like to emphasise that there appears to be a lack of consistency across jurisdictions regarding additional conditions that new services must abide by following approval. For example, in a number of jurisdictions new services are restricted to registering a maximum of as few as 10 educators, which is not the case in other jurisdictions. While FDCA recognises that the application of conditions such as this are currently mandatory and are designed to be a strategy to manage risk in newly established services, we maintain that the imposition of such severe restrictions impede legitimate growth and viability in the sector and should be reviewed. Furthermore, the risk management framework for assessing appropriate educator caps as conditions of service approvals should be transparent and consistent across jurisdictions. FDCA does not support the blanket imposition of conditions of service approval without adequate transparency as to the risk management profiling process as this is at best, contrary to the intention of the Act, or at worst, overreach of the a Regulatory Authority's powers under the National Law.

<sup>6</sup> National Quality Framework Review Issues Paper, Section 1.2

### 3.3 Sustainability of the NQF<sup>7</sup>

This section responds to the following consultation question:

14. What fee models are appropriate for ensuring the continued operation of the NQF and improving outcomes for children and families by encouraging improvement in service quality?

Given that from 1 July 2018 the Australian Government no longer provides funding to Regulatory Authorities for the administration of the NQF, FDCA acknowledges that there is clearly a funding gap that needs to be filled as a result of the cessation of this funding. However, the majority of this gap should not lie with the ECEC services being regulated in the form of increased prescribed fees, as this would not promote ongoing sustainability of service delivery, particularly for smaller services or those in rural and remote areas.

Additionally, as acknowledged in the Issues Paper, given that the proportion of the cost of administering and regulating services under the NQF borne by services is relatively insignificant (i.e. less than 10%), any increase to prescribed fees that would make a significant difference to alleviating the cost of regulating the NQF to Regulatory Authorities would be a considerable, and unsustainable, financial burden on ECEC services generally, though particularly on small, rural and remote family day care services.

While FDCA believes that the current framework surrounding prescribed fees in Schedule 2 of the National Regulations adheres to the six principles underpinning charging fees for government activities under the Australian Government Charging Framework, and FDCA generally supports a tiered structure of the prescribed fees, FDCA does not support any significant increase in fees, particularly for smaller and/or regional and remote services. Any increases to fees required to be paid by family day care services to support the ongoing

maintenance of the NQF should continue to be tiered (based on the number of educators engaged by the service) and more detailed consultation should take place with the sector in relation to the appropriate fee levels, as they currently appear to be somewhat arbitrary and do not align with other regulatory measures affecting service size, for example, Regulation 32A under the National Regulations which caps the maximum number of educators a service may register.

### 3.4 Regulatory approach<sup>8</sup>

This section responds to the following consultation questions:

15. How can high quality providers and services be encouraged to sustain and grow quality services?
16. What approach should Regulatory Authorities take to engaging with approved providers to best achieve the objectives of the NQF?

The Issues Paper suggests that following cessation of the National Partnership on the National Quality Agenda, and the range of ECEC service types and offerings, consideration should be given to alternative approaches to regulation, including assessment and other regulatory activities to foster quality provision. FDCA agrees with this broad proposition in principle.

In a family day care context, flexible regulatory approaches, such as increased autonomy for consistently high performing services, could certainly be used as a means of encouraging high quality. Indeed, an considerable majority (78%) of FDCA service members support such an approach.

However, it is important to note that while favourable treatment to high quality/low risk services may result in reducing regulatory burden, reward their efforts and act as an incentive to other services to deliver high quality

<sup>7</sup> National Quality Framework Review Issues Paper, Section 2.1

<sup>8</sup> National Quality Framework Review Issues Paper, Section 2.2



services, ultimately the type of favourable treatment taken by regulatory authorities is strongly dependent on the reliable identification of such services and relies on the risk assessment process and policies that both services and regulatory authorities have in place.

FDCA also considers constructive relationships with Regulatory Authorities as an important dimension of sustaining and growing quality services. Overall, there appears to be a need for a more collaborative approach on the part of Regulatory Authorities when working with family day care services and recognition of the unique context the sector operates within. There is also room to provide opportunities for quality providers to be better recognised.

*“ Redevelop the collaborative partnerships that services had years ago with Authorized Officers. Quality services should be able to develop respectful and positive professional partnerships that focus on improving outcomes for children. This space has changed in such a negative way over the past 5 years. Quality services are now isolated, judged and guilty until proven innocent. Quality services want recognition for their ongoing work and practices - not to be judged on one day of visits during an assessment. When we work together to reflect and improve practice greater results can be achieved. ”*

**METRO SERVICE, VIC**

*“ Services that are meeting the standard and have no compliance issues should be reviewed less than those that are working towards. Also, local officers that have connections with local services would make a difference. ”*

**INNER REGIONAL SERVICE, NSW**

FDCA therefore advocates for a holistic and integrated regulatory approach. This approach would not only consider specific regulatory incentives that could encourage and grow quality provision, but take into account a range of other relevant factors such as exploring, establishing and delivering linkages between high quality and viability, fundamental economic principles of supply and demand, income against expenditure in quality service delivery (i.e. the true costs associated with operating higher quality family day care services). While this piece of work in its entirety is outside the scope of the 2019 NQF Review, work was recently undertaken in this area by the Council of Australian Governments' (COAG) Early Childhood Policy Group (ECPG) and should be considered in informing and developing a national approach to help sustain and grow quality services in the family day care sector.

In relation to possible specific regulatory incentives, FDCA considers the following types of regulatory incentives may be attractive to high quality/low risk family day care services and effective in reducing regulatory burden:

- a. Reduced intervention, simplified procedures and lighter reporting requirements such as:
  - i. spot checking rather than the usual scheduled inspections and assessments;
  - ii. allowing high quality / low risk services to manage some complaints 'in-house'. This measure would need to be accompanied by the development of a clear and transparent risk-based complaints framework developed in consultation with Regulatory Authorities, ACECQA and FDCA.

- b. More lenient or “lighter touch” regulation such as:
  - i. abolition of the imposition of educator caps and co-ordinator: educator ratios for high quality/low risk services.

In some circumstances, the limits placed on educators are a barrier for quality services to expand their provision. Family day care services are businesses like any other and legitimate expansion needs to be an option to remain viable in a competitive, demand driven and dynamic market. As recommended in the 2014 NQF Review Decision Regulation Impact Statement, the regulation should be exercised as a discretionary power designed primarily to manage potential risks associated with new services or those with a higher risk of non-compliance.

- c. Allowing regulatory authorities the discretion to permit high quality/low risk services to approve educator to child ratios of 1:5 under specified circumstances, such as for educators holding a Diploma or Degree with a cap on number of children aged 0-2 years.
  - i. While FDCA is on the record for supporting the NQS requirement of a ratio of 1:4 for children in family day care under school age, an argument can be made for rewarding high quality/low risk services by giving regulatory authorities the option to apply this higher ratio. This would act as a financial incentive, without the need for additional financial subsidies to be created. This option may also incentivise educators to undertake a Diploma qualification, which would directly impact on increases in higher quality service delivery.

### 3.5 Qualification requirements<sup>9</sup>

This section responds to the following consultation question:

- 17. Does recognising educators who are ‘actively working towards’ a qualification continue to be a practical approach to balance workforce needs and the NQF goals of service quality and child outcomes?

As outlined in the Issues Paper, the aim of the current NQF qualification requirements is to promote positive educational and developmental outcomes for children attending education and care services by ensuring comparable quality across jurisdictions. A person who is “actively working towards” a qualification can be recognised as having that qualification for the purposes of meeting staffing requirements in both the family day care sector and in centre-based services.

Recent research undertaken by FDCA to gain insight into the contemporary socio-demographic profile of family day care educators,<sup>10</sup> shows that the proportion of educators with Certificate III qualifications and above has increased significantly over the past ten years. Educators currently classified as “actively working towards Certificate III”, is very small (4%), while the proportion holding a Certificate III is 39%. Furthermore, more than half of survey respondents have higher qualifications in ECEC, with 49% holding a Diploma level qualification, and 5% holding a Bachelors Degree or higher.

FDCA certainly recognises that the intent of the regulation is not to allow educators to be actively working towards a qualification indefinitely. However, the small proportion of family day care educators classified as “actively working towards Certificate III”, highlights that the issue of educators exploiting this qualification category is not substantiated. It implies it is working as it should – alleviating workforce pressures in certain areas, with educators moving through to obtaining their full Certificate III or higher qualification.

<sup>9</sup> National Quality Framework Issues Paper, Section 2.3

<sup>10</sup> *Attracting the next generation of family day care educators*, Family Day Care Australia, 2019. (Please note: the sample size of educators surveyed for this research is 1,288).

The “actively working towards Certificate III” provision is exceptionally important for many services, especially in rural, regional and remote areas where it continues to assist services to meet work force demands. For this reason, FDCA is strongly opposed to removal of this provision entirely.

Nevertheless, it is clear that there is strong support from our members (both educators and services) to place a limit on the time frame that an educator can be classified as “actively working towards a Certificate III”, with 83% of services and 71% of educators supporting this. The time limit preferred by the vast majority of educators (86%) and services (95%) was 18 – 24 months. This appears adequate given that the projected duration for completing the Certificate III in Early Childhood Education and Care (CHC30113)<sup>11</sup> can vary from between 18 weeks (full time) to 18 months (online).

As such, FDCA would support a limitation on the timeframe for educators to be actively working towards a Certificate III to 24 months at a minimum, to allow for any unforeseen necessary breaks required while completing the Certificate III qualification whilst not allowing educators to be indefinitely “actively working towards Certificate III”.

*“ We would prefer new Educators to have a qualification but since we are at a point where we are desperate to attract new educators for the purpose of ensuring we build our viability and continue to exist; the removal of actively working towards could be detrimental. ”*

**OUTER REGIONAL SERVICE, NSW**

*“ FDC Educators are often parents wanting to stay home with their own children and earn an income. They are fully supported by us during their study time and are provided with professional development. We would struggle to get educators on board if they had to be qualified first as we are rural. ”*

**OUTER REGIONAL SERVICE, QLD**

<sup>11</sup> Project durations are based on courses provided by TAFE NSW.

## 3.6 Emergency placements<sup>12</sup>

This section responds to the following consultation questions:

20. Should the education and care of additional children during emergency placements in FDC be notified to the Regulatory Authority?
21. What are appropriate timeframes for the length of emergency placements?

Under the NQF an approved provider can give permission for an educator to operate over their set ratio in 'exceptional circumstances', which are prescribed in the National Regulations. However, it is up to the approved provider to ascertain if exceptional circumstances, as defined in the regulations, exist and approve each additional child. Currently, there is no defined time frame for how long a family day care educator is able to operate over ratio in exceptional circumstances, and the provider is not required to notify the Regulatory Authority when this exception is being utilised.

FDCA believes it is 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, FDCA would also support further guidance as to what would constitute 'exceptional circumstances', subject to adequate consultation with the sector.

Regarding an appropriate amount of time for a family day care educator to provide care for additional children in exceptional circumstances, FDCA maintains that this should depend on the individual case circumstances. In regional, rural and remote locations, there may be no other services available to assist and service providers should be able to be flexible and responsive to families needs.

## 3.7 Family day care co-ordinators<sup>13</sup>

This section responds to the following consultation questions:

22. Is further guidance on the role of FDC co-ordinators needed? If so, what form should this take? E.g. in regulation, online guidance materials etc
23. Should the child protection training obligations of Nominated Supervisors similarly apply to FDC co-ordinators?

The Issues Paper outlines the changes that applied to family day care co-ordinators following the 2014 NQF Review. FDCA notes that apart from qualification requirements, there is little guidance and few regulatory requirements that apply specifically to family day care co-ordinators under the National Law and the National Regulations.

### 3.7.1 GUIDANCE ON THE ROLE OF CO-ORDINATOR

Two thirds of FDCA service members believe that further guidance on the role of family day care co-ordinators is needed to assist them to understand their responsibilities in light of the recent changes, with a majority of those supporting additional guidance in the form of online materials.

However, it is important to emphasise that any role requirements set down in legislation should define suitability without unduly constraining the scope of the co-ordinator, as flexibility is essential given the variety of service types and sizes.

A comparison could be drawn between the definition of the regulated description of the role of an educational leader, as prescribed by Regulation 118, which states "the approved provider of an education and care service must designate, in writing, a suitably qualified and experienced educator, co-ordinator or other individual as educational leader at the service to lead the development and implementation of educational programs in the service."

<sup>12</sup> National Quality Framework Issues Paper, Section 2.6

<sup>13</sup> National Quality Framework Review Issues Paper, Section 2.6

---

This is clearly a very broad definition, but allows for the flexibility that is required of the role.

FDCA contends that any additional guidance for co-ordinators should be in the form of Best Practice Guidelines, rather than being prescribed in regulations. FDCA has commenced the development of this piece of work and will be consulting with FDCA members nationally and through a formal Advisory Committee, as provided for under the FDCA Constitution. This is a considerable piece of work that will require extensive consultation due to the unique and varied nature of the role of co-ordinators. FDCA proposes that any additional work done in this area as a result of the 2019 NQF Review be conducted in conjunction with the work already being undertaken by FDCA both to avoid duplication of work, reduce cost for Regulatory Authorities and/or ACECQA and to ensure robust and comprehensive consultation with sector experts is undertaken.

### **3.7.2 CHILD PROTECTION REQUIREMENTS**

As also highlighted in the Issues Paper, one requirement of family day care co-ordinators is to ensure family day care services are able to identify and respond to child protection issues. However, family day care co-ordinators are not specifically required to successfully complete an approved child protection training course, although co-ordinators must hold a Diploma level education and care qualification that may include child protection training as a required module.

FDCA unequivocally supports appropriate measures that further increase the safety of children in family day care. As such, FDCA would support the introduction of a regulation that requires co-ordinators to undertake child protection training in line with the current requirements for Nominated Supervisors. An overwhelming majority of service members (94%) also agree that the child protection training obligations of Nominated Supervisors should similarly apply to co-ordinators.

---

## 3.8 Value of quality ratings for families<sup>14</sup>

This section responds to the following consultation question:

24. How can public knowledge and understanding about quality ratings of education and care services be improved?

As is clearly outlined in ACECQA's *National Partnership Annual Performance Report: National Quality Agenda (December 2018)*, research conducted in 2014 and 2017 by the Australian Government and ACECQA suggested there was limited to moderate awareness of the NQF among families. Additionally, further research commissioned by ACECQA in 2018 found that parents placed a high degree of trust in the perceptions of other parents and many relied heavily on these subjective sources to inform their decision-making and that awareness of the NQF and function of NQS ratings remained low. However, the findings also indicated that while few specifically mentioned the word, the notion of 'quality' was crucial in their decision-making and parents had their own methods of assessing it.

These findings are also reflected in the results of a recent survey conducted by FDCA of over 2,000 families currently using family day care. Results indicated that 33% of respondents ranked the 'educational program offered', (a key indicator of indicator of quality), in their top three most important factors when selecting family day care as a care type for their child (the top responses were the home environment 71%, small groups 68% and a word of mouth recommendation 43%). This indicates that while the educational program on offer plays an important factor in the decision making for some families, other factors that are not directly associated with indicators of quality are more important considerations for more families.

A communications package could be developed at low cost for distribution by services and FDCA would support the roll out of this to services, educators and families. Such a package could be coupled with additional communication obligations for services under the National Regulations. While Regulation 173 requires that certain information must be displayed, further obligations could be introduced under Chapter 4, Part 4.7, Division 3 of the National Regulations requiring that, upon assessment or re-assessment, services actively communicate their rating with families along with a summary of what the rating means.

14 National Quality Framework Review Issues Paper , Section 3.1

### 3.9 Appropriateness of sanction<sup>15</sup>

This section responds to the following consultation questions:

25. Are current penalty amounts properly matched to the offences, and proving an effective deterrent to non-compliance?
26. Are offences targeted at the correct person? (i.e. Approved Provider, Nominated Supervisor, Educator)

While it is certainly appropriate to consider the effectiveness of current offences and associated penalties in ensuring compliance with the National Law and National Regulations, there appears to be little evidence of a correlation between increased fines and behavioural change in the ECEC sector. Therefore, FDCA would suggest that more work be done in this area prior to arbitrary increases in fines and penalties.

FDCA contends that while the current fines and penalties are certainly appropriate for approved providers if they are individuals, it is not proportionate for family day care educators to have the same level of liability as approved providers, which is currently the case under the existing fines and penalties framework. Given that the vast majority of educators are independent contractors with a relatively small turnover, the current thresholds for some fines and penalties may not represent appropriate and proportionate sanctions for family day care educators as individual entities.

Given the above, and that majority of FDCA service members were satisfied that current penalty amounts properly matched the offences and proved an effective deterrent to non-compliance, FDCA would not support any increase in fines or penalties, particularly for family day care educators.

Other feedback from FDCA members indicated that there should be some positive recognition from Regulatory Authorities for self-reporting by services; at present it is evident that some services that diligently self-report feel excessively penalised simply for strictly adhering to their compliance and reporting obligations.

<sup>15</sup> National Quality Framework Review Issues Paper , Section 4.1

<sup>16</sup> National Quality Framework Review Issues Paper , Section 4.3

### 3.10 Prohibition notices<sup>16</sup>

This section responds to the following consultation question:

29. What other factors should be considered when the Regulatory Authority is determining whether a person is unsuitable to be involved in the provision of education and care?

FDCA acknowledges that the assessment of a person's suitability to work within the education and care sector should take into account a broad number of factors, paramount of those being any matters that pose an unacceptable risk of harm to children and any factors that negatively impacts on the safety, health and wellbeing of children attending education and care services.

FDCA certainly supports a comprehensive and holistic approach to assessing suitability; however, there needs to be clear and transparent guidance in relation to the threshold whereby a person is deemed "inappropriate to be involved in the provision of an approved education and care service". FDCA contends that targeted consultation with the sector and relevant experts regarding what constitutes the threshold of inappropriateness is also necessary in order to have a robust, transparent yet appropriately proportionate system. For example, the Issues Paper cites that the assessment of whether someone is fit and proper could include consideration of fraudulent behaviour by the person. While in some instances this would certainly be a valid consideration as to the appropriateness of a person's to be engaged in the any occupation, in many circumstances an issue flagged in this area while assessing suitability would not necessarily threaten or result in negative impacts on the safety, health and wellbeing of children attending ECEC services, and thus not render such a person unsuitable under the NQF. This may, of course, differ to their suitability under Family Assistance Law (FAL), as the fitness and propriety

---

checks undertaken under FAL relate specifically to a person's suitability to be engaged in the administration of Commonwealth family assistance payments.

Additionally, the timing of previous offences or issues that are flagged while assessing fitness and propriety should also be considered. For example, a minor offence that occurred twenty years prior to the assessment (one that would not necessarily constitute a threat the safety, health and wellbeing of children attending ECEC services) may not necessarily result in the person being considered unsuitable to currently work within the ECEC sector.

Assessing suitability is complex and a holistic approach that takes into account many factors must be considered. As such, comprehensive guidance should be developed that is not unreasonably prescriptive (as a certain level of discretion is warranted in many instances) and this guidance should be based on extensive consultation with key ECEC stakeholders and relevant experts.



## 4. SIGNIFICANT ISSUES NOT EXPLICITLY COVERED IN THE ISSUES PAPER

This section responds to the following consultation question:

1. Are there any issues not covered in this paper which significantly impact on the National Quality Framework being able to meet its objectives? What are these issues and why are they significant?

FDCA strongly maintains that consistency of implementation of the NQF across jurisdictions and transparency of decision making are foundational to the NQF's continued validity and reliability as a national framework and critical to ensuring the NQF continues to achieve its objectives into the future.

For these reasons we would like to draw attention to several issues that, in our view, are in some instances contrary to the Principles of Best Practice Regulation outlined in the COAG Best Practice Regulation Guide which underpins the administration of the NQF and may also undermine its effectiveness as a nationally integrated system. These relate to:

- a. the current regulations around co-ordinator: educator ratios and educator caps and how these are implemented across jurisdictions; and
- b. consistency issues with the implementation of NQF assessment and ratings processes in the family day care sector.

### 4.1 Discretionary powers to limit numbers of educators

FDCA remains concerned that some family day care services have been unreasonably burdened by some significant operational issues arising from the additional powers that Regulatory Authorities were awarded through the 2014 NQF Review in relation to setting educator caps.

As the Issues Paper points out, state and territory Regulatory Authorities are allowed to impose a limit on the maximum number of educators that may be engaged or employed by a service as a condition on a family day care service approval, under Section 51 (5) of the National Law and 32A of the National Regulations.

FDCA holds concerns that powers to impose educator caps on family day care services, if not administered in a fair and transparent manner, can act as a significant barrier to legitimate growth within the sector, impacting negatively on the viability of the sector in the longer term and potentially limiting family day care educators' ability to choose a service to register with. Additionally, we contend there can be a disproportionate impact upon services that engage educators who work part-time, which constitute the vast majority of family day care services, as an unreasonable cap on the number of educators a service can register can create a disincentive for services to recruit educators who wish to work part-time.

While FDCA appreciates the need for regulators to manage risk, family day care services are businesses like any others and legitimate expansion needs to be an option to remain viable in a competitive, demand driven and dynamic market. Inequitable market restriction mechanisms such as a cap on educator numbers, can unreasonably limit competition and hence does not align with Principle 4 of the Principles of Best Practice Regulation outlined in the COAG Best Practice Regulation Guide.

These concerns have been borne out of feedback from our members, who have highlighted a lack of consistency in the implementation of educator caps across jurisdictions, and in many cases a lack of procedural fairness and transparency in the associated decision making process. For example:

- In at least one jurisdiction, FDCA understands that Commonwealth Child Care Subsidy System (CCSS) data is applied in determining (and denying) a number of applications for service approval amendments with regard to educator caps. This approach has not included consultation with the relevant service(s) to substantiate the data obtained and in some cases this data has been inaccurate as it was based on unsubstantiated allegations that were subsequently proven wrong. Even so, the services in question cannot apply for an amendment to or removal of the educator cap condition for one year.
- In some jurisdictions, new family day care services have a condition of service approval setting a maximum of ten educators, which in FDCA's view appears, prima facie, to be extremely restrictive and unwarranted. As stated above, FDCA does not support the blanket imposition of conditions of service approval without adequate transparency as to the risk management profiling process as this constitutes poor regulatory practice.

It is in all relevant parties' interests to ensure that the decision making process (and subsequent reasoning) for determining conditions placed on services is transparent, fair, robust and not susceptible to challenge. FDCA proposes a review of the implementation of the educator cap condition be undertaken from the perspective of consistency and with consideration of potential impacts on legitimate business growth. A review of this matter would support adherence to Principle 6 of the Principles of Best Practice Regulation outlined in the COAG Best Practice Regulation Guide, that is, to ensure that "regulation remains relevant and effective over time".

Additionally, the development of transparent guidelines is clearly in line with the recommendations made in the *Decision Regulation Impact Statement for changes to the National Quality Framework (January 2017)* which states "to help ensure national consistency, develop guidelines to assist regulatory authorities when exercising this discretion, including examples of when the discretion may be exercised (such as where there is a new service whose ability to run a service is untested, or where the service has a history of compliance issues), and when such conditions should be reviewed (every

12 months of operation). To ensure transparency this guidance should also be available to FDC providers [emphasis added]."

“ I feel that as a not for profit business operating for 30+ years we have the systems in place to self-regulate. Applying for additional places has been an issue for our service and we have had restrictions placed on us that prevents the growth of our business. It also prevents us from taking on educators from other services that are operating a good quality service if their provider has been shut down. ”

INNER REGIONAL SERVICE, NSW

“ I believe there should be a consultation with the service and department regarding the number of Educators allowed as per their rating, the compliance history, as well as the resources they have available to ensure the service is able to provide adequate support and has good systems in place. ”

METRO SERVICE, QLD

---

## 4.2 Discretionary powers to set co-ordinator: educator ratios

As a result of the 2014 NQF Review, amendments also included a mandatory ratio of co-ordinators to educators of 1:15 for the first 12 months and 1:25 thereafter (under Regulation 123A).

FDCA's concerns regarding co-ordinator: educator ratios relate primarily to the interpretation of the regulation. Specifically, we maintain that the business compliance costs were not adequately considered in the implementation of the regulation and that unreasonable interpretation of the regulation is excessively impacting on the capacity of some services to operate.

FDCA is aware, that in at least one jurisdiction, the initial approach to the implementation of the co-ordinator ratio regulation implemented 1 October 2017 was to impose a blanket ratio of 1:15 on all services and impose an unreasonable timeframe by which services were able to apply for a higher 1:25 ratio (i.e. 14 days). FDCA contended that the blanket response of imposing a universal 1:15 co-ordinator ratio is, at best, contrary to the intention of the Act, at worst, overreach of the Regulatory Authority's powers under the law. FDCA advocated against this draconian approach and the timeframe for application was subsequently extended; however, this is an example of the legitimate concerns FDCA has in relation to implementation of the new regulations that have allowed Regulatory Authorities to unreasonably restrict the legitimate growth of the family day care sector.

More generally, FDCA remains concerned that there is a lack of transparency to date in relation to the primary decision making process behind the ratios applied and no detailed information provided regarding the nature of the secondary review process. FDCA is therefore not confident that this process either allows for adequate time for the service to respond or will be conducted in a transparent, fair and impartial manner. As such, FDCA proposes that clear and transparent guidance be developed for the decision making process.

FDCA contends that an unreasonable interpretation of Regulation 123A has been implemented which is resulting in both administrative/operational burden and business viability. While it may be appropriate that one FTE co-

ordinator be engaged by the service for every 15 or 25 educators registered with the services, FDCA contends that it is entirely unreasonable that the commonly held interpretation of the regulation by Regulatory Authorities is that if, as an example, a service (with a 1:25 co-ordinator ratio) that has 25 registered educators, and hence one FTE co-ordinator, decides to register one more educator, they are required to engage another FTE co-ordinator. Regulation 123A states:

"For the purposes of section 163(1) of the Law, the prescribed minimum number of qualified persons employed or engaged as family day care co-ordinators of the family day care service is to be calculated in accordance with the following ratios —

- (a) for the first 12 months after the service commences providing education and care to children as part of the family day care service, 1 full-time equivalent family day care co-ordinator for every 15 family day care educators;
- (b) after the end of that 12 month period, 1 full-time equivalent family day care co-ordinator for every 25 family day care educators."

The regulation may alternatively be interpreted as stating for every block of 25 educators, another co-ordinator is required to be engaged. While this interpretation may also not reflect the policy intent of the regulation, a more reasonable "pro-rata" system should be considered for inclusion in the national guidance sought by FDCA, whereby 0.2 FTE additional co-ordinator hours are required for every five additional educators registered (for a 1:25 ratio service) and 0.33 FTE additional co-ordinator hours are required for every five additional educators registered (for a 1:15 ratio service). This would reflect a fair and proportionate interpretation of the regulation.

Additionally, FDCA has confirmation in writing from at least one jurisdiction that the Regulatory Authority is requiring a service to engage another co-ordinator if one co-ordinator is on sick leave (for as little as one day) to meet the ratio requirements, which is clearly absurdly unreasonable and outside the scope of the regulation. The regulation clearly refers to a co-ordinator being "employed or engaged"; a co-ordinator does not cease to be employed or engaged whilst on sick leave. As such, FDCA requests that guidance be developed that clarifies

that a co-ordinator on leave (unless extended sick or long service leave) still be included in the ratio if on short term leave.

Finally, as stated in Section 3.4 above, the NQF Review team should consider amending the National Regulations to allow for discretionary imposition of co-ordinator ratios by Regulatory Authorities (i.e. include provision for a waiver) for consistently high quality services, which may also act as a regulatory incentive to improve quality across the sector. Including provision for a waiver is in line with the recommendation detailed in the preferred option under Section 7.3 of the Decision Regulation Impact Statement arising from the 2014 NQF Review.

“Managing ratios has been challenging and time consuming. We already had a high ratio - but this new system does not allow for any variations. For example when educators work part time, services are still required to have co-ordinator ratios based on the overall registered number - in our case, our educator numbers can drop 25% on some days. The extra cost to staff this has left us questioning the ongoing viability of our service.”

**METRO SERVICE, VIC**

### 4.3 Consistency of NQS assessment and ratings processes

As ACECQA and Regulatory Authorities are aware, FDCA has commissioned independent research in this area to better understand the experience of FDCA members participating in the NQS assessment and ratings process. The study consisted of analysis of NQS data, a survey of family day care services and educators, an interview with representatives from all state and territory jurisdictions, and interviews with selected family day care services. While the research is yet to be finalised, we can share in this submission that a key finding of the study is the remarkable degree of variation in the experience of family day care services participating in the assessment and ratings process, that is unrelated to the jurisdiction in which they operate or the type of service they operate.

FDCA maintains strong concerns regarding discrepancies in how different regulatory authorities conduct assessment processes in family day care services, particularly in relation to notifying services of which educators are going to be visited and when, and in relation to how individual Authorised Officers conduct their assessment within educator's homes.

FDCA believes that the unique structure of family day care services, that is, a satellite model with multiple service delivery locations, whereby the service acts as a co-regulator, is particularly challenging to accurately and fairly assess as a whole.

Given the degree of variation, it is clear that the national implementation of NQS assessment and ratings process needs to be reviewed by ACECQA from a consistency point of view, in consultation with the sector. Variation in subjective experience is inevitable; yet if the variance in individuals' experiences stems from systemic variance in the administration of structural processes, this may call into question the validity and accuracy of the ratings system as a whole. FDCA will share key findings of the research with the NQF Review team when finalised.

**FOR MORE INFORMATION ABOUT THIS  
SUBMISSION PLEASE CONTACT:**

Michael Farrell, Policy and Advocacy Manager

Phone: 1800 658 699

Email: [michael.farrell@fdca.com.au](mailto:michael.farrell@fdca.com.au)

