

National Child Safety Review

Consultation Regulation Impact Statement

24 April 2025

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Contents

Contents	3
Acronyms.....	7
Guide to the Child Safety Review Consultation Regulation Impact Statement.....	9
What is a regulation impact statement?	9
Guide to the document	11
1. Introduction	13
1.1 The National Quality Framework	14
1.2 The education and care sector	18
1.3 What is the case for change?	20
2. The case for government intervention	26
3. Management of digital devices	29
3.1 Managing the use of digital devices	29
4. Child safety training.....	38
4.1 Introducing mandatory child safety training	38
5. Responding to educator and staff member conduct	52
5.1 Making inappropriate conduct an offence	54
5.2 Enhancing Regulatory Authorities' ability to share information with approved providers	61
5.3 Expansion of regulatory responses to educator and staff member conduct	68
6. Working with Children Checks	77
6.1 Requiring an approved WWCC prior to commencing paid or volunteer work at an education and care service	77
6.2 Requiring approved providers and Regulatory Authorities to be notified about changes in WWCC status	85
7. Improving the safety of the physical service environment.....	94
7.1 Service and temporary waivers for the design of premises (to facilitate supervision of children)	95

7.2 Requiring approved providers to assess not just the FDC residence, but areas near the residence.....	102
7.3 Enabling authorised officers to access areas of a FDC residence or property, beyond the service premises, in specific instances or for specific purposes.....	109
8. Additional recommendations	115
8.1 Effective identification, monitoring and regulation of ‘related providers’	115
8.2 Extending the limitation period for commencing proceedings under the National Law	121
8.3 Information sharing provisions for recruitment agencies	124
9. Consultations	133
9.1 Consultations to date.....	133
9.2 Consultation on CRIS options.....	133
9.3 Consultation timeframe.....	135
10. Appendix.....	136
10.1 Evolution of CSR recommendations to the proposed options	136
10.2 The National Model Code and Guidelines.....	142
10.3 Child protection training and Child Safe Standards.....	144
10.4 Overview of jurisdictional WWCCs.....	147
10.5 Summary of relevant WWCC legislation and requirements.....	149
10.6 Family Assistance Law (FAL)	155

Figures and Tables

Table I: Content of CRIS and DRIS.....	10
Figure I: Timeline of this RIS.....	11
Table II: Guide to the document.....	11
Figure 1.1: The National Quality Framework structure	15
Table 1.1: Different service types and attendance, 2023-2.....	18
Figure 1.2: Number and proportion of services by provider management type, 1 January 2025.....	20
Table 3.1: Policy options under consideration – Managing the use of digital devices	31
Table 4.1: Policy options under consideration – Child safety training	42
Table 5.1: Policy options under consideration – Making inappropriate conduct an offence ..	56
Table 5.2: Policy options under consideration – Enhancing Regulatory Authorities’ ability to share information with approved providers.....	64
Table 5.3: Policy options under consideration – Expansion of regulatory responses to educator and staff member conduct.....	70
Table 6.1: Overview of WWCC legislation, regulation, and standards	78
Table 6.2: High-level overview of key differences in jurisdictional legislation for commencing roles with WWCCs	79
Table 6.3: Policy options under consideration – Requiring an approved WWCC prior to commencing paid or volunteer work at an education and care service.....	81
Table 6.4: High-level overview of key differences in jurisdictional notification requirements ..	87
Table 6.5: Policy options under consideration – Requiring approved providers and Regulatory Authorities to be notified about changes in WWCC status.....	88
Table 7.1: Quantity of all waivers of regulation 115 by status, 2013-2024	97
Table 7.2: Policy options under consideration – Service and temporary waivers for the design of premises (to facilitate supervision of children).....	98
Figure 7.1: Diagram example of the boundaries of an FDC service premises and FDC residence relative to property boundary	103
Table 7.3: Policy options under consideration – Requiring approved providers to assess not just the FDC residence, but areas near the residence.....	105

Table 7.4: Policy options under consideration – Enabling authorised officers to access areas of a FDC residence or property, beyond the service premises, in specific instances or for specific purposes	110
Table 8.1: Policy options under consideration – Effective identification, monitoring and regulation of ‘related providers’	117
Table 8.2: Policy options under consideration – Extending the limitation period for commencing proceedings under the National Law	123
Table 8.3: Policy options under consideration – Information sharing provisions for recruitment agencies.....	127
Figure 9.1: Approach to consultation process	134
Appendix Table 1: Overview of CSR recommendations and proposed options	136
Appendix Table 2: Overview of jurisdictional child protection training and status of Child Safe Standards implementation	144
Appendix Table 3: Summary of jurisdictional WWCC details.....	147
Appendix Table 4: Summary of WWCC legislation and key requirements relevant to education and care contexts	149

Acronyms

Acronym/term	Name
ACECQA	Australian Children's Education and Care Quality Authority
ACT	Australian Capital Territory
CBA	Cost-benefit analysis
CCTV	Closed-circuit television
CRIS	Consultation Regulation Impact Statement
CSR	Review of Child Safety Arrangements under the National Quality Framework
DRIS	Decision Regulation Impact Statement
ECEC	Early childhood education and care
FAL	Family Assistance Law
FDC	Family day care
LDC	Long day care
National Law	Education and Care Services National Law
National Principles	National Principles for Child Safe Organisations
National Regulations	Education and Care Services National Regulations
NQF	National Quality Framework
NQS	National Quality Standard
NSW	New South Wales
NT	Northern Territory
OSHC	Outside school hours care
QLD	Queensland
RIA	Regulation Impact Analysis
RIS	Regulation Impact Statement
SA	South Australia
SNAICC	National Voice for our Children (formally Secretariat of National Aboriginal Islander Child Care)
TAS	Tasmania
VET	Vocational education and training
VIC	Victoria

WA	Western Australia
WWCC	Working with Children Checks or Clearances
WWVPR	Working with Vulnerable Persons Registration

Guide to the Child Safety Review

Consultation Regulation Impact Statement

What is a regulation impact statement?

A regulation impact statement (RIS) assesses the impact of potential changes in regulation for Australia. Regulation is any rule endorsed by government where there is an expectation of compliance.¹ A RIS, also known as an 'Impact Analysis', is required for any policy proposal or action of government, with an expectation of compliance, that would result in more than minor change in behaviour or impact for people, businesses or community organisations.² The policy proposals included within this RIS, propose changes to the Education and Care Services National Law (National Law) and Education and Care Services National Regulations (National Regulations)³, and which would require more than a minor change in behaviour or impact for people, businesses and community organisations in the education and care sector.

A RIS must consider seven key questions (refer Table I) to enable decision-makers to understand the potential impact of major decisions and the total effect of the proposal/s on the community. These seven questions are discussed further in the subsequent paragraphs. To support the successful delivery of a comprehensive and robust analysis of these questions, the RIS will comprise of two key elements, namely a:

- consultation RIS (CRIS), which is primarily intended to provide background information on proposed reforms which largely stem from recommendations from the Review of Child Safety Arrangements under the National Quality Framework and inform public consultation responses and data collection
- decision RIS (DRIS), which is drafted and finalised following the public consultation period, which includes a cost-benefit analysis (CBA) to evaluate the impacts of each

¹ Australian Government Guide to Regulatory Impact Analysis (2020), < <https://oia.pmc.gov.au/sites/default/files/2021-06/australian-government-guide-to-regulatory-impact-analysis.pdf>>.

² Australian Government Guide to Regulatory Impact Analysis (2020), < <https://oia.pmc.gov.au/sites/default/files/2021-06/australian-government-guide-to-regulatory-impact-analysis.pdf>>.

³ This RIS also applies to the Education and Care Services National Law (Western Australia), see section 4 of the Education and Care Services National Law (WA) Act 2012.

regulatory proposal. The DRIS is treated as the final RIS document, whereby the outcomes may lead to the implementation of recommended reforms (subject to the decision of Education Ministers).

The seven RIS questions are summarised in the table below⁴. As shown in the table below, assessments and responses for Questions 4, 6, and 7 for each reform area will be included in the DRIS only. The DRIS will be drafted for consideration after consultations on the proposed options within this CRIS have been completed.

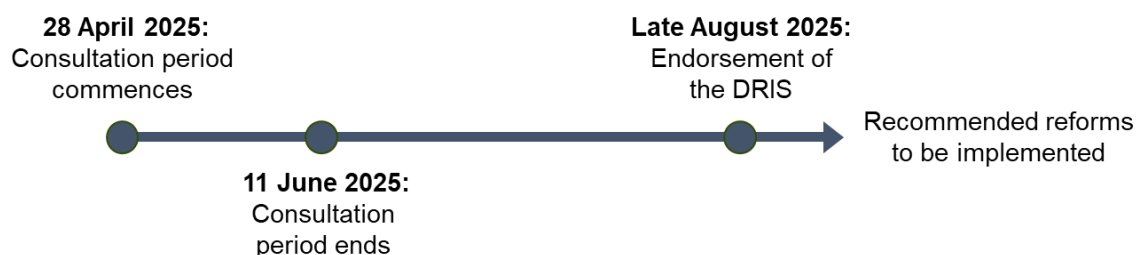
Table 1: Content of CRIS and DRIS

Key questions	Content covered in	
	CRIS	DRIS
1. What is the policy problem?	✓	✓
2. Why is government action needed?	✓	✓
3. What policy options are to be considered?	✓	✓
4. What is the likely net benefit of each option?	✗	✓
5. Who will you consult and how will their feedback be incorporated?	✓	✓
6. What is the best option from those considered and how will it be implemented?	✗	✓
7. How will the chosen option be evaluated?	✗	✓

The CRIS is subject to public consultation, with the intent of engaging the education and care sector and other stakeholders on the issues and obtaining additional data and insights on each option to inform the DRIS.

⁴ The Office of Impact Analysis, (2023), *Regulatory Impact Analysis Guide for Ministers' Meetings and National Standard Setting Bodies*, < <https://oia.pmc.gov.au/sites/default/files/2024-09/regulatory-impact-analysis-guide-for-ministers-meetings-and-national-standard-setting-bodies.pdf>>.

Figure I: Timeline of this RIS



As the public consultation period occurs post finalisation of the CRIS, it is important to note that this CRIS has been prepared as a reflection of data and evidence collected to date through desktop analysis and review of available secondary data. The public consultation process is intended to strengthen the underpinning evidence base which will inform the analysis of proposed policy options for reform in the DRIS.

Guide to the document

Table II: Guide to the document

Chapter	Content and alignment to the CSR ⁵
Chapter 1: Introduction	Provides background on the National Quality Framework (NQF), the education and care sector, the CSR, and the case for change identified through the CSR.
Chapter 2: The case for government intervention	Outlines the need for government intervention as a means to fulfil the CSR recommendations.
Chapter 3: Management of digital devices	Provides the impact assessment for policy options stemming from CSR recommendations 2.3 and 2.4.
Chapter 4: Child safety training	Provides the impact assessment for policy options stemming from CSR recommendation 12.

⁵ Appendix 10.1 provides an overview of the recommendations of the CSR that are being considered as part of this CRIS.

Chapter 5: Responding to educator and staff member conduct	Provides the impact assessment for policy options stemming from CSR recommendations 10 and 11.
Chapter 6: Working with children checks (WWCC) ⁶	Provides the impact assessment for policy options stemming from CSR recommendations 9.1 and 9.2.
Chapter 7: Improving the safety of the physical service environment	Provides the impact assessment for policy options stemming from CSR recommendations 2.1, 4.2, and 5.
Chapter 8: Additional recommendations	Provides the impact assessment for additional recommendations 1, 2, and 3 that arose subsequent to the CSR.
Chapter 9: Consultations	Provides an overview of the consultation process to be undertaken as part of this engagement and details how stakeholders are able to get involved.
Chapter 10: Appendix	Provides supplementary information that was excluded from the main body of the document

⁶ WWCC is used to represent working with children checks and working with vulnerable persons registration (WWVPR), in addition to equivalent checks across jurisdictions, in this document.

1. Introduction

The education and care sector aims to provide all children who attend an education and care service with high-quality, accessible, equitable, and affordable education and care, to support education and development outcomes and support parents' and carers' workforce participation. As of March 2024, over 1.4 million Australian children aged 12 and under attended some form of approved education and care service, of which over half a million children aged 3-6 were enrolled in a preschool program in 2023.⁷

In December 2023, the Australian Children's Education and Care Quality Authority (ACECQA) published the [Review of Child Safety Arrangements under the National Quality Framework](#)⁸ which examined new or refined systemic safeguards to better support services to protect children who attend an education and care service. In February 2024, Education Ministers agreed to the implementation of recommendations from the CSR, subject to expert advice, broad consultation, and regulatory impact analysis.

While the CSR confirmed the National Quality Framework (NQF) remains a robust regulatory scheme for the education and care sector, with a strong focus on continuous quality improvement, it noted more can be done to strengthen and refine the NQF and the National Quality Standard (NQS) with respect to child safety.

The CSR identified 16 recommendations which seek to strengthen national approaches for improving child safe cultures, safer online environments, more effective information sharing systems across jurisdictions, and building workforce knowledge and capabilities in the education and care sector.

The CSR recommendations are to be achieved through multiple and complementary avenues, including regulatory changes, alignment of current complex child safety mechanisms, and provision of high-quality professional guidance and sector resources. The CSR identifies opportunities to refresh and bolster the intent of the NQF and other child safety mechanisms by addressing emerging issues, closing loopholes, strengthening policies and practices, child safe cultures, recruitment processes and information handling, supporting staff capabilities, and improving protections around the use of new, online technologies.

⁷ Productivity Commission (2025), *Report on Government Services 2025 Part B Section 3*, <<https://www.pc.gov.au/ongoing/report-on-government-services/2025/child-care-education-and-training/early-childhood-education-and-care>>.

⁸ ACECQA, (2023), *Review of Child Safety Arrangements under the National Quality Framework*, <https://www.acecqa.gov.au/sites/default/files/2023-12/Review%20of%20Child%20Safety%20Arrangements%20under%20the%20National%20Quality%20Framework-full_report.pdf>.

This CRIS considers the potential impact of several recommendations arising from the CSR, including regulatory and non-regulatory options to achieving each recommendation's intended outcome. Additional recommendations explored through this CRIS have arisen from further analysis or as supplementary findings to reviews of critical incidents which have occurred over the past 12 months, in accordance with CSR recommendation 16 (see Chapter 8).

1.1 The National Quality Framework

The NQF is the national system for regulating education and care services. Its objectives are to:

- ensure the safety, health, and wellbeing of all children attending an approved education and care services
- improve the educational and developmental outcomes for children attending education and care services
- promote continuous improvement in the provision of quality education and care services
- establish a system of national integration and shared responsibility between participating jurisdictions and the Australian Government in the administration of the NQF
- improve public knowledge, and access to information, about the quality of education and care services
- reduce the regulatory and administrative burden for education and care services by enabling information to be shared between participating jurisdictions and the Australian Government.

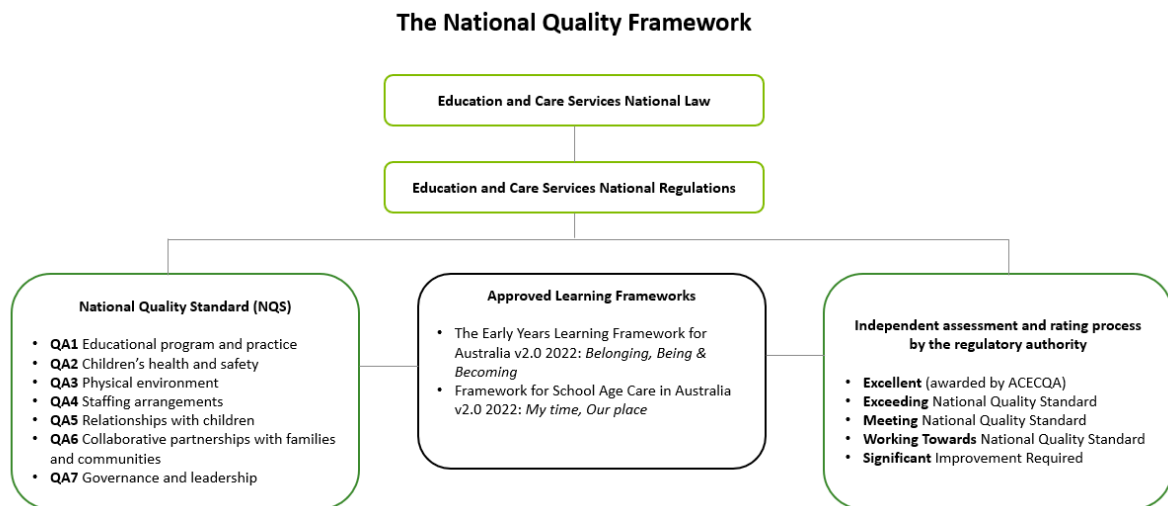
The NQF is jointly governed by the Australian Government and all state and territory governments. The Regulatory Authority in each state and territory is responsible for approving, monitoring and quality assessing education and care services as well as enforcing compliance with the National Law and National Regulations in their jurisdiction. Governments and Regulatory Authorities are supported by ACECQA, the independent national body that guides the implementation of the NQF and works with Regulatory Authorities.

The NQF is a regulatory framework that encompasses:

- the National Law and National Regulations
- the NQS

- an assessment and quality rating process, based on the NQS
- approved learning frameworks.

Figure 1.1: The National Quality Framework structure



Source: ACECQA (2025).

Child safety arrangements under the NQF

All components of the NQF consider and prioritise children's safety. First and foremost, child safety is addressed throughout the National Law, which obliges approved providers to ensure that a service is operating in a way that ensures the safety, health, and wellbeing of children being educated and cared for by the service. It is up to each approved provider to determine how they meet their obligations under the National Law.

Furthermore, it is an offence for an approved provider, nominated supervisor, or family day care (FDC) educator to fail to take reasonable precautions to protect children from harm and any hazard likely to cause injury. The National Regulations operationalise the National Law by prescribing specific requirements for the safety, health, and wellbeing of children related to the physical service premises and environment, and operational matters such as educator qualifications and training, knowledge, and awareness of child protection law, the supervision of children and relationships between educators and children.

The NQS sets the benchmark for the quality of education and care services. All quality areas are inter-related and important for children's safety, as highlighted below:

- *Quality Area 1 – Educational program and practices* ensures that the educational program and practice is stimulating and engaging, and enhances children's learning and development.

- *Quality Area 2 – Children's Health and Safety* safeguards and promotes children's health and safety, minimises risks and protects children from harm and hazard by maintaining adequate supervision of children; configuring groupings of children to minimise the risk of overcrowding, injury and illness; monitoring and minimising hazards and safety risks in the environment; effectively managing illness and injuries; and understanding obligations under state and territory child protection legislation.
- *Quality Area 3 – Physical Environment* reflects the principle that the physical environment is safe, suitable and provides a rich and diverse range of experiences that promote children's learning and development.
- *Quality Area 4 – Staffing Arrangements* contributes to child safe environments through qualified, skilled and experienced professionals developing warm, respectful relationships with children to create safe and predictable environments.
- *Quality Area 5 – Relationships with Children* reflects the importance of relationships with children that are responsive, consistent, respectful and promote children's sense of security and belonging and maintain their dignity and rights. It also focuses on relationships between children and how educators can build children's capacity to form and maintain these relationships.
- *Quality Area 6 – Collaborative partnerships with families and communities* recognises that collaborative relationships with families are fundamental to achieving quality outcomes for children and that community partnerships that are based on active communication, consultation and collaboration are also essential.
- *Quality Area 7 – Governance and Leadership* is important to creating a child safe culture through effective leadership and governance of the service that contributes to quality environments.

The National Law requires approved providers to align their learning program to approved learning frameworks.

The two national approved learning frameworks – *Belonging, Being & Becoming: The Early Years Learning Framework for Australia* and *My Time, Our Place: Framework for School Age Care in Australia* – guide the learning programs of education and care services. The principles, practices and learning outcomes for the approved learning frameworks emphasise a strong focus on environments that promote child safety, recognising the importance of children's safety in supporting and promoting educational experiences.

The two approved learning frameworks were refreshed and released by ACECQA in early 2023, following the 2019 NQF review, with a stronger emphasis on child safety, among other refinements. Updates include the expansion of the approved learning frameworks to cover teaching and learning about personal and cultural safety, assisting children and families with e-safety, and engaging other professionals to enhance the learning of children affected by trauma.

The state of Victoria (VIC) has a third, jurisdiction specific approved learning framework: *Victorian Early Years Learning and Development Framework*. This framework provides outcomes and practices to guide early childhood professionals in their work with families and children from birth to eight years old.

2019 NQF Review

The 2019 NQF Review identified several opportunities to embed a greater culture of child safety into the education and care sector. A key outcome of the 2019 NQF Review was to embed the National Principles for Child Safe Organisations (National Principles) into the NQF. The National Principles reflect 10 child safe standards that were recommended by the Royal Commission into Institutional Responses to Child Abuse.

In 2019, the National Principles were endorsed by all state and territory governments and the Australian Government, with the aim of providing a nationally consistent approach to supporting organisational cultures that foster child safety, health, and wellbeing. Since 1 October 2023, the National Principles were embedded through changes to the Education and Care Services National Law and National Regulations.

In addition to introducing the National Principles, the 2019 NQF Review also recommended a suite of regulatory changes, many of which have a strong focus on child safety. Reforms span areas such as safe arrival of children at services, sleep and rest safety, transportation of children, services operating in multi-storey buildings, record keeping requirements, FDC registers, water hazards (and safety glass requirements) near FDCs, assessment and rating of OSHC services, workforce qualification requirements, fees to Regulatory Authorities, oversight of services and personnel, and additional technical amendments. Several of the proposed reforms are still in the process of being implemented.

1.2 The education and care sector

Education and care services are provided through a variety of different service types and organisational structures. As of 1 January 2025, approximately 7,200 approved providers⁹ operated 17,842 NQF-approved education and care services across Australia.¹⁰ 79% of approved providers operate a single education and care service (designated as a ‘small’ provider), while only 1% of providers operate more than 25 services (designated a ‘large’ provider).

There are four main service types regulated under the NQF (Table 1.1).

Table 1.1: Different service types and attendance, 2023-2¹¹

Service type	Definition	No. of children attending (%) ¹²	Share of services by type
Long day care (LDC)	A centre-based service aimed primarily at children aged 0–5 years, with children usually grouped with others of their own age. LDC services provide extended operating hours, typically from 7am to 6pm each weekday, and operate at least 48 weeks per year.	851,161 (42.9%)	9,323 (52.3%)
OSHC	A centre-based service that provides care for school aged children before school, after school, during school holidays, and on pupil free days. OSHC may use stand-alone facilities, share school buildings and grounds and/or share facilities such as community halls.	564,755 (28.46%)	5,037 (28.2%)

9 An approved provider is defined in the National Law as a person who holds a provider approval, which authorises them to apply for one or more service approvals. Approved providers are responsible under the National Law for managing an education and care service they are approved to operate, across areas such as health and safety of children, staffing and documentation. An approved service is the site at which children attend and are educated and cared for by teachers and educators.

10 ACECQA, (2025), NQF Snapshot Q4 2024, <<https://www.acecqa.gov.au/sites/default/files/2025-02/NQF%20Snapshot%20Q4%202024%20FINAL.pdf>>.

11 Unless otherwise stated, numbers here refer to the number of children aged 0-12 attending a Child Care Subsidy approved childcare service (excluding the preschool category). Some children attend more than one service.

12 Percentages are in relation to the total number of children attending childcare as in the previous footnote and the number of children attending preschool.

Service type	Definition	No. of children attending (%) ¹²	Share of services by type
Preschool/ kindergarten ¹³ , 14,15	A centre-based service with a preschool program delivered by a degree qualified early childhood teacher, aimed primarily at children in the year or two before they commence full-time schooling. A preschool program can be delivered in a variety of settings such as stand-alone preschools, preschools co-located with a school (both government and non-government), and LDC services.	560,384 (28.24%)	3,063 (17.2%)
FDC	A service providing small group education and care services for children, generally in the home environment of an educator or an approved venue. FDC is primarily aimed at children aged 0–5 years, but primary school aged children may also receive the service before and after school, and during school holidays. FDC educators are supported by a FDC co-ordinator.	73,826 (3.72%)	416 (2.3%)

Source: Productivity Commission (2025); ACECQA (2025).

LDC, OSHC and preschool services are collectively referred to as centre-based services under the NQF.

There are a range of other service types that are not regulated under the NQF but may, or may not, be regulated under jurisdiction-based legislation. These include, occasional care, mobile preschools, playschools, some vacation care, crèches and some In Home Care services. There are also a small number of services currently regulated by the Australian Government that are excluded from the definition of an ‘education and care service’ and are not within scope of the NQF; coming under Minister’s Rules. These include a small number of In Home Care services, and a number of former Budget Based Funded services and former Indigenous Advancement Strategy funded services predominantly located in the Northern Territory (NT) and South Australia (SA).

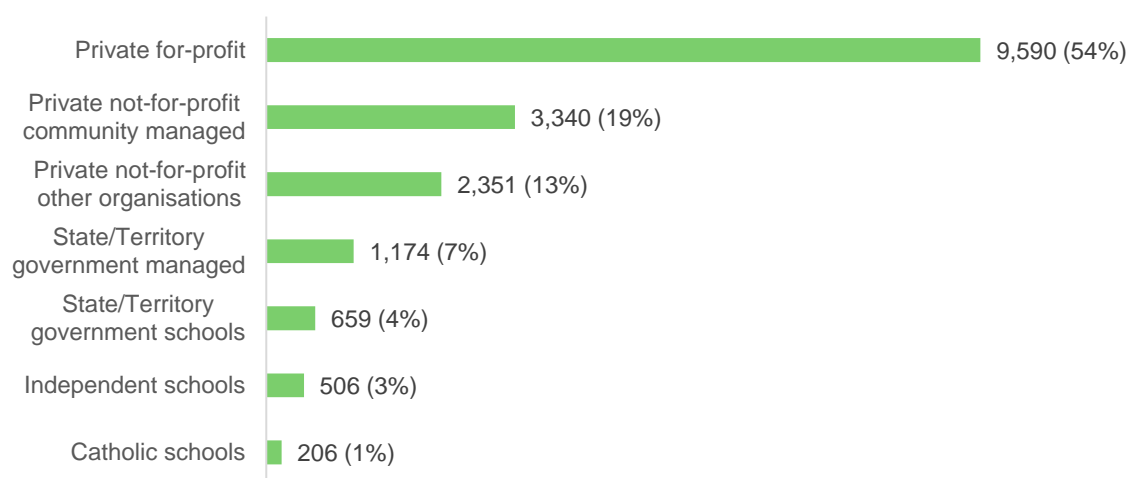
¹³ Preschool is called ‘kindergarten’ in VIC, Queensland (QLD), Western Australia (WA) and Tasmania (TAS).

¹⁴ The majority of preschools/kindergartens operating in WA and TAS are out of scope of the NQF, as they have oversight via the schooling system in these states.

¹⁵ The number of children enrolled in a preschool program is the number of children aged 3-6 enrolled in a preschool program as of 2023.

A variety of provider management types operate education and care services, as shown in Figure 1.2.

Figure 1.2: Number and proportion of services by provider management type, 1 January 2025



Source: ACECQA: NQF Snapshot Q4 2024¹⁶

1.3 What is the case for change?

Child safety is the first objective under the NQF and is supported by a focus on continuous quality improvement to ensure children are safe, healthy and thriving in approved education and care services. The need and urgency for additional protections is reflected not only by CSR findings but also by ongoing reported critical incidents and allegations.

The CSR found that instances of harm could be reduced by introducing additional child safety measures and evolving the requirements of the NQF in line with technological and other advances. For example, improving practices regarding the use of digital devices within education and care settings to remain current with technological advances and associated risks.

CSR progress to date

Since the release of the CSR report in December 2023, several actions have been progressed to respond to certain recommendations, including:

¹⁶ NQA ITS data collected on provider management type is self-reported by providers when applying for service approval. The service profile can vary significantly between provider management types. For example, Private for Profit managed services are predominantly LDC services, while 'State/Territory and local government' managed services are predominantly preschools/kindergartens.

- Guides developed by ACECQA on embedding child safe cultures and online safety in education and care services, due to be published in mid-2025
- The development of the National Model Code and Guidelines, released by ACECQA on 1 July 2024, addressing child safe practices for the use of electronic devices while providing education and care.
- Regulatory changes expected to take effect from 1 September 2025:
 - a requirement for services to have new policies and procedures relating to the safe use of digital devices (including the use of closed-circuit television (CCTV));
 - a reduction in notification timeframes for reporting allegations or incidents of physical or sexual abuse from 7 days to 24 hours; and
 - service environments to be free from the use of vaping devices and vaping substances.
- The Australian Institute for Teaching and School Leadership has published materials to support early childhood teachers, leaders and employers to apply the Australian Professional Standards for Teachers in non-school settings.

Progressing further CSR recommendations through this CRIS

Several other recommendations arising from the CSR¹⁷ and ongoing reported critical incidents relate to:

- Managing the use of digital devices (related to CSR recommendation 2.3 and 2.4)
- Child safety training (related to CSR recommendation 12)
- Improving responses to educator and staff member conduct (related to CSR recommendations 10 and 11)
- Strengthening the obligations and reporting requirements around WWCCs (related to CSR recommendations 9.1 and 9.2)
- Improving the safety of the physical service environment (related to CSR recommendations 2.1, 4, and 5)

¹⁷ Implementation of further recommendations from the CSR are being progressed concurrently to the policy options included in the CRIS. These further recommendations are either outside the scope of the NQF but within the remit of Education Ministers (Recommendations 6, 7, 8) or are outside the scope of the NQF and outside the remit of Education Ministers (Recommendations 2.2, 13, 14, 15.1-15.6 and possibly 16). For a full description of these recommendations, refer to the [CSR full report](#).

- Additional recommendations to improve child safety (three additional recommendations, identified subsequent to CSR publication).

These proposed areas for reform consider potentially significant change, requiring careful consideration and broader consultation, and are the focus of this regulation impact statement.

A high-level overview of the proposed areas for reform is provided below. Links are included to the relevant chapter of this document where each reform area is explored in further detail. Significant regulatory and policy analysis, informed by expert advice, has occurred since the release of the CSR report to inform the areas of reform and options for consideration in this CRIS. The rationale for any changes to the implementation approach for CSR recommendations is provided in Appendix 10.1.

Management of digital devices

The use of digital images and videos can be helpful in documenting children's learning and participation in an educational program. However, improper capture, retention, storage, sharing and destruction of images and videos can result in an increased risk of harm to children. Lack of appropriate controls and procedures can enable an environment where individuals may use devices inappropriately and/or for illicit purposes. Even if images are appropriate, they may be accessed and used in an inappropriate way by other individuals if storage practices are unsecure.

There is an opportunity to increase protections around the use of digital devices among those working with children, with a particular focus on the use of personal digital devices.

The impact of this proposed area for reform is explored in [Chapter 3](#).

Child safety training

Current requirements for child safety training and knowledge under the NQF relates specifically to child protection and the individuals required to undertake such training is limited. While constituting an element of child safety, child protection entails a narrow scope of topics such as mandatory reporting and serves a distinct purpose of identification and response. Child safety training extends beyond child protection training by including topics such as creating an organisational child safe culture, policies and procedures, and expectations for staff conduct (online and offline) (including trauma informed practice). Due to this distinction, a clear knowledge and training gap exists in the education and care sector, raising a potential risk to children where sector understanding and capability are inadequate and outdated.

There is an opportunity to strengthen child protection provisions and simultaneously introduce nationally consistent and potentially mandatory child safety training to ensure those individuals involved in the provision of education and care are equipped with the knowledge and expertise to uphold and enact principles of child safety in everyday practice and service culture, ensuring children are safeguarded and any cases of abuse are responded to effectively.

The impact of this proposed area for reform is explored in [Chapter 4](#).

Responding to educator and staff member conduct

There is only one child-related offence for which educators are liable under the National Law, which is the use of inappropriate discipline.¹⁸ This offence directly correlates to the immediate safety, health, and wellbeing of the children being educated and cared for within a service. There are instances where an educator has engaged in another form of inappropriate conduct, which does not constitute a contravention of the National Law.

In some cases, the threshold for prohibition is met by such inappropriate conduct, which enables the Regulatory Authority to prohibit an individual from being involved in the education and care sector. It generally results in a cancellation of an individual's WWCC registration.¹⁹ However, in circumstances where the threshold for prohibition has not been met, the Regulatory Authority has limited tools available to address inappropriate conduct. This enables an environment where conduct may often be left untreated and the likelihood of similar behaviour re-occurring is a genuine risk.

This limitation also applies where an individual has engaged in low level inappropriate discipline but the threshold to prohibit has not been reached.

There is an opportunity to more efficiently identify and respond more appropriately and proactively to risk posed by educators who have or may have engaged in conduct harmful to children by:

- expanding information sharing powers of Regulatory Authorities
- expanding offence provisions to cover a broader range of inappropriate conduct and
- expanding enforcement options.

The impact of these proposed areas for reform is explored in [Chapter 5](#).

¹⁸ Noting there are a number of offences for which FDC educators are liable.

¹⁹ In jurisdictions with a working with vulnerable persons registration (WWVPR) that does not only cover children, this cancellation may only apply to an individual's ability to work with children, specifically.

Strengthening the obligations and reporting requirements around WWCCs

WWCCs²⁰ are an important part of ensuring that only suitable persons are able to work with children in Australia. As it stands, there are inconsistencies across jurisdictions in allowing persons to commence work with children when they have applied, but are not yet approved for, a WWCC. Similarly, a change in status of a person's WWCC or teacher registration/accreditation is not necessarily communicated to those responsible for ensuring staff remain suitable to work in education and care services, depending on the ability to screen and monitor by jurisdiction. These issues may result in children being exposed to persons who are not suitable to work or volunteer in education and care services.

There is an opportunity to reduce the risk of children's exposure to unsuitable individuals by introducing nationally consistent and stringent requirements on:

- the need for an approved WWCC prior to commencing a role
- reporting requirements when the status of a WWCC or teacher registration/accreditation changes.

The impact of these proposed areas for reform is explored in [Chapter 6](#).

Improving safety of the physical service environment

The design and safety of the physical service environment in which children receive education and care has significant bearing on the potential for risks to child safety. The physical environment can impact the ability of educators to adequately supervise children and can also pose risks if there are hazards in or nearby a service premises. There are opportunities to reduce the risks associated with the physical environment in services by:

- designing premises to better facilitate supervision
- broadening the scope of approved provider assessments of FDC residences
- enabling authorised officers to enter areas beyond the FDC service premises.

Each of these proposed reforms has the potential to reduce the risk of harm to children.

The impact of these proposed areas for reform is explored in [Chapter 7](#).

Additional recommendations to strengthen the NQF and improve child safety

It is important for services to be vigilant in identifying and responding to signs of child maltreatment. With this context in mind, a number of additional areas to strengthen child

20 WWCC is used to represent working with children checks and working with vulnerable persons registration (WWVPR), in addition to equivalent checks across jurisdictions, in this document.

safety arrangements under the NQF were identified subsequent to the publication of the CSR and as a result of a review of cases of child maltreatment in the education and care sector and ongoing analysis.

Areas identified for proposed reform include:

- allowing for the efficient identification, monitoring, and regulation of ‘related providers’
- extending the limitation period for prosecuting National Law offences
- introducing information sharing and evidence gathering provisions with educator recruitment agencies.

The impact of these proposed areas for reform is explored in [Chapter 8](#).

2. The case for government intervention

Government action signals to the education and care sector, families and community that there is no greater priority than the safety of children in education and care services. Government intervention is required to ensure child safety and improve quality in the education and care sector, by helping to build safe environments for children, support educators and providers, and ensure that legislation keeps up to date with new and emerging risks.

While strengthening the NQF is crucial, doing so in isolation will be insufficient to deliver the best outcomes for children, families, and educators. Addressing systemic issues will require collaborative reform across jurisdictions, along with greater alignment and clarity across existing child safety systems. In addition, providing high-quality professional guidance and sector resources will ensure that safety practices evolve to meet emerging challenges.

Types of intervention and why it is needed

In response to CSR recommendations the government may undertake two forms of intervention: non-regulatory or regulatory intervention.

Non-regulatory interventions can include sector guidance, targeted training, and communication strategies to help services meet existing obligations and promote consistent child safe practices. The objectives of non-regulatory interventions are to:

- ensure there is **sufficient awareness and understanding of existing expectations and obligations** under the National Law, National Regulations, the NQF, and government protocols. For example, an option to respond to recommendation 4.2 (option 2) involves providing more guidance to approved FDC providers on their obligations to assess areas near FDC residences (regulation 116).
- **promote national consistency** in the implementation of effective and contemporary child protection and safety practices. For example, an option to respond to recommendation 10 (option 2) involves developing more communication and training materials to encourage and aid approved providers to identify and address inappropriate conduct by staff and volunteers in an education and care service.

- to **promote the importance of child protection and safety practices**. For example, an option to respond to recommendation 9.1 (option 2) involves providing guidance to highlight the importance of WWCCs and detail 'best practice' approaches.

Regulatory interventions involve legislative or policy changes to ensure that regulatory gaps or areas where legislation has not evolved with emerging risks are addressed to enable stronger enforcement of child safety principles. By implementing regulatory measures (such as financial or other penalties), the government can mandate behavioural or practical changes that enhance child safe practices within education and care services. In some instances, regulatory interventions may have greater effectiveness, as amendments to the National Law and National Regulations allow for stricter enforcement and national consistency.

In some instances, proposed regulatory options may be preferred for several reasons, including, but not limited to:

- Some sections of the **National Law are not keeping pace with corporate structures**. For example, additional recommendation 1 identifies that certain provisions of the National Law have not kept up with modern business structures, limiting regulators' ability to identify and manage risks at the provider level.
- Some sections of the **National Law are not sufficiently proactive**. For example, recommendation 11 highlights that in the absence of proactive notification systems, an individual with a suspended or prohibited status may continue working undetected, creating an unacceptable risk.
- Regulatory intervention may be the **most effective option**. For example, recommendation 9.2 identifies that providing additional guidance about current WWCC and teacher registration/ accreditation notification requirements, in isolation, would not resolve existing regulatory gaps or inconsistencies which pose risks to child safety.
- Regulatory intervention may be the **only option**. For example, regulatory intervention is the only available intervention for additional recommendation 2, which seeks to change the limitation period following an alleged offence.

Potential alternatives to government action

As outlined in [Chapter 1.1 – The National Quality Framework](#), the NQF sets out a consistent national approach to ensuring the safety, health, and wellbeing of children in education and care services. While many providers are proactive in managing risks, relying solely on individual services creates inconsistency and gaps. Additionally, the outcomes of approved

providers' actions may be limited in comparison to standardised and enforced government interventions. The vast majority of the sector work hard everyday to provide safe, high-quality education and care to children; however, Governments across Australia agree that the risk to children's safety is too significant to leave to voluntary action alone. A nationally coordinated, enforceable approach is essential.

3. Management of digital devices

There is currently no legislative mechanism under the National Law and National Regulations to address the use of digital devices, including personal devices, when taking images and videos of children in an education and care service. While the use of images and videos provides tangible evidence of a child's development and learning for families, there are also significant potential risks associated with inappropriate usage of digital devices. The most pertinent potential risks include the infringement upon a child's agency and right to privacy and that individuals use devices to commit offences.

Throughout this chapter, consideration is given to the impact of non-regulatory and regulatory changes to address the inappropriate use of digital devices in education and care settings, including the possession and use of personal devices while providing education and care to children.

The reform area in this chapter aims to:

1. mitigate the risk of harm to children connected to the taking, sharing, and storing of images or videos of children
2. manage risks to child safety that continue to evolve with technological advancements.

The specific reforms discussed in chapter 4.1 are managing the use of digital devices in education and care services, by:

1. requiring only service-issued digital devices to be used when taking images or videos of children in education and care and/or
2. mandating that personal devices that can take images or videos cannot be in the possession of any person while providing education and care and working directly with children, except in defined circumstances.

3.1 Managing the use of digital devices

Currently, National Regulations 74, 177(1)(a) and 178(1)(a) require documentation of children's learning and participation in the educational program. Typically, digital photos and videos are used to document this learning.

While some services have policies, procedures and authorisations surrounding the appropriate capture, retention/storage, disposal and sharing of digital documentation, the National Regulations are limited in their specificity around these requirements:

- National Regulations 181 and 182 require approved providers and FDC educators to ensure that information kept in a prescribed record is not divulged nor communicated, directly or indirectly, to another person other than in a way specified by the regulations; and
- National Regulation 183 requires records to be stored in a safe and secure place and be kept for the relevant retention period.

Regulatory changes expected to come into effect from 1 September 2025 include amending regulation 168 of the National Regulations to require education and care services to have policies and procedures relating to the safe use of digital devices, including:

- the taking, use, storage and destruction of images and videos of children
- the use of any digital devices issued by the service
- the use of any digital devices by children being educated and cared for by the service.²¹

Accompanying this regulatory amendment is the development of the NQF Online Safety Guide, expected for release to the education and care sector in mid-2025. The NQF Online Safety Guide is designed to increase the knowledge and skills of education and care service staff about how to use devices safely. The NQF Online Safety Guide's content will overlap with content covered by the new policies and procedures to be implemented in line with amendments to regulation 168.

In addition to these initiatives, ACECQA developed the [National Model Code and Guidelines](#), released on 1 July 2024, to address child safe practices for the use of digital devices while providing education and care. More information on the National Model Code and Guidelines is available in [Appendix 10.2](#).

What is the problem?

The use of personal digital devices to take and store images and videos of children in education and care presents risks to child safety. These risks include, but are not limited to:

- child harm, particularly where personal devices are used by individuals to inappropriately take, store, retain and share images or videos of children
- staff members or volunteers taking, storing and using photos of children on personal devices without considering children's consent, privacy, voice and rights. The use of

²¹ Additional matters include:

- the use of optical surveillance devices at the service
- obtaining authorisation from parents to take, use, and store images and videos of children.

personal devices increases the risk of children's images being shared and stored for long periods, either deliberately or inadvertently, beyond their initial intended purpose.

There have been cases in which these risks to child safety have resulted in instances of harm to children being educated and cared for. For example, Operation Tenterfield highlighted instances where an individual utilised a personal digital device to record and distribute child abuse offences. When instances of child abuse are recorded and distributed, this can also deepen the harm experienced by children, as their trauma is exploited by other persons who were not involved in the initial offence.

Approved providers need to be vigilant and have oversight and control of who has access to images of children. However, the use of personal digital devices to take images or videos of children in education and care services creates challenges in maintaining this oversight.

What are the policy options under consideration?

Three options, including the status quo and two regulatory options are under consideration. Options 2 and 3 are not mutually exclusive, and the preferred option for these recommendations can be any combination of the proposed regulatory and non-regulatory approaches.

Table 3.1: Policy options under consideration – Managing the use of digital devices

Option	Description
1	<p>Status quo (no change)</p> <p>The status quo includes recent guidance for the education and care sector and a regulatory amendment proceeding to implementation in response to the CSR. In particular, it includes:</p> <ul style="list-style-type: none"> • National Model Code and Guidelines • Development of the NQF Online Safety Guide • Amendments to regulation 168 of the National Regulations.
2	<p>Regulatory</p> <p>Amend the National Law and National Regulations to enact standalone provisions to mandate that:</p> <ul style="list-style-type: none"> • Only service-issued digital devices can be used when taking images or videos of children while providing education and care.

	This amendment would be an offence provision with a penalty attached.
3	<p>Regulatory</p> <p>Amend the National Law and National Regulations to enact standalone provisions for all education and care services (including FDC settings) to mandate that other than in the case of defined exempt circumstances:</p> <ul style="list-style-type: none"> personal devices that can take images or videos (such as tablets, phones, digital cameras, and smart watches) and personal storage and file transfer media (such as SD cards, USB drives, hard drives, and cloud storage) cannot be in the possession of any person while providing education and care and working directly with children. Including penalties for non-compliance (i.e. create offence provisions). <p>This amendment would be an offence provision with a penalty attached.</p>

What are the impacts of each option?

Option 1: Status quo

Some non-regulatory and initial regulatory changes have been progressed relating to the use of personal devices in an education and care service:

- The National Model Code and Guidelines are voluntary and designed for centre-based services (excluding OSHC and FDC) to address child safe practices for the use of devices while providing education and care. This guidance may lead to more consistent application of best practice in relation to promoting the safety, health and wellbeing of children. However, any compliance with the guidance is at the discretion of the approved provider and the education and care service. As a result, no consistency or safety outcomes for children can be guaranteed. This is advisory guidance, and therefore, the cost to purchase/upgrade any existing centre-owned devices is dependent on the existing resourcing, and the size and perceived requirements of the service.
- The NQF Online Safety Guide will directly address risks identified with device use and will assist approved providers, staff and educators with embedding a culture that is focussed on child safety and best-practice principles without the burden of requiring approved providers to undertake further research. All service types, including OSHC and

FDC, can utilise the guidance to support their day-to-day practice and tailor it to their service.

- Amendments to regulation 168 of the National Regulations²² will require approved providers to have policies and procedures in place relating to the use of digital devices in their education and care services. This will enable approved providers to tailor their personal device management policy to fit their specific context – this may be particularly relevant for different service types located in different geographies.²³ The onus will be on approved providers to determine the content of the policies and procedures. This may create a risk that some services may not create robust policies and procedures, or they may fail to adequately implement them due to the absence of an offence provision. This is, however, in keeping with the foundations of the NQF, in which approved providers are responsible for meeting their obligations.

These non-regulatory and initial regulatory changes will generate a variety of costs and benefits. In particular, the status quo includes some protections in place to reduce the opportunities for individuals to harm children. These baseline costs and benefits will be considered when assessing the incremental impact that might be achieved by options 2 and 3.

Option 2: Mandate the use of service-issued devices to take and store images and videos (regulatory)

This regulatory option would amend the National Law and National Regulations so that only service-issued digital devices can be used when taking images or videos of children while providing education and care.

Impact on child safety

Option 2 generates benefits by reducing the likelihood that images and videos of children attending education and care services are handled inappropriately. If service-issued devices are used to take and store images and videos involving children, it will minimise the risk that individuals could obtain and distribute images and videos inappropriately. Moreover, approved providers will have some oversight about the kinds of digital content generated in its services, as well as the quantity of content being produced and how it is being appropriately stored and disposed of.

²² These amendments are expected to take effect in September 2025.

²³ For example, a FDC service operating in regional WA may require a different set of policies and procedures relating to personal device use than a centre-based service in Melbourne's CBD.

Additionally, the proposed changes to the National Law and National Regulations would provide national consistency regarding the use of service-issued devices and make clear that the use of personal devices to take images or videos of children in education and care services is not appropriate. The penalty for a breach of the National Law would likely be significant and possibly act as an incentive for compliance.

Impact on stakeholders

This regulatory change has the potential to generate substantial compliance costs across the sector. The exact cost of compliance across the national education and care sector will depend on a variety of factors:

- **The extent to which service-issued devices are already in use:** Many services already report they have policies and procedures in place around the use of personal devices for taking and storing images and videos of children being educated and cared for. It remains unclear if these procedures extend to the use of a service-issued device, or how many services currently use service-issued devices.
- **The cost of the device purchased:** Compliance costs will depend on the cost of purchasing service-issued devices. The type of device purchased – and the cost of such a device – may depend on other IT devices or data management arrangements in a particular service.
- **The number of devices purchased:** The number of devices purchased is likely to vary by service size. For example, centre-based services may need fewer than one device for every staff member (as different staff members can use the devices at different times). FDC providers would need to purchase one service-issued device for each FDC educator that only that educator will use.

For providers that are required to purchase new centre-based devices, the costs would equate to approximately \$599 per device.²⁴ Services will incur additional costs associated with the use, maintenance, replacement and insurance of service-issued devices. This includes utility costs, such as electricity and costs to repair and replace broken, outdated or inoperable devices.

In addition to initial compliance costs, approved providers may face additional costs associated with training staff, monitoring and ensuring compliance with the updated regulatory changes.

²⁴ The cost of one device was chosen to be \$599, in line with the price of a digital camera/iPad identified through desktop research.

Option 3: No personal devices in the possession of persons providing education and care to children (regulatory)

Option 3 would mandate that personal devices capable of taking and storing images and videos (such as tablets, phones, digital cameras and smart watches) may not be in the possession of persons providing education and care for children, except in the case of defined exempt circumstances. The National Model Code and Guidelines define exempt circumstances as including:

- communication in an emergency situation involving a lost child, injury to child or staff member, or other serious incident, or in the case of a lockdown or evacuation of the service premises
- personal health requirements, e.g. heart or blood sugar level monitoring
- disability, e.g. where a personal digital device is an essential means of communication for an educator or other staff member
- family necessity, e.g. a worker with an ill or dying family member
- technology failure, e.g. when a temporary outage of service-issued digital devices has occurred
- local emergency event occurring, to receive emergency notifications through government warning systems, for example, bushfire evacuation text notification.

Impact on child safety

The primary benefit of option 3 is that it is relatively more difficult for individuals providing education and care to use their personal device to generate inappropriate digital content relating to children attending education and care services. Further, it reduces the risk that images or videos of children (including inappropriate content) will be distributed, intentionally or unintentionally. Moreover, a change to the National Law and National Regulations will generate a national understanding around the acceptable use of personal devices in an education and care setting. This has the potential to avoid confusion amongst providers and to enhance the reputation of the NQF as a system designed to uphold child safety.

It should be noted that restricting the use of personal devices will not prevent individuals from engaging in inappropriate or offending behaviour on its own. At most, it can limit (but not completely prevent) their ability to record such behaviour.

Impact on stakeholders

This policy option will generate a variety of costs. Since the use of images and videos is currently a widespread practice to document a child's learning progress and experiences while in education and care, removing the option to use personal devices may require services to purchase additional devices. As with option 2, this could generate initial compliance costs for providers that are required to purchase new centre-based devices of approximately \$599 per device, and some minor costs associated with monitoring and enforcement.

This option would generate additional administrative and compliance costs around ensuring that service educators and other staff adhere to the regulated use of their personal devices. Primarily, approved providers will need to develop additional administrative processes to determine if any educators or other staff members qualify for personal device use in the case of a defined exemption. For example, if an educator has a personal health requirement that requires the use of a personal device, it will fall to the approved provider to ensure that this educator can use their personal device as it relates to their health requirement, and not for the purpose of generating images and videos of children attending the service. Approved providers will also need to ensure that educators working without access to personal devices can be contacted in a case of emergency, and that there are suitable storage arrangements for personal devices away from areas where educators are working directly with children.

An indirect consequence generated by this option could involve the allocation of human and other resources to personal device management, that could be better used in the effective supervision of staff to minimise risk of harm to children. It may also require disclosure of personal medical information by staff members.

From desktop research conducted, option 3 would set a precedent nationally and internationally for explicitly prohibiting personal devices in education and care services as stipulated by the National Law and National Regulations.

Option 3 has potential to adversely impact recruitment and retention, particularly in the case of a highly feminised workforce, many of whom are primary caregivers.

Additionally, challenges exist to implementing option 3 in the home-based environment of FDC where educators may require access to their personal mobile phone to allow family contact and the management of emergency situations. Further considerations are required when applying this option to OSHC. This option would also present implementation challenges in environments such as schools where different requirements may be in place for educators. For example, educators in preschool/kindergarten rooms would not be

allowed access to their personal device, whereas this restriction would not apply to educators in classes with older students.

Consultation considerations

Feedback is sought on:

- **how the proposed options would affect you or your service both positively and negatively if they were to be implemented**
- **which option (or combination of options) is your preferred option for the purposes of reducing harm to children, and why?**
- **the specific contexts and circumstances in which personal devices are currently used to take and store images and videos in an education and care service**
- **the number of devices that approved providers would need to purchase to comply with option 2. This includes understanding how purchasing requirements would vary across service types and by service size**
- **how frequently approved providers already require that images and videos of children being educated and cared for are captured and stored on a service-issued device**
- **the number of approved providers that already limit the use of personal digital devices for staff members while they are working directly with children**
- **how effective non-regulatory action has been on limiting personal device use (1) for taking and storing images and videos of children attending a service, and (2) while working with children attending a service**
- **how the management of digital devices may impact FDC and OSHC service types.**

4. Child safety training

Current training requirements under the NQF are limited to ‘child protection’ and are reliant on jurisdictional law or protocol. While this is an element of child safety, child protection is more narrowly and responsively focused on topics such as mandatory reporting and serves a distinct purpose. Child safety, in comparison, encompasses a broader and more proactive spectrum of topics focusing on child wellbeing. This distinction highlights a knowledge and training gap in the education and care sector, raising a potential risk to children where sector understanding and capability is inadequate and outdated.

This chapter details policy options to strengthen and ensure the longevity of existing child protection provisions under the NQF while concurrently recommending a transitioned approach to implementing and delivering nationally consistent and mandatory child safety training including a renewal requirement.

The specific reform area discussed in this chapter is Chapter 4.1 – Introducing mandatory child safety training.

4.1 Introducing mandatory child safety training

Through section 162A of the National Law and regulation 84 of the National Regulations, there are specific requirements regarding child protection, knowledge, and training. However, these provisions do not encompass all aspects of child safety and only require some staff who work directly with children in education and care services to complete training. Excluding the broader concept of child safety from the National Law leaves a significant gap in workforce capability and understanding, therefore posing a risk to the wellbeing and safety of children attending education and care services.

Section 162A requires nominated supervisors and persons in day-to-day charge to undertake child protection training only if mandated by jurisdictional legislation or government protocol.²⁵ In all jurisdictions except for WA, FDC coordinators are also subject to mandated child protection training and related government protocols under section 162A. This amendment to include FDC coordinators in the scope of section 162A eventuated from the 2019 NQF Review, which WA is yet to implement but is expected to do in the foreseeable future.

²⁵ ‘Government Protocol’ refers to a set of established rules, procedures or guidelines that govern how government interacts with other entities.

The depth, breadth, and mandating of child protection training and reporting obligations differ across jurisdictions. A high-level overview of these differences is captured in Appendix 10.3.

Child safety training – which centres on children’s rights, harm prevention, and promoting the safety, health, and wellbeing of children including child protection – is of a broader scope than child protection training, which deals primarily with responses to harm, the risk of harm to a child and, the issue of mandatory reporting. However, child safety training is not mandated in any jurisdiction.

Under regulation 84, approved providers are required to ensure that any person who works with children in an education and care service, except for those who do not have contact with children (e.g., administrative staff), are advised of the existence and application of the current child protection law and any obligations that the person may have under the law. However, those that work in a service but do not have contact with children may still have obligations under jurisdictional law.

To practically reinforce the National Principles, Child Safe Standards are at various stages of implementation across jurisdictions. The standards enshrine child safety principles and values in organisations and their policies and practices, including the education and care sector and promote a culture that prioritises children’s safety and wellbeing through effective, unanimously applied principles. There are four principles that are especially relevant to child safety training and can provide guidance and an established framework for the content in child safety courses, and those required to complete training. Relevant principles include:

- Principle 1: Calls for child safety and wellbeing to be embedded in organisational leadership, governance and culture.
- Principle 4. Equity is upheld and diverse needs are respected in policy and practice
- Principle 5: Requires that people working with children are suitable and supported to reflect child safety and wellbeing values in practice.
- Principle 7: Requires that staff and volunteers are equipped with the knowledge, skills and awareness to keep children and young people safe through ongoing education and training.

For the status of jurisdictional implementation of the National Principles, see Appendix 10.3.

What is the problem?

Under the National Law and National Regulations:

- the requirement to complete child protection training is dependent upon jurisdictional law or protocol; therefore, certain individuals in some jurisdictions are not required to complete such training
- education and care staff who do not have direct contact with children may have limited awareness of the existence and application of jurisdictional child protection laws and their obligations under such laws
- no requirement exists for nationally consistent child safety training which differs from and goes beyond child protection training and knowledge.

These issues contribute to knowledge and capability gaps across jurisdictions and across different staff who work within the education and care sector. As a result, some staff may lack awareness or understanding of effective child safety practices and child protection laws including reporting obligations.

The mechanisms of harm arising from the identified issues are elaborated below.

Jurisdictional dependent requirements for child protection training

- **Staff required to undertake training:** Section 162A of National Law mandates that nominated supervisors, persons in day-to-day charge, and FDC coordinators²⁶ must undertake child protection training if required by jurisdictional laws or protocol. The scope of individuals required to complete the training varies across jurisdictions and in some jurisdictions this variance is substantial compared to other jurisdictions. For example, SA requires volunteers in services to complete child protection training. Differences in jurisdictional laws mean that volunteers, students, and certain staff may not be obligated to undertake child protection training in some jurisdictions. There is therefore a risk that some volunteers, students, and staff may lack the knowledge or understanding of how to effectively follow child protection laws, policies, and procedures, such as identifying, managing, or reporting risks or occurrences of child maltreatment.

Scope of child protection law obligations

- **Staff obligations:** Regulation 84 of the National Regulations only mandates that staff who work with children are advised of the existence and application of child protection

²⁶ In WA, FDC coordinators are currently not obligated under jurisdictional legislation to undertake child protection training, however this is expected to be implemented in the foreseeable future.

laws and any obligations they have under such laws. This means there may be staff who work in education and care settings (e.g. administrative staff) who do not have awareness of child protection laws in their jurisdiction. These staff may play a role in complying with child protection laws, even if they do not work directly with children (e.g. undertaking mandatory reporting). As such, a lack of understanding of child protection laws and associated policies and procedures may lead to non-compliance, hence increasing the risk of harm, or the risk that harm goes unaddressed and leads to repeat offences.

Introduction of nationally consistent child safety training

- **Lack of child safety coverage under the National Law:** Child safety training differs to child protection training and therefore, development of new content is required. Child safety training goes beyond the current legislative requirements under section 162A of the National Law, encompassing crucial issues for which there is currently a knowledge gap in the sector. Excluding the broader concept of child safety from the National Law leaves a significant gap in workforce capability and understanding, therefore posing a risk to the wellbeing and safety of children attending education and care services.
- **Access to child safety material in education and care qualifications:** The Vocational Education and Training (VET) and Higher Education sectors are limited in their course content which cover issues of child safety. Further, in some jurisdictions, the requirement to attain VET qualifications to work in certain service types does not currently exist (for example, OSHC educators in New South Wales (NSW) and TAS).

Implementing more uniform and additional training in the education and care sector will increase confidence and capability within the workforce. This will reduce gaps in knowledge regarding child safety, creating a consensus of understanding on how to keep children safe. Where issues or incidents occur, there should be a shared ability across a service for appropriately and effectively responding to harm or risk of harm to a child.

- **Currency requirements:** Section 162A of the National Law does not specify expiry periods for child protection training, or the need for certifications to demonstrate the period in which the training was undertaken. In the context of child safety, currency is crucial where legislative and expert understanding of the concept is still developing and evolving, particularly as technological advancements pose additional risks of harm in online contexts. Evolving risks necessitate that child safety training be continuously updated and undertaken, such that the education and care workforce has contemporary

knowledge and understanding of how to uphold child safety practices and principles in the education and care sector.

Training that is regularly updated and required to be kept current will support the education and care sector to achieve collective competency in child safety practices, therefore strengthening the workforce and promoting a culture of prioritising children's safety, health, and wellbeing while attending education and care services.

What are the policy options under consideration?

Six options, including the status quo, a non-regulatory option, and four regulatory options are under consideration. Options 1, 3 and 4 are mutually exclusive, however the remaining are not. The preferred option for these recommendations can be any combination of the proposed regulatory and non-regulatory approaches, aside from implementing any two that are mutually exclusive.

Table 4.1: Policy options under consideration – Child safety training

Option	Description
1	Status quo (no change).
2	Non-regulatory Improved, nationally consistent resource and training guidance materials that can be provided to Registered Training Organisations and Higher Education institutions to insert into courses.
3	Regulatory Amend section 162A of the National Law to require nominated supervisors, persons in day-to-day charge and FDC coordinators to complete child protection training, removing the dependency on other jurisdictional law or government protocol. This would be supported by publication of an approved list of child protection training for the purposes of compliance with this section, as for first aid training (made up of national or state accredited units of competency or short courses) through amendment to regulation 137.
4	Regulatory Amend section 162A of the National Law to require staff who work with children, including FDC educators, volunteers and students, in addition to

Option	Description
	<p>nominated supervisors, persons in day-to-day charge and FDC coordinators, to complete child protection training, removing the dependency on other jurisdictional law or government protocol.</p> <p>This would be supported by publication of an approved list of child protection training for the purposes of compliance with this section, as for first aid training (made up of national or state accredited units of competency or short courses) through amendment to regulation 137.</p>
5	<p>Regulatory</p> <p>Amend regulation 84 so that all staff and volunteers, whether or not they work with children, must be made aware of:</p> <ul style="list-style-type: none"> • Existence and application of the current child protection law; and • Any obligations that the person may have under that law <p>(i.e. remove the limitation to staff who work with children)</p>
6	<p>Regulatory</p> <p>Legislative change to require:</p> <p>a) Mandatory child safety training.</p> <p>Which is nationally consistent, of a high quality, and tailored for all people involved in the provision of education and care services (including people who do not directly work with children), with a requirement to complete refresher training every two years.</p> <p>This change should be subject to governments undertaking further research, costing and impact analysis of any proposed training and the implementation approach.</p> <p>Mandatory child safety training may feature matters including, but not limited to:</p> <ul style="list-style-type: none"> • Creating a child safe culture in education and care services; • Identifying, reporting, and responding to child maltreatment through trauma informed practice;

Option	Description
	<ul style="list-style-type: none"> • Differences in behaviour and responding appropriately, along with identifying grooming behaviour in children and adults around them; • Understanding the difference between developmentally expected sexual behaviour and concerning or harmful behaviour by children or between children; and • Effective supervision and behaviour guidance, including the offence of using inappropriate discipline, and potentially inappropriate conduct (refer to Chapter 5.1).

What are the impacts of each option?

Option 1: Status quo

Under the status quo, no additional regulatory, administrative or compliance costs are borne by any relevant parties.

If no changes are made, child protection training will continue to be mandated based on jurisdiction specific legislation or protocols, reducing the likelihood that jurisdictions without a requirement will introduce such training. There will be variations in workforce capability and knowledge in the area of child protection and safety as only nominated supervisors, persons in day-to-day charge, and FDC coordinators²⁷ are obligated to undertake child protection training, under section 162A of the National Law. Further, there will be a lack of understanding around the differences between child protection and child safety across the education and care workforce.

A gap will exist in the legislation where reference is specifically made to 'child protection law' but not to 'child safety'. A clear distinction exists, and the legislation will fail to evolve to reflect this.

The cost of inaction is to maintain a higher level of risk for children in jurisdictions where child protection training is not currently a requirement, compared to children in jurisdictions that mandate child protection training. In VIC, WA, NT and the Australian Capital Territory

²⁷ In Western Australia, FDC coordinators are not obligated under jurisdictional legislation to undertake child protection training however this is expected to be implemented in the foreseeable future.

(ACT), there are less stringent training requirements, as a result, these jurisdictions have more tangible risks.

Option 2: Improve nationally consistent resource and training guidance materials that can be inserted into courses.

Option 2 would see the provision of a nationally consistent framework to support all jurisdictions to have the same materials available to guide the development of Registered Training Organisation and Higher Education institution courses pertaining to child protection and child safety.

Impact on child safety

Option 2 encourages consistency in the child protection and child safety content covered in all qualifications and courses, which may reduce knowledge gaps and inconsistencies in the emerging workforce's knowledge of child safety and protection.

A limitation under option 2 is that gaps in current child safety knowledge will persist among the current education and care workforce, as there are no legislated changes to introduce child safety training.

Impact on stakeholders

The stakeholder responsible for developing, maintaining, and upholding nationally consistent resources and training guidance materials would incur administrative costs. The scale of costs would depend on the complexity of the resources and guidance, as well as the extent to which these materials can be developed with the support of existing resources and as part of business-as-usual activity.

Under option 2, child protection training will continue to be reliant on jurisdictional legislation and government protocols. Additionally, once VET and Higher Education qualifications are attained, there is no requirement for educators or service staff to undertake refresher training to keep up to date with best practice and evolving risks.

Option 3: Amend section 162A of the National Law to require nominated supervisors, persons in day-to-day charge, and FDC coordinators to complete child protection training, removing the dependency on other jurisdictional law or government protocol. (regulatory)

Option 3 is a regulatory option that would ensure a minimum standard of child protection training is maintained at an organisational level as specified persons within a service are required to complete child protection training.

Impact on child safety

This option will reduce inequity between jurisdictions in the requirement to undertake child protection training. This option allows jurisdictions to maintain their respective approaches to the training, aligned with their specific jurisdictional child protection laws. Additionally, nationally accredited units of competency in relation to child protection exist in current training packages, so the development of new courses or content is not required, reducing the cost of the option.

Under option 3, there remains a gap whereby not all persons who work with children are required to undertake child protection training, potentially creating an imbalance in understanding. Further, this will contradict the principle that all people involved in the provision of education and care services are responsible for keeping children safe and promoting a child safe culture. This could result in children being exposed to varying levels of harm due to inconsistent workforce capability, understanding, and skills to adequately prevent, and respond to child safety concerns.

Impact on stakeholders

Approved providers will incur compliance costs associated with implementing and providing the child protection training in line with this policy option. Current child protection training ranges up to eight hours, depending on what training and courses are required within the jurisdiction.²⁸ Training costs associated for staff who are required to undertake and complete mandatory training will be incurred by the service. Additionally, there may be an incremental cost associated with backfilling staff members who are attending training. This is necessary to ensure that mandated staff-to-child ratios are maintained. This cost may only be relevant for services who will not have enough staff to cover staff-to-child ratios while particular staff undertake training.

Administrative costs will also be incurred by option 3, as approved providers will be responsible for ensuring that specified persons within the service have completed child protection training. Approved providers will need to establish and maintain records of their staff who have completed the mandatory child protection training. Depending on the extent and complexity of this, records of completed training may be able to be developed and maintained with existing business-as-usual activity.

28 Community Early Learning Australia, (n.d), CHCPRT025 Identify and Report Children and Young People at Risk <https://www.cela.org.au/training/health-and-safety/chcp025-identify-report-children-young-people#:~:text=About%20the%20self%20paced%20format&text=Student%20materials%20and%20the%20relevant,in%20addition%20to%20assessment%20tasks>.

Option 4: Amend section 162A of the National Law to require staff who work with children, including FDC educators, volunteers, and students, in addition to nominated supervisors, persons in day-to-day charge and FDC coordinators to complete child protection training, removing the dependency on other jurisdictional law or government protocol. (regulatory)

Option 4 is a regulatory option that not only removes the dependency on jurisdictional law or government protocol for specified persons to complete child protection training (as in option 3), but also expands the coverage of who is required to complete the training, to all staff who work with children. This amendment of the National Law widens the coverage of child protection training across jurisdictions and ensures that it is aligned with the specified persons in National Regulation 84 and actions occurring to introduce child safety training.

Impact on child safety

Option 4 promotes child protection at all levels of an organisation as the protection of children attending education and care services is a responsibility that belongs to each person involved in the provision of services. This option will reduce the likelihood of there being an inequity between jurisdictions in the requirement to complete child protection training. This option allows jurisdictions to maintain their respective approaches to the training, aligned with their specific jurisdictional child protection laws. Additionally, nationally accredited units of competency in relation to child protection exist in current training packages, so the development of new courses or content is not required, reducing the burden of the option.

Impact on stakeholders

This option will incur administrative costs associated with implementing child protection training for the identified staff in jurisdictions where training is not currently required. Relative to option 3, the cost of training for option 4 will be larger, as a larger number of roles are required to complete the training. Additionally, there may be an incremental cost associated with backfilling staff members who are attending training. This is necessary to ensure that mandated staff-to-child ratios are maintained. This cost may only be relevant for services who will not have enough staff to cover staff-to-child ratios while particular staff undertake training.

Option 5: Amend regulation 84 so that all staff and volunteers, whether or not they work with children, must be made aware of the existence and application of the current child protection law, and any obligations they may have under that law. (regulatory)

Option 5 is a regulatory option that expands the coverage of persons who interact with a service, to be made aware of the child protection laws in the jurisdiction they operate in, including their obligations.

Impact on child safety

This option promotes child protection at all levels of an organisation ensuring all staff are equipped with knowledge and understanding of child protection obligations such as reporting requirements.

Impact on stakeholders

This option allows jurisdictions to maintain their respective approaches to child protection, recognising the differences between jurisdictional child protection laws; whilst ensuring the National Regulations are consistent with approaches being taken with respect to child protection training. Further, alignment with state and territory reporting obligations under the National Regulations may reduce sector confusion.

There will be substantive compliance costs incurred with implementing processes or training to ensure all staff are made aware of child protection laws. There will be labour costs associated with the time commitment to become aware of child protection laws and their obligations under it, which may entail training. Depending on the extent and complexity of this, approved providers may be able to notify and inform staff within existing business-as-usual activity.

Option 6: Legislative change to require mandatory child safety training which is nationally consistent, of a high quality, and tailored for all people involved in the provision of education and care services (including people who do not work directly with children), with a requirement to complete refresher training every two years.

This change should be subject to government undertaking further research, costing and impact analysis of any proposed training and the implementation approach. (regulatory)

Option 6 is a regulatory option that involves a transitioned, approach including (1) a legislative change to require mandatory child safety training which is nationally consistent, of

a high quality, and tailored for all people involved in the provision of services, with a requirement to complete refresher training every two years to ensure currency of knowledge, and (2) a list of several features that may be included in the content of the mandatory child safety training (as listed below).

Mandatory child safety training may feature matters including, but not limited to:

- Creating a child safe culture in education and care services;
- Identifying, reporting, and responding to child maltreatment through trauma informed practice;
- Differences in behaviour and responding appropriately, along with identifying grooming behaviour in children and adults around them;
- Understanding the difference between developmentally expected sexual behaviour and concerning or harmful behaviour by children or between children; and
- Effective supervision and behaviour guidance, including the offence of using inappropriate discipline, and potentially inappropriate conduct (refer to chapter 5.1).

Impact on child safety

A legislative change to mandate child safety training which is nationally consistent and of a high quality would ensure that all individuals involved in the provision of education and care receive a comprehensive and standardised training, benefitting the status and professional perception of the workforce. This would improve consistency in child safe practices across all jurisdictions in Australia, by requiring training across specified topics and closing the gap in sector understanding and knowledge of how the concept of child safety differs from and goes beyond child protection laws and mandatory reporting obligations. Over time, this could contribute to a stronger child safe culture within the sector, improving workforce capability, confidence, and ultimately, children and families will benefit from all service staff being aware of their roles and responsibilities regarding child safety.

Impact on stakeholders

Option 6 also requires refresher training to be completed by all people involved in the provision of education and care services every two years. This will ensure that all people involved in the provision of services (including volunteers and those who do not directly work with children) undertake nationally consistent child safety training that is subject to ongoing revision. Particularly when the concept of child safety is evolving, alongside technology

advancements, regular refresher training would ensure that service staff and relevant volunteers are equipped with updated knowledge, skills and understanding of child safety practices.

This option could incur administrative and compliance costs for approved providers alongside additional burdens placed on the workforce. Administrative costs would be incurred to update existing training packages and develop new training packages to align with the agreed requirements of child safety training.

There is expected to be a delay to the legislative amendment while training implementation and delivery is further considered with key stakeholders, including child safety experts to ensure both the longevity and flexibility of an implementation approach. Immediate amendments to the National Law would result in education and care services sourcing training for their staff to meet requirements. Private contractors may fill the market, but there would be little control over course content consistency or quality, and these factors are likely to be exacerbated over time.

In progressing a legislative approach subject to further action, the education and care sector will be given the best opportunity to comply with law changes when they occur. This will occur by proper consideration being given to training delivery and development to ensure process viability, including consideration of accessibility and inclusivity for learners (e.g. rural and remote, learning needs, cultural safety, ensuring the training is relevant to each service type and context).

This option would incur ongoing costs for approved providers. Compliance and administrative costs would be incurred by approved providers to record and maintain a register of child safety training completion to comply with the legislation. Training costs associated with meeting the additional training requirements, as well as additional costs associated for staff who are required to undertake and complete mandatory refresher training every two years will be incurred by services. Additionally, there may be an incremental cost associated with backfilling staff members who are attending training. This is necessary to ensure that mandated staff-to-child ratios are maintained. This cost may only be relevant for services who will not have enough staff to cover staff-to-child ratios while particular staff undertake training.

Consultation considerations

Feedback is sought on:

- how the proposed options would affect you or your service both positively and negatively if they were to be implemented
- which option (or combination of options) is your preferred option for the purposes of reducing harm to children, and why?
- the time taken for individuals to complete current mandatory training (such as child protection and first aid training).
- what training resources or programs relevant to child safety exist, and the extent to which:
 - they are being utilised to improve the knowledge and skills of service staff
 - these materials can be leveraged to develop training aligned to the criteria for child safety training.
- the type and magnitude of costs in engaging temporary staff or rostering additional staff to release existing staff to undertake mandatory training.
 - in particular, what would the cost variance be between costs involved with new training requirements and those involved with staff undertaking potential refresher training?
- the number of volunteers, students on placement, administrative staff that do not have direct contact with children, and other staff in services.
- the extent to which voluntary child protection training is completed by non-specified positions, and in jurisdictions in which it is not mandated.
- the complexity and time required to establish and maintain records of staff who have completed mandatory child protection training.

5. Responding to educator and staff member conduct

There is only one child-related offence for which educators are liable under the National Law, which is the use of inappropriate discipline. Pursuant to section 166(3)(4) of the National Law, it is an offence for a staff member, volunteer or FDC educator²⁹ to use inappropriate discipline.

There are instances where a staff member, volunteer or FDC educator has interacted with children in a way that is serious, inappropriate and requires Regulatory Authority intervention however, does not constitute a breach of section 166.

Under section 182 of the National Law, the Regulatory Authority may intervene with legislative action against an educator, FDC educator, employee, contractor or volunteer³⁰ where that individual may pose an *unacceptable risk of harm* to a child or children. In those instances, the Regulatory Authority is able to prohibit a person without a contravention, or alleged contravention, of section 166 of the National Law. Prohibiting a person is a significant exercise of regulatory power because it prevents a person from working in the education and care sector, therefore affecting their livelihood and reputation. Whilst reserved for the most serious of circumstances, this mechanism is crucial to mitigating risk of harm to children in education and care services by the few individuals who may present such an unacceptable risk.

An individual may offer an enforceable undertaking to the Regulatory Authority as an alternative to prohibition, after a show cause process, pursuant to section 184(3) of the National Law. An enforceable undertaking is an agreement between that individual and the Regulatory Authority, where the individual agrees to take certain actions, or refrain from certain actions, to comply with the National Law.

With specific regard to FDC educators, section 178 of the National Law enables the Regulatory Authority to issue a 'notice to suspend education and care by a FDC educator' after a show cause process. A notice to suspend education and care by a FDC educator is

²⁹ Section 166 of the National Law imposes a legal obligation on approved providers and nominated supervisors to ensure that children being educated and cared for are not subjected to inappropriate discipline. If a child is subjected to inappropriate discipline by a staff member, volunteer or family day care educator whilst in the care of a service, then the approved provider and nominated supervisor will have also failed in their obligations, in addition to the person who inappropriately disciplined, and contravened section 166 of the National Law.

³⁰ This section also applies to other persons in any way involved in the provision of an education and care service, such as approved providers, persons with management or control, and nominated supervisors.

an instruction to an approved provider to cease engaging or allowing a FDC educator to be registered with their service.

Unlike a prohibition notice, a notice to suspend education and care by a FDC educator is issued to the approved provider, does not prevent the educator from any involvement with another service, and only applies to a specific education and care service.

Where conduct falls short of the threshold for prohibition, Regulatory Authorities have limited legislative mechanisms available to sufficiently address the risk of harm to children.

Additionally, early intervention and oversight of conduct that is not conducive to the safety, health, and wellbeing of children is imperative to mitigating that risk of harm. Currently, Regulatory Authorities may only disclose information about individuals who have been issued a prohibition notice, or who are suspended FDC educators, if requested by an approved provider.

There is also currently no legislative mechanism to enable the Regulatory Authority to disclose details of a person's current enforceable undertaking³¹ with that person's current approved provider, without the express consent of that person or it being a condition of that person's enforceable undertaking. An approved provider would typically be unaware of such conduct where it has occurred in a previous service. This is not conducive to approved providers being able to support that employee to fulfil their enforceable undertaking if needed or identify non-compliant conduct as a pattern of behaviour rather than a standalone incident.

Given the close correlation and intersections of these reform areas, policy options in this chapter are recommended to be considered jointly. Together, these reform areas consider:

- creation of an offence provision to capture inappropriate conduct (see Chapter 5.1)
- enhancing the ability of Regulatory Authorities to share information with approved providers (see Chapter 5.2)
- expansion of regulatory responses to educator and staff member conduct (see Chapter 5.3).

³¹ An enforceable undertaking is an agreement between a person and the Regulatory Authority, where the person agrees to take certain actions, or refrain from certain actions, to comply with the National Law. For example, an enforceable undertaking may require a person to undertake training.

5.1 Making inappropriate conduct an offence

There are instances where a staff member, volunteer or FDC educator has behaved in a way that is serious, inappropriate and requires Regulatory Authority intervention, however is not captured under the National Law offence of inappropriate discipline. This inappropriate conduct may include, but not be limited to:

- a child sexual offence;
- sexual misconduct committed in relation to, or in the presence of a child, including verbal discussions, flirtatious gestures and comments;
- inappropriate verbal interactions, that is, conversations with, or comments to children or conversations in the presence of children in relation to sexuality or sexual contact, including excessive flattering, conversations of a sexual nature, making sexual jokes or evoking children's curiosity about sexuality;
- ill-treatment of a child;
- neglect of a child;
- physical or verbal violence (including threats) committed in relation to, or in the presence of a child;
- behaviour that is likely to cause emotional or psychological harm to a child;
- any form of inappropriate physical contact. For example, unwarranted, invasive, or unnecessary for the child's age and developmental stage, such as kissing, massage, 'tickling games', inappropriate touching).
- any form of inappropriate online contact or online harm. For example, exposing children to sexual or violent content inappropriate for their age and stage of development, and technology-facilitated abuse.
- correspondence, communication of a personal nature or capturing of images of children via any medium (phone, text message, social media, within apps, internet postings) unrelated to the staff members role or endorsed communication channels;
- manipulating or coercing a child emotionally to meet the educator's personal needs or to create inappropriate dependencies; and
- grooming, being any form of conduct, online or offline, that facilitates child sexual abuse. For example, making a child feel special through favouritism or special privileges and rewards or receiving / giving gifts of an inappropriate nature.

The list of abovementioned behaviours has been informed by key academics in the child safety and harm prevention field; as well as the Regulatory Authority from each jurisdiction, who keep records of contraventions and alleged contraventions of the National Law and reports of conduct that may not meet the threshold for prohibition.

Some of the behaviours listed above, such as conduct amounting to child sexual offences, would meet the threshold for prohibition, namely that there is an unacceptable risk of harm to a child or children³². In those instances, the Regulatory Authority is able to prohibit a person without a contravention of the National Law (although they are likely to be offences in criminal law). However, not all the behaviours listed above may necessarily meet the threshold for prohibition but could still pose risk to children and require further investigation if observed and/or reported.

What is the problem?

There are limited legislative provisions to empower the Regulatory Authority to take action where inappropriate conduct has occurred. As noted above, some inappropriate conduct may not meet the threshold for prohibition. This enables an environment where:

- persons who have displayed or allegedly displayed inappropriate conduct can continue operating within the education and care sector without proportionate legal responses or consequences by the Regulatory Authority
- the Regulatory Authority is unable to intervene and approved providers are responsible for addressing serious behaviour of their employees under the employment contract and Code of Conduct
- If the approved provider terminates the person's employment, that person may move on to the next approved provider without safeguards in place and no formal record.

Evidence from Regulatory Authorities indicates there has been an increase in the number of inappropriate conduct incidents that do not constitute an offence in the National Law. This evidence indicates that the current provisions under the National Law are insufficient for protecting children from harm and do not allow appropriate intervention and oversight by the Regulatory Authority when a threshold for prohibition has not been met.

³² See chapter 5.3 for further information on prohibitions.

What are the policy options under consideration?

Three options, including the status quo, a non-regulatory option, and a regulatory option are under consideration. Options 2 and 3 are not mutually exclusive, and the preferred option for these recommendations can be any combination of the proposed regulatory and non-regulatory approaches.

Options to address reform areas covered in chapter 5.1 should be considered alongside reform areas covered in chapter 5.2 (enhance the ability of Regulatory Authorities to share information with approved providers) and reform areas covered in chapter 5.3 (expand regulatory responses to educator and staff member conduct).

Table 5.1: Policy options under consideration – Making inappropriate conduct an offence

Option	Description
1	Status quo (no change).
2	<p>Non-regulatory</p> <p>Develop more communications and resources on encouraging approved providers to address appropriate and inappropriate conduct within their contracts of employment, Code of Conduct and policies and procedures required under regulation 168(2) of the National Regulations.</p>
3	<p>Regulatory</p> <p>Amend the National Law to introduce ‘inappropriate conduct’ as an offence applicable to approved providers, nominated supervisors, educators, other staff members, volunteers and FDC educators as follows:</p> <p><i>The approved provider and a nominated supervisor must ensure that no child being educated and cared for by the service is subjected to any form of inappropriate conduct:</i></p> <p>and</p> <p><i>A staff member of, or volunteer at an education and care service, or FDC educator must not subject any child being educated and cared for by the service to any form of inappropriate conduct.</i></p> <p>Inappropriate conduct may include, but is not limited to:</p> <ul style="list-style-type: none"> • a child sexual offence;

Option	Description
	<ul style="list-style-type: none"> • sexual misconduct committed in relation to, or in the presence of a child, including verbal discussions, flirtatious gestures and comments; • inappropriate verbal interactions, that is, conversations with, or comments to children or conversations in the presence of children in relation to sexuality or sexual contact, including excessive flattering, conversations of a sexual nature, making sexual jokes or evoking children's curiosity about sexuality; • ill-treatment of a child; • neglect of a child; • physical or verbal violence (including threats) committed in relation to, or in the presence of a child • behaviour that is likely to cause emotional or psychological harm to a child; • any form of inappropriate physical contact. This may include physical contact that is unwarranted, invasive or unnecessary for the child's age and developmental stage, such as kissing, massage, 'tickling games', inappropriate touching. • any form of inappropriate online contact. This also may include online harm such as exposing children to sexual or violent content inappropriate for their age and stage of development, and technology facilitated abuse. • correspondence, communication of a personal nature or capturing of images of children via any medium (phone, text message, social media, within apps, internet postings) unrelated to the staff members role or endorsed communication channels; • manipulating or coercing a child emotionally to meet the educator's personal needs or to create inappropriate dependencies; and • grooming, being any form of conduct, online or offline, that facilitates child sexual abuse, for example, making a child feel

Option	Description
	special through favouritism or special privileges and rewards or receiving/giving gifts of an inappropriate nature.

What are the impacts of each option?

Option 1: Status quo

Under the status quo, there will be no regulatory, administrative or compliance costs borne by any relevant parties.

If no changes are made, Regulatory Authorities will remain unable to intervene where inappropriate conduct does not breach section 166 of the National Law and the person does not meet the threshold for prohibition. This means that jurisdictional legislation (i.e., criminal law and administrative law) and employee contracts will remain the primary mechanisms for addressing misconduct of staff and volunteers in education and care settings where the person may not pose an 'unacceptable risk of harm'. Further, approved providers' Codes of Conduct are not likely to be consistent across providers.

If the status quo remains, child safety will not improve as the risk of physical, emotional, or psychological harm from inappropriate conduct will persist.

Option 2: Additional communications and resources to address appropriate and inappropriate conduct (non-regulatory)

Option 2 is a non-regulatory option in which communication materials and resources will be developed to encourage approved providers to address appropriate and inappropriate conduct within their employment contract or Code of Conduct.³³

Impact on child safety

Additional resources and communication will help approved providers clarify what constitutes inappropriate behaviour in their Code of Conduct. Clearer and more explicit Codes of Conduct may mitigate pertinent risks to child safety, by enabling staff in education and care settings to better prevent, identify, and manage inappropriate conduct.

³³ Approved providers are required to have a Code of Conduct under section 168 of the National Regulations. Given this is a legal requirement, the CRIS has not captured costs associated with approved providers developing a Code of Conduct.

Impact on stakeholders

Depending on the complexity, government may incur costs to develop communication materials and resources. Costs will be more significant if relevant materials cannot be developed with the support of existing government resources and as part of business-as-usual activities.

Under this option, the Regulatory Authority will remain unable to intervene if inappropriate conduct is not a breach of section 166 of the National Law, and the person does not reach the threshold for prohibition. As such, approved providers will remain responsible for addressing inappropriate conduct that does not meet the threshold for prohibition using employee contracts and jurisdictional legislation (i.e., criminal law).

Option 3: Amend the National Law to introduce 'inappropriate conduct' as an offence (regulatory)

Option 3 mandates changes to the National Law, such that 'inappropriate conduct' is introduced as an offence. This legislative amendment is intended to mirror the structure and strict or absolute liability of section 166, to emphasise the seriousness of any behaviour that constitutes inappropriate conduct. Like section 166, this new offence will apply to educators and workers in the education and care sector.

This amendment would stipulate responsibilities for approved providers and nominated supervisors to ensure that no child being educated and cared for by the service is subjected to any form of inappropriate conduct. Further, this amendment also requires that staff members, volunteers at a service, or family day care educators must not subject any child being educated and cared for by the service to any form of inappropriate conduct. That is, regardless of intention, knowledge, negligence, carelessness or attempts to comply, behaviour identified as inappropriate conduct occurring in an education and care service is a contravention of the National Law; and children within education and care services must not be subjected to that conduct. This goes to the heart of the problem by setting the expectation that this conduct will not be tolerated.

Impact on child safety

Option 3 may improve child safety outcomes through several mechanisms. Firstly, it will enable Regulatory Authorities to address a greater range of inappropriate behaviours which have the potential to cause physical, emotional and/or psychological harm to a child. The regulatory nature of this option (and the potential risk of compliance actions or incurring financial penalties if successfully prosecuted) may deter staff from engaging in inappropriate

conduct, leading to improved child safety outcomes. Additionally, the legislative mechanisms discussed in chapter 5.2 would also apply to this offence if endorsed to allow a greater range of regulatory responses commensurate to the seriousness of the inappropriate conduct. For example, mandatory re-training which may allow an educator or staff member to continue working in the sector, while enhancing that individual's knowledge and suitability, and Regulatory Authorities' oversight of behaviour patterns of particular educators or staff members, regardless of employment location.

Impact on stakeholders

Approved providers may incur compliance costs associated with relevant monitoring and enforcement activities associated with this legislative change. The exact cost of compliance will depend on the extent to which approved providers already monitor and manage inappropriate conduct through Codes of Conduct and employee contracts.

Further, Regulatory Authorities may incur costs associated with monitoring compliance and ensuring that instances of inappropriate conduct are sufficiently dealt with under the National Law. The extent of this cost may depend on the prevalence of inappropriate conduct in education and care settings, and the extent to which such conduct would be dealt with under changes to the National Law.

Consultation considerations

Feedback is sought on

- **how the proposed options would affect you or your service both positively and negatively if they were to be implemented**
- **which option (or combination of options) is your preferred option for the purposes of reducing harm to children, and why?**
- **the proposed scope of inappropriate conduct and whether it covers all forms of inappropriate conduct that should be captured in the National Law.**
- **how frequently inappropriate conduct is currently observed but does not currently (1) constitute an offence and/or (2) support the threshold for prohibition.**
- **the degree to which approved providers' current Codes of Conduct effectively set expectations regarding what constitutes inappropriate conduct.**

- the training that approved providers currently provide to staff on inappropriate conduct.

5.2 Enhancing Regulatory Authorities' ability to share information with approved providers

Prohibition notices and notice to suspend FDC educators

The NQF is structured to ensure approved providers are accountable and responsible for ensuring consistent and effective prioritising of children's safety, health, and wellbeing.

Obligations include:

- an approved provider must not engage a person as an educator, FDC educator, employee, contractor or staff member of, or allow a person to perform volunteer services for, an education and care service if the provider knows, or ought reasonably to know, a prohibition notice is in force under the National Law in any jurisdiction (section 188(1) of the National Law)
- complying with a notice to suspend education and care by a FDC educator (section 178 of the National Law).

Approved providers are responsible for undertaking appropriate steps to complying with these obligations and may request the Regulatory Authority (or National Authority – ACECQA) to disclose whether a person named in the request is the subject of a prohibition notice or has been suspended in the case of FDC educators.

The most efficient way for approved providers to access this information is by accessing the register located within the National Quality Agenda Information Technology System (NQA ITS) and verifying with the relevant Regulatory Authority whether a person is a prohibited person or suspended FDC educator.

ACECQA and the Regulatory Authority cannot disclose this information without a request from an approved provider. This protocol is to ensure approved providers remain responsible for implementing and maintaining appropriate and rigorous recruitment processes and screening criteria.

Despite approved providers undertaking the necessary steps to avoid employing prohibited persons or suspended FDC educators in a particular service, there is a small possibility in the current legislative environment that may inadvertently enable these persons to operate in

a service. This is more likely to occur where a person has been issued a prohibition notice, or where an FDC educator has been suspended due to conduct that occurred at a different service. In these instances, the approved provider would not be aware of the prohibition or suspension status of that individual, despite undertaking the initial appropriate checks and fulfilling their obligations under the National Law. The risk would only be apparent for a brief period of time, until one of the below instances takes place:

- the approved provider undertakes a subsequent request to ACECQA, the Regulatory Authority; or
- in some jurisdictions, an approved provider may be notified by the relevant WWCC agency if an educator has had a change in their WWCC status as a result of prohibition action.³⁴

Whilst the instance of this occurring is low and the period in which it presents is limited, there is a significant risk of harm present to children should a prohibited individual or suspended FDC educator be found operating in a service.

Enforceable undertakings

An enforceable undertaking is an agreement between the Regulatory Authority and the person who is engaged with the enforceable undertaking. Given the nature of this agreement, approved providers are not made aware of the existence of an enforceable undertaking other than:

- at the express consent of the person who is engaged with the enforceable undertaking, or
- it is a condition of the enforceable undertaking.

In most cases, a person engages with an enforceable undertaking due to conduct reported to the Regulatory Authority by the approved provider. In these instances, the approved provider is aware of non-compliant conduct or risk posed by the person and can subsequently monitor that person's ongoing behaviour (even if they aren't aware of the existence of the enforceable undertaking). In other cases, the person subject to a current enforceable undertaking will move between services and even jurisdictions with a different approved provider. In this scenario, the new approved provider would not be aware of that person's current enforceable undertaking or the conduct which resulted in the enforceable undertaking unless disclosed by one of the aforementioned means.

³⁴ Under the National Law, the Regulatory Authority is required to notify the respective jurisdictions' WWCC agency when they issue a prohibition notice.

This limits the ability for approved providers to:

- A) support persons engaged in their service to successfully fulfil the requirements of their enforceable undertaking (noting this is not a requirement of the approved provider);
- B) maintain oversight of persons who have engaged in non-compliant conduct; and
- C) identify and assess any future non-compliant conduct as a potential pattern of behaviour, rather than a standalone incident.

What is the problem?

Currently, there is no legislative power to enable the Regulatory Authority (or ACECQA) to disclose information regarding a prohibition status or suspension in the case of an FDC educator to a person's current approved provider, without that approved provider's request. Additionally, there are no legislative provisions that enable the Regulatory Authority to share information regarding a person's current enforceable undertaking with that person's current approved provider, unless it is a condition of the enforceable undertaking or with the express consent of that person.

There are instances where an approved provider has undertaken all the appropriate recruitment checks and screening processes, however due to conduct at a previous service, a person has been prohibited, after commencing employment with a different service. Where the Regulatory Authority (or ACECQA) is made aware of a prohibited person operating in an education and care service or suspended FDC educator, the Regulatory Authority is restricted in its powers and is unable to disclose this crucial information to support early intervention and mitigation of harm to children.

The current parameters which restrict disclosure by the Regulatory Authority regarding a current enforceable undertaking are not conducive to supporting and retaining staff who may require further assistance or maintaining clear oversight of persons' who have recently displayed non-compliant conduct.

There are opportunities to support the early intervention and oversight of non-compliant conduct by educators whilst also supporting educators to fulfil the requirements of their enforceable undertaking, and ultimately minimise the risk of harm to children attending education and care services.

What are the policy options under consideration?

Four options, including the status quo, a non-regulatory option, and two regulatory options are under consideration.

Options to address this Chapter 5.2 should be considered alongside Chapter 5.1 (creation of an offence provision to capture inappropriate conduct) and Chapter 5.3 (expansion of regulatory responses to educator and staff member conduct).

Table 5.2: Policy options under consideration – Enhancing Regulatory Authorities' ability to share information with approved providers

Option	Description
1	Status quo (no change).
2	Non-regulatory Develop more communications on the current process for accessing the NQA ITS solution that provides an approved provider with the ability to perform an initial check and subsequent prohibition checks.
3	Regulatory Amend section 272 of the National Law to allow the Regulatory Authority to share information about a prohibited person or suspended FDC educator with that person's current approved provider, without a request from the approved provider.
4	Regulatory Amend the National Law to allow a Regulatory Authority to share information about a person's current enforceable undertaking with that person's current approved provider, without a request.

What are the impacts of each option?

Option 1: Status Quo

Under the status quo, there will be no regulatory, administrative or compliance costs borne by any relevant parties.

If no changes are made, the Regulatory Authorities (and ACECQA) will remain unable to proactively share information with approved providers about prohibitions or suspensions in

the case of a FDC educator; or share any information regarding enforceable undertakings without direct consent from the person who is subject to the enforceable undertaking.

Without the information sharing of current enforceable undertakings with current approved providers, that approved provider may be unaware of educators who have recently displayed non-compliant conduct or otherwise pose a risk to children, and therefore may be unable to determine whether any future non-compliant conduct or indicators of risk are part of a pattern of behaviour, or support an educator to fulfil the requirements of their enforceable undertaking.

This option does not yield improvements in child safety outcomes, where key information regarding educator conduct remains difficult to share between the Regulatory Authority and approved providers.

Option 2: Develop communications to support access of the NQA ITS (non-regulatory)

Option 2 is a non-regulatory option in which communication materials would be developed to support approved providers to effectively undertake initial and subsequent prohibition and suspension of FDC educator checks using the NQA ITS and requests to Regulatory Authorities. However, these requests would remain reactive in nature, noting that whilst a rare occurrence, there may be an opportunity for a prohibited person or suspended FDC educator to gain employment in a service without the knowledge of the approved provider.

Impact on child safety

Where this communication leads to greater use of the NQA ITS, there is potential that there will be greater detection of prohibited persons. This would lead to a reduction in the risk that prohibited persons are exposed to children.

Impact on stakeholders

It is expected that the Regulatory Authority and ACECQA may incur administration costs associated with developing and distributing communication materials. The scale of cost will depend on the complexity and number of communication materials.

Approved providers who undertake additional prohibition and suspension checks after initial screening processes will also incur additional administration costs. The scale of administrative burden will depend on:

- the length of time required to check the prohibition and suspension, in the case of FDC educators, status of staff via the NQA ITS and Regulatory Authorities;
- the number of staff requiring checks;

- how frequently approved providers undertake subsequent prohibition and suspension checks.

As approved providers increase checks to meet obligations, the Regulatory Authority and ACECQA are also likely to face higher administrative costs from handling more requests.

This option will also not address the inability of the Regulatory Authority to disclose information about a current enforceable undertaking to a person's current approved provider.

Option 3: Amend section 272 to allow the Regulatory Authority to share information about a prohibited person or suspended FDC educator with the person's current approved provider, without a request from the approved provider (regulatory)

Option 3 is a regulatory option that enables the Regulatory Authority to proactively share information about a prohibited person or suspended FDC educator with the person's current approved provider

Impact on child safety

Option 3 is the most efficient and direct option to addressing the instances that a prohibited person or a suspended FDC educator has gained employment in an education and care service. It will enable the proactive disclosure of crucial information to a person's current approved provider and support the early intervention and mitigation of harm to children.

Impact on stakeholders

This option is not to shift approved providers' obligations to undertake the appropriate checks to the Regulatory Authority or ACECQA; that onus remains with the approved provider. This option is to support approved providers in instances where they could not know that a person was prohibited or a suspended FDC educator.

As noted, the likelihood of such a scenario occurring is extremely low, however in these instances it is anticipated that the Regulatory Authority or ACECQA would bear the administrative and compliance costs of communicating with the approved provider.

Naturally, approved providers would also experience some administrative costs however this would not be considered beyond their existing obligation not to employ a prohibited person.

Option 4: Amend the National Law to allow a Regulatory Authority to share information about a person's current enforceable undertaking with that person's current approved provider, without a request (regulatory)

Option 4 seeks to enable the Regulatory Authority (and ACECQA) to share information about a person's current enforceable undertaking to that person's current approved provider.

Impact on child safety

This option will promote approved providers to:

- support persons engaged in their service to successfully fulfil the requirements of their enforceable undertaking (noting this is not a requirement of the approved provider);
- maintain oversight of persons who have engaged in non-compliant conduct or may pose a risk to children
- identify and assess any future non-compliant conduct or indicators of risk as a potential pattern of behaviour, rather than a standalone incident.

Combined, this additional oversight and support will contribute to an improvement in child safety.

Impact on stakeholders

The Regulatory Authority will incur additional compliance costs associated with additional communication obligations with approved providers. Approved providers will also bear administration costs in instances if they undertake additional oversight or monitoring to ensure non-compliant conduct does not reoccur. The scale of these costs will depend on the number of enforceable undertakings which need to be communicated and managed.

Consultation considerations

Feedback is sought on:

- **how the proposed options would affect you or your service both positively and negatively if they were to be implemented**
- **which option (or combination of options) is your preferred option for the purposes of reducing harm to children, and why?**
- **how long it takes for an approved provider to check the prohibition or suspension status of person or FDC educator.**
- **how long it takes for an approved provider to submit an information disclosure request and how long it takes to receive information about the prohibition or suspension of a person or FDC educator.**
- **how often an approved provider would check the prohibition and suspension status of a staff member (either by requesting information from the National or**

Regulatory Authority or by using the NQA ITS) after the initial employment screening.

- **how frequently an approved provider would be unaware of an enforceable undertaking of a current staff member.**

5.3 Expansion of regulatory responses to educator and staff member conduct

As noted in Chapters 5.1 and 5.2, the NQF is structured to keep approved providers accountable and responsible for meeting their obligations under the framework, including management of educators, other staff members and volunteers. Typically, approved providers will manage and respond to educator conduct through their Code of Conduct or contracts of employment. Some educator conduct³⁵ may not be, or may no longer be, appropriate to manage through these means alone, such as conduct amounting to, or alleging to amount to, an offence under the National Law or where an educator may pose a risk of harm. In these instances, the Regulatory Authority have limited tools available to respond to this conduct.

Presently, the Regulatory Authority can:

- Issue a prohibition notice if the Regulatory Authority considers that the educator may present an unacceptable risk of harm if that person were allowed to remain at the service premises or provide education and care to children³⁶. That prohibition notice will state the person is prohibited from one or more of the following³⁷:
 - providing education and care to children for an education and care service;
 - being engaged as an educator, FDC educator, employee, contractor or staff member of, or volunteer at an education and care service; and/or
 - carrying out any other activity relating to an education and care service.

³⁵ In the instance where educator conduct falls under an offence under the National Law, it often connects to a failing of the approved provider and nominated supervisor, as seen in section 166 of the National Law – Offence to use inappropriate discipline.

³⁶ National Law s182(1)

³⁷ National Law s185

- Accept an enforceable undertaking from a person who has contravened, or is alleged to have contravened, the National Law³⁸ or as an alternative to prohibition.³⁹
- For FDC educators specifically, a notice to suspend may be issued to an FDC educators' approved provider, directing them to suspend that educator from their service. It does not prohibit that FDC educator from gaining employment with a different provider, to whom the notice of suspension was not directed.
- In the case of a substantiated contravention, prosecution may occur and subsequently a penalty imposed.
- In the case of a substantiated contravention, record the breach and send a "Reminder of Obligations" or caution letter, which is an administrative tool that acts as a warning.

Where an educator or staff member may pose an unacceptable risk of harm to children, the Regulatory Authority can prohibit and enable the swift removal of that individual from not only the service in which they operate, but the entire education and care sector. The respective WWCC agency will also be informed of the prohibition which may result in a change to their WWCC status.

The incentive for an educator or staff member to voluntarily offer and enter into an enforceable undertaking when they are facing prohibition is clear, as they face being prohibited unless they enter into an enforceable undertaking. However, where an individual's conduct does not meet the threshold for prohibition, but they have contravened or allegedly contravened the National Law, there is less of an incentive for the individual to voluntarily offer and enter into an enforceable undertaking. There are minimal consequences of not offering an enforceable undertaking (other than a monetary penalty if successfully prosecuted). Arguably, prosecution and subsequent penalties may be a deterrent for some educators or staff members although they still do not address the underlying behaviour which resulted in the contravention in the first instance.

In the instances an enforceable undertaking is voluntarily offered by the educator or staff member, it generally includes mitigation strategies put forward by the individual, the impact of which are hard to assess or quantify. Specifically, at the present time⁴⁰ there are no nationally recognised training courses that address behaviours which contravene the

³⁸ National Law 179A(1)

³⁹ National Law s184(3)

⁴⁰ Refer to Chapter 4, noting this Chapter seeks to mandate child safety training.

National Law – or any mechanism available to validate and measure the learning and behavioural change to indicate the enforceable undertaking has had the desired outcome.

What is the problem?

As it stands, where the threshold for prohibition has not been met, the Regulatory Authority has limited legislative tools that can be used to directly address educator and staff member conduct that is non-compliant. This is not conducive to an environment that promotes the safety, health, and wellbeing of children in education and care services, noting that:

- Educators and staff members who engage in non-compliant conduct are not required to undertake training or professional development activities to directly address that conduct. This is a concern for two primary reasons:
 - Firstly, the educator or staff member is more likely to repeat that behaviour if their professional knowledge has not increased; and
 - Secondly, without opportunity for correction of non-compliant behaviour, the educator or staff member may later face prohibition or have their employment terminated by the approved provider. This is not conducive towards supporting educators and staff members to develop their skills within the sector.
- Approved providers are left to manage non-compliant educator or staff member conduct without the support of the Regulatory Authority.

What are the policy options under consideration?

Five options, including the status quo, a non-regulatory option, and three regulatory options are under consideration.

Options to address this Chapter 5.3 should be considered alongside Chapter 5.1 (creation of an offence provision to capture inappropriate conduct) and Chapter 5.2 (enhancing the ability of Regulatory Authorities to share information with approved providers).

Options 2 to 5 are not mutually exclusive and could be implemented concurrently.

Table 5.3: Policy options under consideration – Expansion of regulatory responses to educator and staff member conduct

Option	Description
1	Status quo (no change).

Option	Description
2	<p>Non-regulatory</p> <p>Develop more communications and guidance to encourage approved providers to address appropriate and inappropriate conduct within their contracts of employment and their required Code of Conduct and policies and procedures under regulation 168(2) of the National Regulations.</p>
3	<p>Regulatory</p> <p>Amend the National Law to enable the Regulatory Authority to impose: <i>a suspension notice/order from providing education and care to children for a specified period of time, applicable to educators, other staff members and volunteers, where a certain threshold of risk has been met</i></p> <p>to address an alleged contravention or contravention of the National Law, where the person does not pose an unacceptable risk of harm to children.</p> <p>A show cause process would apply and the action would be internally and externally reviewable.</p>
4	<p>Regulatory</p> <p>Amend the National Law to enable the Regulatory Authority to impose: <i>a supervision order on approved providers, applicable where a staff member or volunteer has contravened the National Law and where that contravention also sits with the approved provider (for example, section 166 – Offence to use inappropriate discipline and any new offence provision under Chapter 5.1).</i></p> <p>This is to keep approved providers accountable in addressing conduct that contravenes the National Law but the person does not pose an unacceptable risk of harm to children.</p> <p>A show cause process would apply and the action would be internally and externally reviewable.</p>
5	<p>Regulatory</p> <p>Amend the National Law to enable the Regulatory Authority to impose:</p>

Option	Description
	<p><i>mandatory training/re-training for staff members (with the staff member paying for the cost of any training/re-training).</i></p> <p>to address staff member conduct that contravenes the National Law but the staff member does not pose an unacceptable risk of harm to children</p> <p>A show cause process would apply and the action would be internally and externally reviewable.</p>

What are the impacts of each option?

Option 1: Status quo

Under the status quo, there will be no incremental regulatory, administrative, or compliance costs borne by any relevant parties.

If no changes are made, the Regulatory Authority will continue to have limited tools available to address non-compliant conduct by educators or staff members where the individual's level of risk or harm to children does not meet the threshold for prohibition. This is not conducive to an environment that enables swift and effective responses to non-compliant conduct, which poses an ongoing risk to child safety in the sector. Additionally, it does not support approved providers in managing conduct that may not be, or no longer be, appropriate to be dealt with through their Code of Conduct or contracts of employment.

Option 2: Additional communications and guidance to address appropriate and inappropriate conduct (non-regulatory)

Option 2 is a non-regulatory option and is the same as the non-regulatory option (option 2) in Chapter 5.1.

Impact on child safety

Additional communication and guidance materials may help approved providers create Codes of Conduct and contracts of employment with clauses and content that strengthen and illustrate clearly what constitutes non-compliant conduct and how it will be managed and dealt with. A clearer articulation may deter some educators in engaging in non-compliant conduct and may also support approved providers in referring back to the underpinning principles of ethical and appropriate behaviour when discussing performance matters to ensure compliance and implementing additional monitoring processes.

Impact on stakeholders

Under this option, the Regulatory Authority will continue to have limited tools available to address non-compliant conduct by a person where the risk of harm to children does not meet the threshold for prohibition or pose a risk to children.

It is anticipated approved providers who update their Code of Conduct or contracts of employment because of option 2 will face administrative costs to (1) update the documents and (2) train and inform their staff on changes to the Code of Conduct and to obtain their agreement. The scale of such costs will depend on the extent of changes made.

Government may incur administration costs associated with developing and distributing communication materials. The scale of cost will depend on the complexity and number of communication materials, and the extent to which they can be developed with the support of existing government resources and as part of business-as-usual activities.

Option 3: Amend the National Law to enable the Regulatory Authority to impose a suspension notice/order where a threshold of risk, that is less than the threshold for prohibition, has been met (regulatory)

Option 3 mandates changes to the National Law such that the Regulatory Authority can suspend and subsequently remove for a period of time, an educator, other staff member or volunteer, where a certain threshold of risk has been met that falls below the threshold for prohibition.

Impact on impact on child safety

This option seeks to mitigate the immediate risk of harm to children by enabling swift regulatory responses to non-compliant or alleged non-compliant conduct where the threshold of risk for prohibition is not met. It would do so by enabling the Regulatory Authority to temporarily remove an individual from a service for a period of time, for example, while re-training takes place or the terms of an enforceable undertaking are met, while minimising the risk to children by that person remaining in the service.

Impact on stakeholders

The regulatory nature of this option may (1) deter educators, staff members and volunteers from engaging in non-compliant conduct and/or (2) may encourage approved providers to set clearer expectations or undertake additional monitoring processes to ensure compliance to avoid loss of staff for a period of time. Both behavioural responses would support safer environments for children.

The Regulatory Authority will likely bear administrative costs associated with issuing and monitoring suspension notices. The approved provider is anticipated to bear compliance costs associated with (1) complying with the notice, including implementing mitigation strategies and temporary staffing costs associated with replacing a suspended person for a period of time. The scale of costs will depend on the number of suspensions issued, the reason the suspension was issued (noting this will impact the required mitigation strategies) and the length of the suspension.

The consultation questions located at the end of this Chapter seek feedback on the specifics of the suspension notice.

Option 4: Amend the National Law to enable the Regulatory Authority to impose a supervision order on approved providers (regulatory)

Option 4 mandates changes to the National Law such that the Regulatory Authority can impose a supervision order on approved providers where a staff member or volunteer has contravened the National Law and where the offence provision connects to a failing of the approved provider (for example, section 166 – Offence to use inappropriate discipline). A show cause process would apply to this option, and the action would be internally and externally reviewable.

Impact on child safety

This option would enable the Regulatory Authority to hold approved providers accountable for addressing inappropriate conduct of educators, staff members, or volunteers which poses a risk to the safety of children, yet the level of risk posed by the individual falls short of the threshold for prohibition. This legislative change could create safer environments for children as:

- Approved providers will have additional legislative obligations to address non-compliant behaviour. This may encourage timelier and more effective management of risks.
- The regulatory nature of this option may (1) deter educators, other staff members and volunteers from engaging in inappropriate behaviour and/or (2) may encourage approved providers to set clearer expectations or undertake additional monitoring processes to ensure compliance. Both behavioural responses would support safer environments for children.

Impact on stakeholders

The Regulatory Authority will bear administrative costs associated with issuing and monitoring supervision orders.

If a supervision order is placed on an approved provider, additional costs may be incurred due to creation of a supervision plan for the relevant educator or staff member, and the approved provider may need to engage additional staff to ensure the relevant educator or staff member is appropriately supervised.

Option 5: Amend the National Law to enable the Regulatory Authority to impose mandatory training or re-training for staff members (regulatory)

Option 5 mandates changes to the National Law to enable the Regulatory Authority to issue a direction for mandatory training or re-training. A show cause process would apply, and the action would be internally and externally reviewable.

Impact on child safety

This option would support the Regulatory Authority in being able to require a staff member to address their non-compliant conduct by directing that staff member to undertake a course that is tailored to the specific conduct in question. This training is anticipated to assist staff members in examining and reflecting upon their non-compliant conduct and develop their professional skills to minimise the likelihood of it reoccurring. This option offers intervention to support the staff member in addressing non-compliant conduct that may result in termination or prohibition down the track if left unaddressed, in addition to minimising the risk of harm to children.

Impact on stakeholders

It is intended that the costs of retraining would be borne by the staff member, as it is their misconduct that is being addressed. However, as a result of an staff member undertaking mandatory re-training, certain flow on costs may impact approved providers, including:

- arranging temporary staff to cover the responsibilities/duties of staff members who are required to retrain;
- costs associated with data collection and record keeping of mandatory training.

This option has intersections with Chapter 6 which seeks to employ mandatory child safety training. One particular option, option 6, recommends proposing mandatory child safety training that includes units of content around contraventions of the National Law that educators and staff members are liable, for example section 166 – *Offence to use inappropriate discipline* and any new offence such as that in Chapter 5.1 of this CRIS. This may also reduce the costs for educators or staff members associated with mandatory re-training.

Consultation considerations

Feedback is sought on:

- how the proposed options would affect you or your service both positively and negatively if they were to be implemented
- which option (or combination of options) is your preferred option for the purposes of reducing harm to children, and why?
- with regard to option 3 (suspension notices/orders), feedback is sought on:
 - The maximum time a person could be suspended
 - Whether an approved provider should be required to continue paying a suspended employee or alternatively, whether that educator could be moved to a role that does not involve working directly with children
 - the threshold of risk that should be met to warrant suspension.
- the frequency of inappropriate conduct which occurs in education and care services, where the level of risk posed by the person does not meet the threshold for prohibition or suspension (in the case of FDC educators) but does pose a risk to child safety.

6. Working with Children Checks

This chapter addresses potential reforms to reduce complexity and provide clarity and consistency with WWCC⁴¹ requirements under the NQF, to ensure that only suitable people work or volunteer in the education and care sector.

In Australia, people who work or volunteer with children are screened for suitability through a WWCC process. Having a valid WWCC as an employee or volunteer in an education and care setting and maintaining records of WWCCs as an approved provider is an important safeguard to maintaining a child safe environment. However, there are different jurisdictional WWCC requirements across Australia that mean (1) some states and territories permit a person to commence in a role prior to having an approved WWCC, if certain requirements are met; and (2) not all states and territories require that any change in a person's WWCC status is shared with their employer and/or the relevant Regulatory Authority, either by the individual or the WWCC agency. These gaps mean that unsuitable people may enter the sector and place children at risk.

To address these potential gaps and this risk, the potential reforms discussed in this chapter are creating national consistency by requiring:

- Chapter 6.1 – that an approved provider cannot allow a person to commence work, or work as a volunteer, in an approved education and care service without an approved WWCC or confirmed teacher registration/accreditation, where otherwise not required by existing legislation.
- Chapter 6.2 – all staff in education and care services, regardless of their role or service type, to notify their approved provider of a change in their WWCC status or teacher registration/accreditation status, with the approved provider then required to notify the Regulatory Authority, where otherwise not required by existing legislation.

6.1 Requiring an approved WWCC prior to commencing paid or volunteer work at an education and care service

There is various legislation, regulation, and standards governing WWCC requirements in education and care settings.

⁴¹ WWCC is used to represent working with children checks and working with vulnerable persons registration (WWVPR), in addition to equivalent checks across jurisdictions, in this document.

Table 6.1: Overview of WWCC legislation, regulation, and standards

Mechanism	Details
Jurisdictional legislation	Each state and territory has its own legislation which mandates and regulates WWCCs, and various teacher registration/accreditation requirements. Each jurisdiction has its own naming convention, screening agency, application process, and validity period (see Appendix 10.4 for further details).
National Regulations	<p>These regulations govern approved provider applications and staff reporting requirements, to ensure providers comply with the National Law.</p> <p>Current Education and Care Services National Regulations requirements for WWCC records to be stored include, nominated supervisors (regulation 146), all educators (regulation 147) and FDC coordinators, educators, assistants and residents (regulations 149, 153, 163 and 164). WWCC requirements for the application of an approved provider are provided in regulations 14, 16, 20, 22. WWCCs need to be read by the approved provider or nominated supervisor for all staff in Victoria only (regulation 358).</p>
National standards for WWCCs	<p>The National Standards for WWCCs (National Standards) will establish nationally consistent parameters for the screening of persons who propose to engage in child-related work. These National Standards were endorsed by state and territory ministers in 2019 and are in various stages of being implemented.</p> <p>Specifically, National Standard 8 stipulates that a WWCC applicant may begin child-related work under the safeguards that the applicant does not withdraw their WWCC application, the employer verifies the application with the screening agency prior to engaging the applicant, and the screening agency has the capacity to impose interim bars on applicants where information held by the screening agency indicates a risk which requires further assessment.</p>

Across jurisdictions, there are fundamental differences in the exemptions and conditions under which persons can start working or volunteering in the education and care sector while WWCC applications are being processed. Key differences include:

- **Ability to commence child-related work or volunteering with WWCC application only:** The legal position in some jurisdictions may currently allow staff, students, and volunteers to commence work in an approved service while their WWCC application is being processed. While individuals typically need to provide proof that a WWCC application has been lodged (e.g. an application number), it is not always certain that an approved check or registration is required before commencing a role in these jurisdictions (refer Table 6.2). Certain conditions must be met however, such as supervision requirements.
- **WWCC age exemptions:** In some jurisdictions there are WWCC age exemptions. For example, in NSW and VIC persons under 18 years old do not require a WWCC to work or volunteer in child-related services (however, as per the NQF they would not be able to work with children unsupervised). In jurisdictions where persons under 18 years old are required to have a WWCC, there are still various exemptions given based on age *and* working status. For example, in WA employed persons under 18 year of age require a WWCC, but persons under 18 years old who are undertaking an unpaid student placement are exempt from WWCCs. See Appendix 10.5 for further details about WWCC exemptions.
- Only VIC currently has specific provisions in the National Regulations for WWCCs to be read before a person is engaged or permitted to be a volunteer.

Table 6.2: High-level overview of key differences in jurisdictional legislation for commencing roles with WWCCs

	NSW	VIC	QLD	WA	SA	TAS	NT	ACT
Are there exemptions or conditions under which a person might start working or volunteering in the education and care sector before they have a current WWCC?	<u>Yes</u> ⁴²	No	No	<u>Yes</u>	No	No ⁴³	<u>Yes</u>	<u>Yes</u>

⁴² NSW ECEC Regulatory Authority has, in consultation with the NSW Office of the Children's Guardian, interpreted requirements as meaning NSW requires a WWCC to work in education and care, however is seeking this amendment through this CRIS to put it beyond doubt.

⁴³ Exemptions exist in TAS and the jurisdiction specific requirement (reg 344) is an important safeguard to ensure that all persons hold a current WWCC prior to being employed/engaged.

	NSW	VIC	QLD	WA	SA	TAS	NT	ACT
Is teacher registration/accreditation currently compulsory for all early childhood teachers?	Yes	Yes	<u>No</u>	Yes	Yes	<u>No</u> ⁴⁴	<u>No</u> ⁴⁵	<u>No</u>

Source: Information sourced from various jurisdictional WWCC (or equivalent) agencies and education departments. For more information on detailed sources, refer to Appendix 10.5.

The National Regulations recognise the importance of WWCCs through a range of additional requirements for education and care services.⁴⁶ The implementation of this recommendation has the potential to introduce more stringent safeguards under the NQF that extend beyond the interventions introduced to date.

What is the problem?

Differences in jurisdictional legislation governing WWCC processes give rise to two foreseeable mechanisms of harm to children.

First, inconsistencies across jurisdictions can create confusion for approved providers, service leaders, educators and staff leading to non-compliance with WWCC requirements. Non-compliance may result in inadequate vetting, checking, and monitoring during recruitment processes. This increases the risk that some individuals who do not meet the necessary requirements are allowed to work or volunteer in education and care services.

Second, legislative exemptions and inconsistencies could enable individuals with a known history of criminal or inappropriate behaviour to work or volunteer in education and care services. In jurisdictions where a person can start prior to receiving an approved WWCC, there may be a higher likelihood of exposing children to people with known histories of misconduct or harm.

The resulting harm may manifest in several ways, including increased exposure of children to individuals with a history of misconduct, or who otherwise may not have been approved for a WWCC, the potential for abuse or neglect, and a loss of trust in education and care services among families and communities.

Currently, there is no systematically reported evidence which identifies the nature, scale, or prevalence of harm directly resulting from regulatory gaps or inconsistencies in WWCC

⁴⁴ A teacher registration/accreditation is, however, required for early childhood teachers working in school settings.

⁴⁵ Ibid

⁴⁶ Government initiatives have included: requiring WWCC details to be noted on volunteer staff records and existing student records (regulation 149); requiring volunteers to be aware of how to comply with all child protection laws and any obligations held under them (regulation 84).

requirements across jurisdictions. The National Standards for WWCCs allow for employment to commence on application for a WWCC providing additional safeguards are in place. However, given that conditions and exemptions in jurisdictional legislation governing WWCC processes could result in potential perpetrators of abuse to work or volunteer in education and care services, it is reasonable to conclude this may expose children to undue risk of physical or sexual harm.

Although teacher registration/accreditation processes in some jurisdictions already effectively screen, monitor, record and share disciplinary action about early childhood teachers, it is not required in all jurisdictions or in all education and care settings. For this reason, an option to provide national consistency of teacher registration/accreditation arrangements for services under the NQF is not yet possible and not included here.

What are the policy options under consideration?

Three options, including the status quo, a non-regulatory option, and a regulatory option are under consideration. Options 2 and 3 are not mutually exclusive, and the preferred option for these recommendations can be any combination of the proposed regulatory and non-regulatory approaches.

Table 6.3: Policy options under consideration – Requiring an approved WWCC prior to commencing paid or volunteer work at an education and care service

Option	Description
1	Status quo (no change).
2	<p>Non-regulatory</p> <p>Additional guidance about WWCC and teacher registration/accreditation requirements and the importance of WWCCs in conjunction with the implementation of child safety training (refer to Chapter 4). The guidance should include recommended ‘best practice’ approaches.</p> <p>Guidance to include the following recommended best practice approaches:</p> <ul style="list-style-type: none"> • Confirmation of a WWCC record in staff file prior to working in a service (all staff and volunteers). • Check WWCC status every 6 months (in jurisdictions where approved providers are not already notified by the relevant WWCC agency).

Option	Description
3	<p>Regulatory</p> <p><i>Jurisdiction specific National Regulation amendment in WA, the ACT and the NT to require that an approved provider of an education and care service must ensure that staff, students, and volunteers of that service hold a valid WWCC before they can be engaged/commence their roles. In addition, a jurisdiction specific National Regulation amendment in NSW will clarify this same requirement beyond doubt.</i></p>

What are the impacts of each option?

Option 1: Status quo

Under the status quo, there will be no regulatory, administrative or compliance costs borne by any relevant parties.

If changes are not made, staff, students, and volunteers in WA, ACT and NT may continue to be allowed to begin roles in approved education and care services pending WWCC applications being processed (i.e. do not have a clear check). Further, no changes will mean the jurisdictional differences and current gaps in WWCC requirements will persist. This can lead to (1) undue risks to the safety of children through exposure to unsuitable individuals working in education and care services, and (2) greater regulatory burden in understanding WWCC obligations – particularly for approved providers operating across multiple jurisdictions.

Option 2: Additional guidance about WWCC and teacher registration/accreditation requirements (non-regulatory)

Option 2 is a non-regulatory option in which explicit national guidance would be provided to approved providers about WWCC requirements. This guidance would also explain the importance of WWCCs in conjunction with the implementation of child safety training (refer to Chapter 4).

Impact on child safety

Clear and specific guidance would support providers to better understand WWCC requirements, including differences in requirements for multi-jurisdictional providers. This would reduce administrative burden (particularly for approved providers who operate across

jurisdictions) and support approved providers to meet their obligations under relevant jurisdictional and regulation under the NQF.

Impact on stakeholders

The cost of developing guidance to improve awareness of WWCC requirements may incur costs for government, depending on the complexity of the guidance and the extent to which it cannot be developed with the support of existing government resources and as part of business-as-usual activity.

Under option 2, existing gaps and inconsistencies in WWCC requirements will continue. Further packages of new guidance for the CSR could lead to sector overload and/or confusion, particularly if there is no significant change. The upcoming NQF Child Safe Culture Guide contains detailed guidance on best practice recruitment, including checking and monitoring WWCCs.

Option 3: Jurisdiction specific National Regulation amendment in WA, the ACT and the NT to require that an approved provider of an education and care service must ensure that staff, students, and volunteers of that service hold a valid WWCC before they can be engaged/commence their roles. In addition, a jurisdiction specific National Regulation amendment in NSW will clarify this same requirement beyond doubt. (regulatory)

Option 3 would introduce a new requirement under the National Regulations for services in WA, ACT, and NT to require that staff, students and volunteers hold a current WWCC before engaging/commencing roles with approved providers. Jurisdiction specific National Regulation amendment in NSW is sought to clarify this same requirement beyond doubt. This option would ensure that approved providers in all jurisdictions only allow staff, students and volunteers to commence if they have a valid WWCC.

Impact on child safety

This option would promote national consistency and clarity of WWCC requirements in the education and care sector, whereby no one can work or volunteer in a service until they have received their WWCC. This may result in improved child safety outcomes, with reduced risk of unsuitable individuals applying to work or volunteer in education and care services. It should be noted that an individual with a criminal history is unlikely to apply for a WWCC given this would be revealed through the process.

Impact on stakeholders

Administrative costs may arise due to longer recruitment timelines, as some approved providers must introduce a vetting step to review WWCCs. Additionally, if staff, students, or volunteers commencing a role in an education and care setting lack a current WWCC, approved providers may incur temporary staffing costs (i.e., a delay cost) while awaiting clearance. The scale of costs is difficult to determine, as the number of approved providers who do not currently ensure staff member or volunteers hold a current WWCC before commencement is unknown, and the length of time to process WWCC applications varies.⁴⁷

Further, option 3 may exacerbate current workforce shortages if there are delays for processing WWCC in jurisdictions where this is not currently required prior to commencement in a service.

While this amendment intends to create more consistency in WWCC requirements in the education and care sector, it may contradict or lead to inconsistencies in related sectors such as in disability services in some jurisdictions which may still allow a person to commence child-related roles in other sectors pending WWCC registration.

Consultation considerations

Feedback is sought on:

- **how the proposed options would affect you or your service both positively and negatively if they were to be implemented**
- **which option (or combination of options) is your preferred option for the purposes of reducing harm to children, and why?**
- **the number of staff, students and volunteers who begin roles while their WWCC is being processed, from approved providers with education and care services in WA, ACT and NT**
- **the average wait time to receive a WWCC, particularly in WA, ACT and NT**
- **the estimated time required to understand and comply with different jurisdictional WWCC requirements, from approved providers who operate across multiple jurisdictions**

⁴⁷ The scale of potential costs will be explored further through consultation and targeted data requests.

- **how often staff or volunteers are not granted WWCC registration after commencing work in an education and care service in WA, ACT and NT**

6.2 Requiring approved providers and Regulatory Authorities to be notified about changes in WWCC status

There are a range of different notification requirements regarding the communication of a change in WWCC status from an individual to an approved provider, an approved provider to a Regulatory Authority, or for an individual to report a change in employer to the WWCC screening agency.

Jurisdiction-specific WWCC legislation mandates:

- employees must communicate WWCC status changes to their employer (VIC, WA and SA)
- WWCC holders must communicate changes in their employer to the WWCC screening agency (VIC, NSW, QLD, WA and TAS⁴⁸)
- Approved providers or WWCC screening agencies are obligated to notify Regulatory Authorities of changes in all employees' WWCC status or teacher registration/accreditation status (WA, QLD, and in some circumstances, SA⁴⁹).

The National Law stipulates that Regulatory Authorities must be notified of changes in WWCC status for nominated supervisors, FDC educators and FDC residents over 18 years old. Under section 173 of the National Law, approved providers must notify the Regulatory Authority if the nominated supervisor's WWCC card or teacher registration/accreditation is suspended or cancelled. Further, section 271 requires Regulatory Authorities to disclose the suspension or cancellation of a WWCC card or teacher registration of a nominated supervisor to other Regulatory Authorities.

The National Regulations also set requirements for reporting changes in WWCC status in limited circumstances. Specifically, regulation 163 requires FDC educators to notify approved providers of any new person aged over 18 years old who resides or intends to

⁴⁸ In some jurisdictions, the new employer is responsible for advising a change, not the individual.

⁴⁹ Holding a valid WWCC is a requirement of teacher registration in SA. As such, the SA Department of Human Services Screening Unit notifies the Teacher Registration Board of any changes in a registered teacher's WWCC status. The Department of Education do not notify the Teacher Registration Board of changes in status, as they receive the notification straight from the SA Department of Human Services.

reside at the residence and notify them of any circumstance that may affect whether they are fit and proper to be in the company of children.⁵⁰

Government intervention to date has recognised the importance of WWCCs by working towards greater standardisation across jurisdictions and encouraging data sharing initiatives. Specifically, National Standard 30 (of the National Standards for WWCC) specifies that it should be a criminal offence in all jurisdictions if a person, as an applicant or WWCC holder, fails to notify screening agencies of relevant changes to their circumstances including a change of relevant criminal history, a change of employer, or a change of personal information. However, state and territory governments are at different stages of implementing National Standard 30.

What is the problem?

There is currently no systematically reported evidence which identifies the nature, scale, or prevalence of harm caused by regulatory gaps or inconsistencies in notification obligations related to changes in WWCC status. Conceptually, the absence of nationally consistent and comprehensive notification requirements increases the risk of unsuitable individuals remaining in education and care settings.

In addition, the absence of nationally consistent and comprehensive notification requirements has the potential to create additional regulatory burden in navigating interjurisdictional requirements – particularly for approved providers that operate across several jurisdictions. These requirements are illustrated in Table 6.4.

The variance in notification requirements across jurisdictions has the potential to result in harm to children in any jurisdiction with potential gaps in notification requirements. This harm is most likely to result from a change in a person's WWCC status being unknown to an approved provider and/or Regulatory Authority, and a person continuing to work in an education and care role. Further, the ability of WWCC screening agencies to notify approved providers⁵¹ and/or Regulatory Authorities⁵² of changes to a person's WWCC status (in jurisdictions where the WWCC screening agency makes this notification⁵³) is compromised

⁵⁰ For example, this may include notification of whether the person is charged with or convicted of an offence of a sexual or violent nature, involving drugs or a weapon, or if the person's application for a WWCC, card or registration has been rejected, revoked or suspended, or if they are prohibited from working with children.

⁵¹ Across all jurisdictions, the WWCC screening agency notifies the verified or listed employer of changes in WWCC status, except for in WA where it is a requirement for the employee to notify their employer of a change in criminal record.

⁵² In some states, such as QLD, Regulatory Authorities are notified by WWCC screening agencies directly of any changes to an employee or volunteer's WWCC status. In such instances, notification of any changes in WWCC status from approved providers is not required.

⁵³ As per note 55.

in states where individuals are not required to notify WWCC screening agencies of a change in employer.

Table 6.4: High-level overview of key differences in jurisdictional notification requirements

	NSW	VIC	QLD	WA	SA	TAS	NT	ACT
Individuals are required to notify their approved provider of a change in WWCC (or equivalent) status	<u>No</u>	Yes	<u>No</u>	Yes	Yes	<u>No</u>	<u>No</u>	<u>No</u>
WWCC agency notifies the approved provider of changes to a person's WWCC status	Yes	Yes	Yes	<u>No</u>	Yes	Yes	Yes	Yes
Individuals are required to notify WWCC screening agencies of a change in employer	Yes	Yes	Yes	Yes	<u>No</u>	Yes	<u>No</u>	<u>No</u>
Approved providers or WWCC screening agencies are required to notify Regulatory Authorities of a change in an any employee, volunteer, or FDC resident's WWCC status (or equivalent)	<u>No</u>	<u>No</u>	Yes	Yes	Yes ⁵⁴	<u>No</u>	<u>No</u>	<u>No</u>

Source: Information source from various jurisdictional WWCC (or equivalent) agencies and education departments. For more information on detailed sources, refer to Appendix 10.5.

Although teacher registration/accreditation processes in some jurisdictions already effectively screen, monitor, record and share disciplinary action about early childhood teachers, it is not required in all jurisdictions or in all education and care settings. For this reason, an option to provide national consistency of teacher registration/accreditation arrangements for services under the NQF is not yet possible and not included here.

⁵⁴ Holding a valid WWCC is a requirement of teacher registration in South Australia. As such, the DHS Screening Unit notifies the Teacher Registration Board of any changes in a registered teachers WWCC status. The Department of Education do not notify the Teacher Registration Board of changes in status, as they receive the notification straight from DHS.

What are the policy options under consideration?

Three options, including the status quo, a non-regulatory option, and a regulatory option are under consideration. Options 2 and 3 are not mutually exclusive, and the preferred option can be any combination of the proposed regulatory and non-regulatory approaches. Option 3 comprises of two parts (part A and part B) that cannot be split.

Table 6.5: Policy options under consideration – Requiring approved providers and Regulatory Authorities to be notified about changes in WWCC status

Option	Description
1	Status quo (no change).
2	<p>Non-regulatory</p> <p>Additional guidance about current WWCC and teacher registration/accreditation notification requirements and the importance of WWCCs in conjunction with the implementation of child safety training (refer to Chapter 4)</p> <p>Guidance to include the following recommended 'best practice' approaches:</p> <ul style="list-style-type: none"> • Confirmation of a WWCC record in staff files prior to working in a service (all staff and volunteers). • Check WWCC status every six months (in jurisdictions where approved providers are not already notified by the relevant WWCC agency).
3	<p>Regulatory</p> <p>Amend the National Regulations and National Law</p> <p>A) New requirement for all centre-based staff and FDC educators to notify their approved provider of a change in WWCC or teacher registration/accreditation status (in NSW, TAS, ACT and NT only).⁵⁵</p> <p>and</p> <p>B) New requirement for approved providers to notify the Regulatory Authority of a change in WWCC or teacher registration/accreditation status for all staff with penalties/offences for non-compliance, (in all</p>

⁵⁵ Noting in QLD, Blue Card Services, the WWCC screening agency, makes this notification.

Option	Description
	jurisdictions except QLD and WA. ⁵⁶ Also, an exemption in SA in instances where changes to WWCC status is directly communicated to the Regulatory Authority).

What are the impacts of each option?

Option 1: Status quo

Under the status quo, there will be no additional regulatory, administrative, or compliance costs borne by any relevant parties.

Current inconsistencies and regulatory gaps with respect to notifying changes in WWCC and teacher registration/accreditation status will remain under the status quo. As such, risks to child safety will also remain unchanged in all jurisdictions except for QLD and WA – where there are currently no known regulatory gaps of this nature.

To some extent, the status quo will be supported by state and territory WWCC screening unit reform to implement National Standard 30 that are already reducing existing regulatory gaps in notification of changes to WWCCs, which may result in a reduction in risks to child safety.

Option 2: Additional guidance about current WWCC and teacher registration/accreditation notification requirements and the importance of WWCCs (non-regulatory)

Option 2 is a non-regulatory option in which explicit national guidance would be provided to approved providers and staff about current WWCC and teacher registration/accreditation notification requirements, to allow these stakeholders to better understand their obligations. This guidance would also explain the importance of WWCCs in conjunction with the implementation of child safety training (refer to Chapter 4).

Impact on child safety

Issuing this guidance is expected to improve compliance with jurisdictional WWCC requirements and improve awareness of a change in WWCC status. This is expected to

⁵⁶ QLD and WA already require this, as demonstrated in Table 6.4.

improve child safety outcomes whereby unsuitable individuals can be identified and removed from education and care services.

Impact on stakeholders

The cost of developing guidance to improve awareness of notification obligations may incur costs for government, depending on the complexity of the guidance and the extent to which it cannot be developed with the support of existing government resources and as part of business-as-usual activity.

The content regarding recruitment and WWCC status monitoring in the upcoming NQF Child Safe Culture guide may be sufficient to increase understanding of and compliance with notification requirements.

Further, with existing gaps and inconsistencies in notification processes, a non-regulatory option of this nature may have limited effectiveness in reducing instances of potential risks to children.

Option 3A: Amendment of the National Regulations such that all centre-based staff and FDC educators must notify their approved provider of a change in WWCC or teacher registration/accreditation status (regulatory)

Option 3A is a new provision in the National Regulations that would only impact staff in NSW, TAS, ACT, and NT. This is because existing jurisdictional WWCC legislation already requires staff in VIC, SA, and WA to notify changes to their approved provider, noting that the relevant WWCC agency notifies the approved provider (where known) of changes to a person's WWCC status in all jurisdictions except WA.

Impact on child safety

This option would promote clarity of staff notification obligations. This may enhance child safety by enabling approved providers to make informed decisions and take timely action, reducing the potential that unsuitable individuals are present in education and care settings. However, the requirement for an individual to report changes in their WWCC or teacher registration/accreditation status to their approved provider may not guarantee compliance unless this requirement is consistently enforced.

Impact on stakeholders

This option will result in administrative burden for staff who are newly required to notify and provide records detailing changes in WWCC and teacher registration/accreditation status. Approved providers may also incur temporary staffing costs (i.e., a delay cost) when

removing or suspending staff due to changes in status, as jurisdictional requirements often mandate that staff hold a current WWCC or teacher registration/accreditation to engage in child-related work or volunteering. These costs may be outweighed by the opportunity to reduce risks to child safety, a considerable concern in the case of a change (such as suspension or cancellation) to a WWCC.

The scale of costs is difficult to determine, as the number of staff who have been removed or suspended from roles as a result of self-reported changes in WWCC or teacher registration/accreditation status is currently unknown.⁵⁷

Option 3B: Amendments of jurisdictional legislation mandating that approved providers must notify the Regulatory Authority of a change in WWCC or teacher registration/accreditation status for all staff (regulatory)

Option 3B must be considered alongside option 3A as a complementary option. This is because both options are necessary so Regulatory Authorities are able to support the sector and ensure a person with a change in WWCC status is unable to move from their current workplace to another education and care service either in the current jurisdiction or interstate.

Option 3B proposes amendments to jurisdiction-specific provisions in the National Regulations. These amendments will impact approved providers in NSW, VIC⁵⁸, TAS, ACT, NT, and SA (in some circumstances), as approved provider notification of changes in status to Regulatory Authorities is not currently required under jurisdictional WWCC legislation in these states and territories, nor is this notification process undertaken by the state's WWCC screening agency. This amendment would also stipulate penalties and/or offences associated with non-compliance.

Impact on child safety

Option 3B would promote clarity of approved provider notification obligations to Regulatory Authorities with effective communication and prompt action. This may enhance child safety as Regulatory Authorities can consider action to mitigate risk to children from unsuitable individuals with a temporary or permanent change of WWCC status. This option would have limited effectiveness without option 3A, as approved providers may be unaware of any

⁵⁷ The scale of potential costs will be explored further through consultation and targeted data requests.

⁵⁸ Note that VIC require staff to notify approved providers of changes to WWCCs or teacher registration/accreditation status but do not require approved providers to notify Regulatory Authorities. Hence Victoria would be impacted by option 3B but not option 3A.

changes in WWCC or teacher registration/accreditation status and are therefore unable to provide this information to Regulatory Authorities.

Impact on stakeholders

This option will result in some additional administrative burden for approved providers who are required to notify Regulatory Authorities of changes in employees' WWCC and teacher registration/accreditation status. Regulatory Authorities may incur compliance costs in sharing this information with other relevant agencies, in addition to implementation costs to introduce monitoring processes (where they are not already in place).

The scale of costs is difficult to determine, as the prevalence of this type of reporting (and non-compliance in jurisdictions with mandates) is currently unknown.⁵⁹

Consultation considerations

Feedback is sought on:

- **how the proposed options would affect you or your service both positively and negatively if they were to be implemented**
- **which option (or combination of options) is your preferred option for the purposes of reducing harm to children, and why?**
- **the potential that staff or volunteers may continue in a role following a change in WWCC or teacher registration/accreditation status that is unknown to the approved provider or Regulatory Authority**
- **the potential harm to children that may occur as a result of a change in WWCC status or teacher registration/accreditation status that is unknown to the approved provider or Regulatory Authority**
- **the extent to which changes in WWCC (or equivalent) status are communicated in the following ways:**
 - **from employees or volunteers to approved providers**
 - **from WWCC screening agencies to approved providers**
 - **from approved providers to Regulatory Authorities**
 - **from WWCC screening agencies to Regulatory Authorities.**

⁵⁹ The scale of potential costs will be explored further through consultation and targeted data requests.

- **the need for temporary staff in instances where current staff's WWCC or teacher registration/accreditation has been suspended or cancelled, for approved providers**
- **how much time it would take for approved providers to complete the administrative process to notify Regulatory Authorities of changes in staff's WWCC or teacher registration/accreditation status**

7. Improving the safety of the physical service environment

In relation to centre-based services, this chapter highlights that it is critical for service premises and environments to be designed, built, and maintained in a way that facilitates supervision of children at all times. This is reflected in regulation 115 of the National Regulations. Options for change considered in the CRIS involve:

- providing guidance to promote the importance of designing and maintaining premises in a way that facilitates supervision of children at all times
- removing the ability for approved providers to apply for waivers from this critical requirement.

Additionally, this chapter considers how FDC environments could be safer for children, whilst recognising that each FDC residence or approved venue is unique. Options for change considered in the CRIS involve:

- determining how providers should assess the FDC residence and approve the FDC premises
- allowing authorised officers to enter all areas of the FDC residence or property in limited and specific situations, including when a serious incident is reasonably believed to have occurred.

Collectively, the reform areas outlined in this chapter aim to improve child safety by ensuring that:

- all children attending education and care services are provided with a child-safe physical environment that meets regulatory requirements
- providers have clear guidelines to support them to identify and mitigate child safety risks in the physical environment
- authorised officers have suitable powers of entry to respond to situations impacting children's safety.

The specific reform areas discussed in this chapter are:

- Chapter 7.1 – Service and temporary waivers for the design of premises (to facilitate supervision of children) (*waivers of regulation 115*)

- Chapter 7.2 – Requiring approved providers to assess not just the FDC residence but areas near the residence (*expanding regulation 116*)
- Chapter 7.3 – Enabling authorised officers to access areas of a FDC residence or property, beyond the service premises, in specific instances or for specific purposes (*amending Division 2 of Part 9 of the National Law*).

7.1 Service and temporary waivers for the design of premises (to facilitate supervision of children)

Supervision is recognised as the most critical element of child safety. Accordingly, section 165 of the National Law states that it is an offence to inadequately supervise children.

Regulation 115 of the National Regulations requires the approved provider of a centre-based service⁶⁰ to ensure that the education and care service premises (including toilets and nappy change facilities) are designed and maintained in a way that facilitates supervision of children at all times that they are being educated and cared for by the service, having regard to the need to maintain the rights and dignity of children.

Approved providers of centre-based service premises that do not comply with regulation 115 are able to apply for a temporary or service waiver⁶¹, if the design and maintenance of the premises does not facilitate supervision of children, and under any proposed modifications, the premises would still not meet regulatory requirements. This could be the case, for example, if a service is operating from a premises that was not designed for education and care or to facilitate the adequate supervision of children or the building is heritage listed, which limits the modifications that can be undertaken. Alternatively, waivers may be granted if the service must relocate to a temporary premises that does not satisfy regulation 115 due to some circumstance (e.g., undergoing a major renovation, or having suffered damage due to a natural disaster) impacting the original premises of the service. A temporary waiver may also be used whilst services premises are undergoing renovation or repair that may impact the ability to supervise children for a limited time.

When applying for a waiver of regulation 115, the approved provider must demonstrate exceptional circumstances and any proposed alternative methods of facilitating the supervision of all children at all times.

⁶⁰ A centre-based service means an education and care service other than a FDC service. This includes most LDC, preschool and OSHC services that are delivered at a centre.

⁶¹ There are two types of waivers; (1) Temporary waivers, which may be granted for up to 12 months, and (2) Service waivers, which may be granted if a provider is unable to meet requirements for an ongoing period. There is no specific expiry date for a service waiver.

Supervision is recognised as the most critical element of child safety. Accordingly, section 165 of the National Law states that it is an offence to inadequately supervise children.

What is the problem?

Waivers for regulation 115 could increase the likelihood of harm to children through the following causal chain:

- the design and maintenance of a centre-based service premises does not comply with regulation 115, which leads to;
- a failure to ensure adequate supervision of children in the centre-based service premises, which leads to;
- an increased likelihood that children attending the centre-based service premises will experience harm.

While the number of reported occurrences linking the approval of regulation 115 waivers to instances of child harm is inconclusive, it is foreseeable that such an event could result in significant harm to a child. For example, harm could occur if inadequate supervision results in a child encountering a hazard and suffering an injury or creates increased opportunities for potential offenders to harm children by seeking to exploit gaps in supervision. Further evidence is sought through this consultation process.

The approval of waivers for regulation 115 may lead to an increased occurrence of inadequate supervision, which may increase instances in which children experience harm; particularly if additional supervisory measures put in place for a waived service (e.g., the placement of mirrors or CCTV for better supervision or additional staffing) are not fully or consistently complied with. A key question is whether services can sufficiently maintain supervision of children at all times when a waiver of regulation of 115 is approved. In determining this, it is important to consider:

1. How prevalent are service and temporary waivers for regulation 115?
2. Are waivers of regulation 115 associated with instances of inadequate supervision?

Number of service and temporary waivers for regulation 115

Ten waivers of regulation 115 were in place as of October 2024. One temporary waiver in VIC, eight service waivers in QLD, and one service waiver in NSW. Since 2013, 87 applications have been lodged for a waiver of regulation 115 (see Table 7.1). Of these,

approximately one third were temporary waivers that have since expired, while another third were service waiver applications that have since been withdrawn by the service.

Table 7.1: Quantity of all waivers of regulation 115 by status, 2013-2024

Waiver status	Number
In force	10
Expired	29
Invalid	16
Refused	2
Revoked by RA	1
Withdrawn	29
Total	87

Source: Information provided by ACECQA.

The number of approved waivers each year has remained relatively stable over time. Since 2013, nine out of ten years have had five or fewer approved waivers of regulation 115.⁶² Waivers are only granted by Regulatory Authorities in instances where the approved provider can demonstrate an adequate plan to mitigate the supervision risks arising from premises design.

Relationship between regulation 115 and inadequate supervision

A waiver indicates that a building's structural characteristics may not facilitate the supervision of children at all times, which can increase the risk of harm to children. To date, there is limited systematically reported evidence or data to expressly support a finding that the presence of regulation 115 waivers leads to greater instances of inadequate supervision and actual child harm. This is because:

- Breaches of section 165 of the National Law have grown since 2016/17 in a way that is not consistent with the relatively stable and very small number of approved waivers for regulation 115 of the National Regulations
- There were only four known breaches of adequate supervision (section 165) among the 11 services that had a waiver in place at any point from 2021-22 to 2023-24 (of which ten waivers are current). This equates to approximately 0.36 breaches per service with a

⁶² In 2019, 10 waivers of regulation 115 were approved; 8 of these waivers were for services operating in QLD.

waiver, which may be fewer in number than breaches among non-waivered services⁶³. However, with a very low sample size this relationship cannot be definitively established. In addition, data is not available to indicate whether these four breaches were also associated with harm to children.

Given the relatively low reliance on service waivers currently, it is expected that most service premises are designed to facilitate the supervision of children at all times.

Removing the ability for centre-based services to apply for an ongoing and/or temporary waiver under regulation 115 may, however, help reduce instances of inadequate supervision of children in centre-based services and, in turn, improve child safety.

What are the policy options under consideration?

Four options for reform have been developed, including the status quo, a non-regulatory option, and two regulatory options. While options 3 and 4 are mutually exclusive, option 2 can be implemented alongside either regulatory option.

Table 7.2: Policy options under consideration – Service and temporary waivers for the design of premises (to facilitate supervision of children)

Option	Description
1	Status quo (no change).
2	Non-regulatory Providing guidance to promote the importance of designing and maintaining premises in a way that facilitates supervision of children at all times.
3	Regulatory Amend the National Regulations to remove the ability to apply for service waivers of regulation 115. This option means the ability to apply for a temporary waiver of regulation 115 remains in place for short-term emergent circumstances, with suitable risk mitigation required. This amendment will have no impact on existing regulation 115 waivers.
4	Regulatory

⁶³ There were an estimated 0.39 breaches of section 165 per non-waivered service from 2021/22 to 2023/24. However, this is based on 6,753 breaches over time – across the three-year period from 2021/22 to 2023/24 - and 17,423 LDC, OSHC, and preschool/kindergarten services operating at a point in time, in 2024. As some services may have closed and others opened over the reporting period for section 165 breaches, the number of breaches per service may not be directly comparable.

Option	Description
	<p>Amend the National Regulations to remove the ability to apply for service and temporary waivers of regulation 115.</p> <p>This amendment will have no impact on existing regulation 115 waivers.</p>

What are the impacts of each option?

Option 1: Status quo

If no changes are made, then approved providers will retain the ability to apply for temporary and service waivers when education and care service premises fail to satisfy regulation 115.

Importantly, wording of the CSR recommendation essentially replicates the status quo. This is because, in practical terms, waivers for regulation 115 can only be granted in exceptional circumstances – this is reflected in the low number of active waivers (ten, of which one is temporary) across Australia. It is possible, however, that there are different expectations of what constitutes ‘exceptional circumstances’ across jurisdictions, due to the absence of nationally consistent principles to evaluate an application of a waiver for regulation 115.

Under the status quo, approved providers would face no additional regulatory, administrative or compliance costs.

However, services premises with a waiver of regulation 115 have areas in which children may be at a relatively greater risk of experiencing incidents which negatively affect their safety, health, and wellbeing. This could include an increased risk from potential offenders exploiting gaps in child supervision.

Option 2: Guidance to promote and maintain premises design for adequate supervision (non-regulatory)

Option 2 requires that guidance to promote the importance of designing and maintaining premises in a way that facilitates supervision of children at all times is generated for the benefit of approved providers and Regulatory Authorities around:

- the circumstances that must exist to warrant a waiver of regulation 115
- matters that must be considered (or risk mitigations required) when assessing an application for a waiver of regulation 115

- monitoring services and ensuring ongoing risk mitigation in services that do not meet regulation 115 and services that have a waiver of regulation 115 in place.

Impact on child safety

The development and publication of guidance could generate a variety of benefits. Firstly, guidance may support implementation and monitoring of risk mitigation strategies for services that do not meet regulation 115 and services that have a waiver of regulation 115 in place. Secondly, guidance may limit the number of waivers granted for regulation 115 in the future. Finally, the non-regulatory approach implicitly recognises that there may be reasons to maintain the ability to waive regulation 115. For example, maintaining the ability to waive regulation 115 in the future, at least on a temporary basis, can allow education and care services to operate where services are temporarily relocated to a different premises due to unforeseen circumstances such as natural disasters.

Impact on stakeholders

The development and distribution of guidance materials to promote premises design for supervision may incur costs for government, depending on the complexity of the guidance and the extent to which it cannot be developed with the support of existing government resources and as part of business-as-usual activity.

Additionally, education and care service premises that currently require a temporary or service waiver may continue to require a waiver after publication of the guidance. This means that risks to child safety, health, and wellbeing may still be present after approved providers and Regulatory Authorities receive guidance.

Finally, since no changes are being made to the National Regulations, there is limited regulatory burden and associated regulatory or compliance costs. These costs will only apply to services that choose to consider and apply guidance. There is potential, however, that additional clarity provided through the guidance will simplify processes for services and potentially reduce costs associated with designing alternative measures to improve supervision.

Option 3: Remove the ability to apply for service waivers (regulatory)

This option would ensure that all premises used by new and existing services must comply with regulation 115, either upon commencing operation or after the expiration of a temporary waiver granted to the approved provider operating the service. These regulatory changes are not intended to impact services that currently have a service waiver for regulation 115, however it may impact services in the future that would otherwise have applied for a service

waiver. Importantly, this regulatory option ensures that temporary waivers for regulation 115 remain available for approved providers for short-term, emergent circumstances, provided that suitable risk mitigation are in place.

Impact on child safety

Creating new service premises that facilitate supervision of all children at all times has the potential to reduce incidents detrimental to child safety, health, and wellbeing (including instances in which potential offenders seek to exploit gaps in supervision). The removal of the ability to apply for a service waiver of regulation 115 also sets a clear expectation for approved providers and Regulatory Authorities on the design and construction of new service premises, as well as the renovation of existing service premises. This may reduce future costs associated with compliance after a premises has been constructed. It is also likely that the construction of service premises would see a gain in efficiency once clear expectations are communicated.

Impact on stakeholders

Approved providers that would have otherwise relied on a service waiver in the future may incur costs when ensuring that their premises satisfy regulation 115. It is expected that the extent of these costs will vary with the context of each affected service premises. In some extreme cases, the inability to seek a service waiver may prevent the operation of an education and care service, if there is no alternative, suitable venue available.

Option 4: Remove the ability to apply for service and temporary waivers (regulatory)

The removal of service *and* temporary waivers for regulation 115 will largely impose costs on approved providers (or building owners) that would have otherwise relied on a waiver to provide education and care services. It is expected that option 4 would impose a higher cost to these approved providers (or building owners) than option 3, due to option 4 also encompassing temporary waivers.

Impact on child safety

As with option 3, this regulatory approach may reduce the risk of incidents that are detrimental to child safety, health, and wellbeing (including instances in which potential offenders seek to exploit gaps in supervision). Further, the reduction in risk associated with option 4 cannot be smaller than the reduction in risk associated with option 3, as option 4 is an extension of option 3.

Impact on stakeholders

Approved providers that would have otherwise relied on a service waiver in the future may incur costs to ensure that their premises satisfy regulation 115. It is expected that the extent of these costs will vary with the context of each affected service premises. In some cases, the inability to seek a service waiver, and more particularly a temporary waiver, may prevent the operation of an education and care service, if there is no alternative, suitable venue available.

Consultation questions

Feedback is sought on:

- **how the proposed options would affect you or your service both positively and negatively if they were to be implemented**
- **which option (or combination of options) is your preferred option for the purposes of reducing harm to children, and why?**
- **whether the provision of non-regulatory guidance on designing and maintaining premises in a way that facilitates supervision of children at all times is likely to have bearing on the number of breaches of regulation 115 and section 165.**
- **the exceptional circumstances in which regulation 115 waivers are currently granted.**
- **the potential for incidents of inadequate supervision as a result of inadequate building design.**
- **the potential costs to approved providers or building owners stemming from the removal of the ability to apply for:**
 - **a service waiver of regulation 115**
 - **a temporary waiver of regulation 115.**

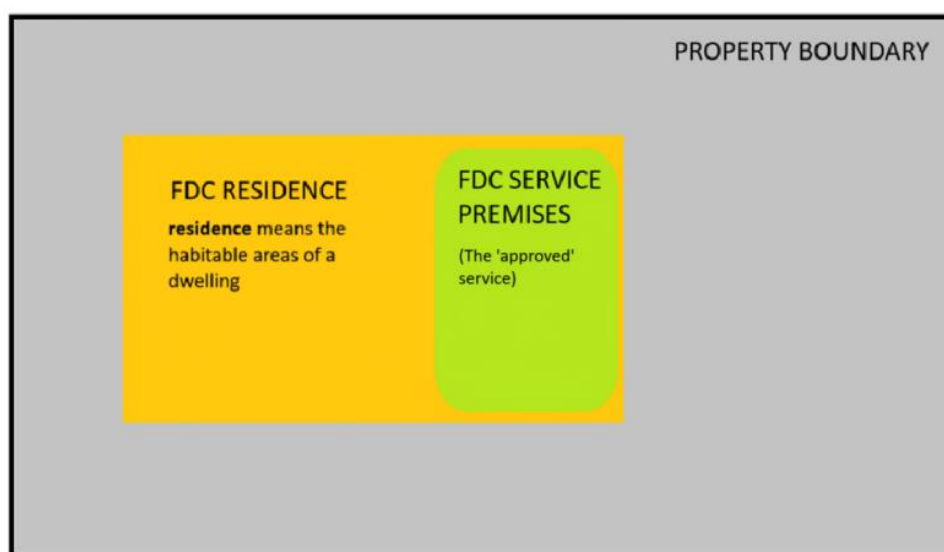
7.2 Requiring approved providers to assess not just the FDC residence, but areas near the residence

Regulation 116 of the National Regulations requires the approved provider of an FDC to conduct an assessment (which includes a risk assessment) of each proposed FDC

residence or venue, before education and care is provided to children at the residence or venue, and on an annual basis.

For FDCs operating from a residence, the assessment is required to encompass the entire FDC residence (i.e., the habitable part of the dwelling), rather than just the areas where education and care is provided (referred to as the FDC 'service premises') (refer Figure 7.1). The assessment is not required to include other spaces, such as sheds and outdoor spaces.

Figure 7.1: Diagram example of the boundaries of an FDC service premises and FDC residence relative to property boundary



What is the problem?

Regulation 116 currently requires approved providers to assess the FDC 'residence'. It does not consider different configurations and layouts of residences (e.g. multiple dwellings on one property, property type) or the outside spaces that surround residences. This may lead to varying expectations and practices across states and territories for the boundaries of assessment of FDC residences.

There are anecdotal reports across states and territories that children attending FDCs have been able to access garages, sheds, or outdoor locations in which hazards such as machinery, chemicals, and insect nests were present. The presence of these hazards, and other foreseeable items, located near the FDC residence raises concerns for children's safety.

Serious risks to children's physical, emotional, and overall wellbeing could arise if they access areas within the broader environment (i.e., beyond the FDC service premises and residence) that contain hazards. Children may suffer physical harm from injuries or

accidents due to exposure to hazardous materials or equipment found in garages, sheds, in areas of an FDC environment outside of the FDC residence.

Where one or more areas around an FDC residence have not been assessed by an approved provider, the FDC service's risk mitigation strategies may not address the full extent of potential hazards or risks that children may encounter while attending an FDC. Approved providers support FDC educators in implementing risk mitigation strategies within the areas that they have assessed. The absence of a risk assessment for some areas can increase the risk of harm to children if they access these areas, particularly if they are not subject to the same risk mitigations in place within the service premises.

There could be a range of ways in which children access areas outside of an FDC residence, such as:

- FDC educators taking children to parts of the property that have not been assessed as part of the residence (e.g., visiting a shed on a property to engage in a tinkering activity).
- Inadequate supervision of children may lead to children accessing areas outside of the service premises. This could lead to children accessing hazardous materials or areas outside of the FDC residence, raising concern for their safety and being exposed to other harms.

In addition, the current National Law and National Regulations do not require approved providers to formally approve the boundary between the FDC service premises and the broader FDC residence. This can result in a lack of clarity among FDC educators and families around which areas of the FDC residence are allowed to be accessed for the purposes of undertaking education and care.

This has previously resulted in children accessing areas of a FDC residence or surrounding property that have not been formally approved as suitable for the provision of education and care, including:

- an FDC educator using a shed (outside of the residence) to provide education and care
- an educator changing nappies in a private area (i.e., not the approved service premises) of a residence.

Since these events were reported, there has been a regulatory change (since 1 October 2023) that requires approved providers to display a diagram clearly identifying spaces in which children will be educated and cared for and the existence of any water hazards, water features or swimming pools at or near the residence or venue. There remains a gap in the

regulations for a formalised approval process to determine the service premises within an FDC residence and for this to be updated on a regular basis as risks change.

What are the policy options under consideration?

Four options, including the status quo, a non-regulatory option, and two regulatory options are under consideration. Options 2 to 4 are not mutually exclusive, and the preferred option for these recommendations can be any combination of the proposed regulatory and non-regulatory approaches.

Table 7.3: Policy options under consideration – Requiring approved providers to assess not just the FDC residence, but areas near the residence

Option	Description
1	Status quo (no change).
2	Non-regulatory Provide more explicit national guidance to FDC approved providers on their obligations under the current regulation 116, including the areas to be assessed and risk assessment/mitigations to prevent children from accessing areas beyond the FDC service premises, and consideration of risks near the residence other than water hazards.
3	Regulatory Amend the National Regulations (regulation 116) to <i>explicitly require assessment</i> of not just the FDC residence but areas near the residence that may be accessible to children. Changes to apply to new assessments and each annual reassessment (not retrospectively), both of which are undertaken by approved providers.
4	Regulatory Amend the National Regulations (e.g. regulation 116) to <i>formalise an approval process</i> for the FDC service premises, as part of the FDC residence i.e. explicit requirement for approval from the approved provider to confirm areas that are used as the FDC service premises. This approval would apply to new FDC service premises. For existing premises, the approval should be confirmed or amended at each annual assessment undertaken by approved providers.

What are the impacts of each option?

Option 1: Status quo

If no changes are made, FDC residences may continue to be inconsistently assessed by approved providers, resulting in varying levels of risk mitigation for any potential hazards and risks that children may encounter across states and territories.

There may be a lack of oversight and risk mitigation in some FDC services where approved providers neglect to address all hazards in the broader environment that children could access. This may increase the risk of child harm or incidents.

Under the status quo, there would be no additional regulatory burden on FDC approved providers or Regulatory Authorities.

Option 2: Provide more explicit national guidance to FDC approved providers

Option 2 is a non-regulatory option where explicit national guidance would be provided to FDC approved providers on their obligations under the current regulation 116 and the specific areas required to be assessed. Additional guidance on consideration of risks beyond the residence, other than water hazards (which are already required to be assessed) would also be provided. This would support approved providers to meet their obligations under regulation 116 and improve oversight and mitigation of risk.

Impact on child safety

This option would improve the quality and coverage of risk assessments under regulation 116. It does, however, still leave the potential for hazards that exist beyond the residence to remain unassessed for risks.

Impact on stakeholders

The increase in administrative burden for approved providers would be minimal with option 2, allowing them to focus on implementing practical safety measures into their practices. The additional explicit guidelines provided would improve consistency of approved provider assessments to FDC residences by:

- improving national expectations and practices for the assessment of FDC residences and improve compliance with regulation 116
- promote collaboration between providers and Regulatory Authorities in the existing co-regulatory model.

Explicit national guidance would give approved providers flexibility to assess and mitigate risks based on their unique service setting and tailor practical safety measures which have the potential to improve safety outcomes for children.

Option 3: Amend regulation 116 to explicitly require approved providers to assess FDC residence and areas near the residence that may be accessible to children

Option 3 mandates that FDC approved providers are explicitly required to make assessment of the FDC residence and areas near the residence that may be accessible to children, such as some outdoor spaces and sheds.

Impact on child safety

This option would ensure that risk assessments assess the hazards and potential risks to child safety in all areas of the residence and beyond the FDC residence. If there are hazards close to the residence in areas that may be accessible to children, such as stored chemicals, dangerous equipment, sheds, etc. they would be acknowledged, and appropriate risk mitigation considered under this option. This may result in improved child safety outcomes; whereby fewer future incidents may occur due to the reduction in risks in areas nearby the FDC residence that may be accessible to children.

Impact on stakeholders

A limited increase in administrative burden for FDC approved providers would occur with this option to amend regulation 116. This could involve the average annual inspection of FDC residences increasing by one hour⁶⁴, imposing a total additional annual cost to approved providers of around \$95.15 per FDC educator.⁶⁵ In present value terms over a 10-year period, this equates to approximately \$700 in costs per FDC educator.⁶⁶

Option 4: Amend regulation 116 to formalise an approval process for the FDC service premises

Option 4 mandates explicit approval from an approved provider to confirm the areas of an FDC residence that will be used as the FDC service premises. This would require amending regulation 116 to formalise an approval process for the FDC service premises.

⁶⁴ This is an assumption which will be refined for the DRIS. While this estimate may appear conservative, it is also subject on the extent to which the wider FDC premises and surrounding area is already being assessed for risk.

⁶⁵ The wage rate of \$95.15 per hour accounts for average hourly pre-tax earnings in the education and training sector (as estimated on a weekly basis by the ABS) and an employee on-costs (which include superannuation) multiplier of 1.75 which is applied to the baseline hourly wage.

⁶⁶ Assuming a 7% discount rate, which aligns with Office of Impact Analysis Guidance.

Impact on child safety

An explicit approval of the FDC service premises used for the provision of education and care would assist FDC educators, families, and Regulatory Authorities to understand what the FDC service premises is, and what comprises the broader residence or property. This will reinforce the co-regulatory model for FDC and emphasise the responsibility of the approved provider.

Impact on stakeholders

Depending on the approval process introduced, there may be potential for the approved provider to bear some cost when formalising the areas used as the FDC service premises. It is unlikely that this process would impose a significant time investment from providers, given their current requirement to display a diagram of areas suitable for education and care, and may not impose material costs as a result.

Consultation questions

Feedback is sought on:

- **how the proposed options would affect you or your service both positively and negatively if they were to be implemented**
- **which option (or combination of options) is your preferred option for the purposes of reducing harm to children, and why?**
- **the potential and likelihood for children to access areas that are outside the FDC residence.**
- **the hazards and risks that children have been or could be exposed to if they enter areas that are outside the FDC residence.**
- **whether risk mitigation strategies are frequently implemented for the broader environment of an FDC residence.**
- **how FDC approved providers determine the areas of an FDC residence and broader environment that are assessed.**
- **whether option 4 is likely to impose material administrative costs on approved providers.**

7.3 Enabling authorised officers to access areas of a FDC residence or property, beyond the service premises, in specific instances or for specific purposes

Part 9, Division 2 of the National Law provides detail on the powers of an authorised officer to enter an approved education and care service premises. An authorised officer is a person authorised by the relevant Regulatory Authority to carry out specific functions under the National Law. Authorised officers have the power to enter, inspect and search a service premises to carry out the following:

- assess and monitor the service (section 197)
- investigate the service (section 199)

These powers have specific requirements that must be met for the entry to be considered lawful. Importantly, the powers refer to the ability for an authorised officer to enter an approved education and care service *premises*. For a FDC service, an education and care service premises consists of:

- an office of the FDC service; or
- an approved FDC venue; or
- each part of a residence⁶⁷ used to provide education and care to children as part of a FDC service or used to provide access to the part of the residence used to provide that education and care.

In practice, for FDCs operating from a residence, authorised officers across states and territories currently seek consent from the FDC educator to view or enter areas beyond the FDC service premises, if necessary to the investigation or visit. Consent is usually sought in a written format.

What is the problem?

For FDCs operating from a residence, there is potential that areas of a FDC residence or property outside the FDC service premises may contain hazards to the safety, health, and wellbeing of children.⁶⁸ Without provisions for an authorised officer to access areas of the

⁶⁷ The residence refers to the habitable areas of a dwelling.

⁶⁸ For example, a FDC service premises may be located on farmland with a nearby shed that stores dangerous farming equipment. Another example may be a room outside the FDC service premises but still part of the FDC residence, which is being or has been used for inappropriate or illegal activity.

residence or surrounding property outside the FDC service premises that is in the possession or control of the FDC educator, the ability of Regulatory Authorities to intervene to preserve the safety, health, and wellbeing of children is limited. If hazards are present, there is a significant potential risk that children are exposed to harm, which could be prevented with expanded entry powers.

The scale and magnitude of this problem is presently unknown, as there is no systematically reported evidence on:

- how often authorised officers obtain written consent from FDC educators to view, enter and inspect areas of the broader residence or property beyond the FDC service premises
- how often FDC educators refuse to provide consent for authorised officers to inspect areas of the broader residence or property beyond the FDC service premises
- how often children being educated and cared for in a FDC service enter areas outside of the service premises, and the extent to which this leads to harm.

What are the policy options under consideration?

Three options, including the status quo, a non-regulatory option, and a regulatory option are under consideration. Options 2 and 3 are not mutually exclusive, and the preferred option for these recommendations can be any combination of the proposed regulatory and non-regulatory approaches.

Table 7.4: Policy options under consideration – Enabling authorised officers to access areas of a FDC residence or property, beyond the service premises, in specific instances or for specific purposes

Option	Description
1	Status quo (no change).
2	<p>Non-regulatory</p> <p>Short guidance or information sheet aimed at authorised officers, FDC approved providers and FDC educators to explain powers of entry in relation to FDC and nationally agreed practices for authorised officers' access to areas of an FDC residence or property that are not part of the service premises.</p>

Option	Description
3	<p>Regulatory</p> <p>Amend the National Law to enable authorised officers' access to areas of a FDC residence or property, beyond the service premises, in specific instances or for specific purposes. These instances or purposes may include:</p> <ul style="list-style-type: none"> • a serious incident has occurred, or the authorised officer reasonably suspects that a serious incident has occurred; • to assess or monitor compliance with regulation 116; • to assess or monitor compliance with regulation 97.

What are the impacts of each option?

Option 1: Status quo

Under the status quo, there will be no incremental regulatory, administrative or compliance costs borne by any relevant parties.

Additionally, there will be no provision in the National Law or National Regulations that grants authorised officers the power to view, enter and search areas of a residence or property from which FDC is being provided that are not the FDC service premises. Note that under the status quo, authorised officers may access these areas with consent from the FDC educator. However, as noted above, the process of obtaining consent is not required or formally provided under the National Law and National Regulations⁶⁹ and there may be a disincentive for educators to provide consent if they are aware of a potential hazard.

In situations where some aspect of the FDC residence or property, apart from the service premises, represent a risk to the safety, health, and wellbeing of children attending FDC, the inability of authorised officers to enter these areas (e.g., if consent is not granted by the FDC educator) may prolong the time until a risk mitigation strategy is implemented. This has the potential to result in harm to children and poses reputational risks for FDCs and the wider education and care sector.

⁶⁹ While there is no provision for the process of obtaining consent for the inspection of a premises, section 213 of the National Law does stipulate that if, in any proceeding, written consent from the occupier of a premises is not produced to the court, it must be proved until the contrary is proved that the occupier did not consent to the entry and search. This likely explains the practice of authorised officers seeking written consent in practice.

FDC educators and residents living in a FDC residence retain greater rights to privacy under the status quo.

Option 2: Guidance around the powers of entry for authorised officers (non-regulatory)

The development of national guidance on the powers of entry for an authorised officer under the National Law and National Regulations will provide greater clarity for FDC educators, authorised officers, and Regulatory Authorities. Clear guidance can create a shared understanding between FDC educators and authorised officers around “nationally agreed practices” (e.g., obtaining written consent) for authorised officers to view and enter areas not covered by the National Law and National Regulations (i.e., areas that are not the service premises). This additional guidance imposes no costs on FDC services, as they retain the right to decline consent to authorised officers to enter other parts of the FDC residence or property that are not the FDC service premises.

Impact on child safety

Implementing guidance around consensual entry of areas outside the FDC service premises can also reduce the likelihood of child harm. Clear guidance may lead some FDC educators to provide consent for the inspection of their broader property who otherwise would not have provided consent. If the authorised officer identifies hazards on the broader property, and these hazards are effectively dealt with, the risk of harm for children attending the FDC service will be mitigated more effectively than if the guidance was not published.

Impact on stakeholders

The cost of developing guidance around the powers of entry for authorised officers may incur costs for government, depending on the complexity of the guidance and the extent to which it cannot be developed with the support of existing government resources and as part of business-as-usual activity.

Option 3: Amend the National Law to enable authorised officers’ access to areas of a FDC residence or property, beyond the service premises, in specific instances or for specific purposes.

Impact on child safety

An expansion of the powers of entry granted to authorised officers may provide benefits through the reduced risk of harm for children attending an FDC service and by enabling remedial action when incidents have occurred, or hazards are identified, in areas beyond the

FDC service premises. This is particularly relevant in situations where areas of the FDC residence or property external to FDC service premises represent some hazard to the safety, health, and wellbeing of children, but where consent from the FDC educator for the authorised officer to investigate these areas cannot or will not be granted.

Impact on stakeholders

The expanded entry powers may also generate a small time saving for both authorised officers and FDC educators who no longer have to go through the process of requesting and providing written consent for an authorised officer to enter beyond the FDC service premises. While this time saving is likely minor in each specific instance where written consent is sought, it may be material on a nation-wide annual basis.

An expansion of the powers of entry granted to authorised officers can, in certain circumstances, infringe upon the privacy and liberties of FDC educators and people living with them – particularly if in the absence of regulatory change, consent for entry would not be granted by the FDC educator. To counterbalance these concerns, option 3 would only apply in *specific instances and for specific purposes*, including the following:

- a serious incident has occurred, or the authorised officer reasonably suspects that a serious incident has occurred
- to assess or monitor compliance with regulation 116 (assessments of FDC residences and approved FDC venues)
- to assess or monitor compliance with regulation 97 (emergency and evacuation procedures).⁷⁰

Consultation questions

Feedback is sought on:

- **how the proposed options would affect you or your service both positively and negatively if they were to be implemented**
- **which option (or combination of options) is your preferred option for the purposes of reducing harm to children, and why?**
- **the specific instances or purposes in which authorised officers should have the power to enter FDC residences or properties, beyond the FDC service premises.**

⁷⁰ Regulation 97 of the National Regulations sets out requirements for emergency and evacuation procedures.

- **issues associated with the process currently used between authorised officers and FDC educators in granting consent for entry into areas beyond the established FDC service premises (e.g., delays in receiving permission).**
- **the frequency of authorised officers' access of areas outside the FDC service premises with the written consent of the relevant FDC educator.**
- **the willingness of FDC educators to provide written consent to authorised officers to access to all parts of a FDC residence or property, should consent be requested.**
- **the extent to which an expansion of the powers of entry granted to authorised officers represents concerns for the right to privacy of FDC educators and people they reside with.**

8. Additional recommendations

The CSR introduced multiple recommendations intended to uphold child safety in education and care services. Recommendation 16 of the CSR proposes a supplementary child safety review informed by ongoing learning and analysis. This chapter outlines additional recommendations to bolster areas in the education and care sector where opportunities to strengthen the NQF have been identified subsequent to the publication of the CSR.

These additional recommendations seek to:

- enable Regulatory Authorities to more effectively regulate related providers;
- amend the limitation period for commencing prosecution of offences under the National Law; and
- strengthen Regulatory Authorities' ability to regulate agency educators.

This aims to ensure the NQF maintains a high regulatory standard, fulfilling its intended purpose and prioritising children's safety and protection in education and care services.

The proposed reform areas discussed in this chapter are:

- Chapter 8.1 – Effective identification, monitoring, and regulation of 'related providers'
- Section 8.2 – Extending the limitation period for commencing proceedings under the National Law
- Chapter 8.3 – Improving information sharing requirements for recruitment agencies.

8.1 Effective identification, monitoring and regulation of 'related providers'

There is a risk that Regulatory Authorities cannot effectively monitor compliance with the NQF when there is an increasing number of services operating under different providers approved under the NQF that are held by the same entity or with the same (or some of the same) PMCs (i.e., a person upon whom the legal obligations of an education and care provider are imposed). Providers of this nature are referred to as 'related providers'.⁷¹

⁷¹ Currently, there is no legal definition of a related provider in the National Law. Hence, when this document refers to related providers, it is referring to approved providers under the National Law that have been identified as related in the assessment of a relevant Regulatory Authority.

The current structures and powers under the NQF do not reflect the actual provider structures that have evolved within the sector, do not allow Regulatory Authorities to identify systemic risks at the related provider level, and when risk is identified, do not enable appropriate action to be taken against groups of related providers. The National Law is structured on the assumption of one provider approval to multiple services and is not conceptually set up to deal with groups of related providers.

The National Law sets out processes for obtaining provider approvals, service approvals, and service transfers, and applies provisions for compliance tools⁷² under this assumption. Under a related provider structure, when a quality or compliance issue exists at the system level of the related provider, enforcement action can only be taken at the level of an individual provider approval, leaving the risk across the system unaddressed.

The NQA ITS⁷³ is also not designed to easily uncover or record potential linkages between approved providers, as it records and presents information for individual approved providers only.

A similar problem was identified under Family Assistance Law (FAL), whereby steps have already been taken to include a related provider definition. The definition introduced for FAL (refer to Appendix 10.6) provides a starting point for a potential definition that could be introduced into the National Law, with amendments to ensure it is suitable for the NQF context.

What is the problem?

The risks to child safety can be significant when the connections or relatedness of approved providers and services is unknown to Regulatory Authorities. For example, when monitoring the compliance of a single approved provider, or when a single approved provider is seeking to expand its education and care services, the compliance history of the approved provider is known and taken into account in regulatory decision making. It is, however, difficult to obtain a similar overall picture for related providers and so regulatory decisions may be made on limited and/or incomplete regulatory intelligence. There are risks to child safety if Regulatory Authorities cannot accurately assess the risk of an approved provider's expansion if their services under a separate (but related) provider are demonstrating poor quality and/or have a history of non-compliance.

⁷² Existing compliance tools to regulate approved providers include the use of infringement notices, emergency action notices, compliance directions, compliance notices, and conditions on provider or service approvals. However, the issue remains that the Regulatory Authority can only apply these at the individual provider level and often cannot identify the relatedness of providers.

⁷³ ACECQA's online system to manage and oversee education and care services, which can be accessed by approved providers (or prospective providers) to make applications and undertake other functions.

Regulatory oversight of related providers is made more challenging by ‘invisible’ transfers of service approvals, when an entity purchases a corporate provider entity. When an education and care service is transferred from one approved provider to another, the Regulatory Authority has oversight and ability to intervene under Part 3, Division 3 of the National Law. When ownership of the provider entity is instead transferred to another entity, the Regulatory Authority is reliant on a notification of change of persons with management or control (PMCs), if one is made.

There are also jurisdictional inconsistencies in how related providers are identified, monitored, and regulated using varying strategies and approaches. Some jurisdictions use PMCs in common to impact on licensing decisions, others address PMC failings through fitness and priority reassessments of the individual. Inconsistencies in how the compliance history of PMCs is taken into account by different Regulatory Authorities, as well as varying risk appetites and thresholds for compliance action, may also impact how coordinated action is taken in relation to multi-jurisdictional providers.

Jurisdictions have experienced tangible, real-world challenges with regulating related providers, which have revealed additional risks to child safety. These investigations⁷⁴ have required significant manual effort for jurisdictional Regulatory Authorities to identify related providers. However, while these investigations have led to the identification of substantial risks to child safety across related providers’ education and care services, enforcement action has only been able to be taken at the individual approved provider level.

What are the policy options under consideration?

Three options, including one non-regulatory option and one regulatory option are under consideration. Options 2 and 3 are not mutually exclusive, and the preferred option for these recommendations can be any combination of the proposed regulatory and non-regulatory approaches.

Table 8.1: Policy options under consideration – Effective identification, monitoring and regulation of ‘related providers’

Option	Description
1	Status quo (no change).

⁷⁴ Further detail of these investigations has been censored due to the potential identifiability of information.

2	<p>Non-regulatory</p> <p>Guidance for the sector and families to improve awareness of an increase in the number of services with multiple approved providers that are being operated by a single controlling entity and/or PMCs in common.</p>
3	<p>Option 3A (regulatory)</p> <p>Legislative amendment to add a definition of related providers that is designed to help Regulatory Authorities efficiently and effectively identify and monitor related providers. Powers for Regulatory Authorities to take compliance and enforcement action at the related provider level would be needed, as well as requirements for providers to disclose they are related.</p>
	<p>Option 3B (regulatory)</p> <p>Legislative amendment to require notice of acquisition to the Regulatory Authority when ownership of an approved provider is transferred to another entity.</p>

What are the impacts of each option?

Option 1: Status quo

Under the status quo, there will be no regulatory, administrative or compliance costs for approved providers and their services.

Under the status quo, the risk of potential harm to children remains unchanged, since related providers are difficult to monitor, and risk at the system level is difficult to assess. Regulatory Authorities across Australia will continue to invest staffing resources to carry out in depth research into the entities related to the various provider approvals. The deployment of resources for this purpose can create opportunity costs whereby existing resources are not allocated towards other activities that could potentially reduce child harm.

Option 2: Guidance for the sector and families around related providers (non-regulatory)

Impact on child safety

Guidance about related providers provides transparency and may help families and other stakeholders to make more informed decisions about the appropriateness of a service (e.g., not sending their child to a service where there are related providers with a history of non-compliance), in turn potentially reducing the likelihood of child harm. However, non-regulatory action is unlikely to help overcome the challenges faced by Regulatory Authorities in monitoring and enforcing compliance across related providers.

Impact on stakeholders

Under policy option 2, there would be no regulatory, administrative or compliance costs for approved providers and their services. However, the cost of developing such guidance would be borne by the government (noting developing this guidance may constitute business-as-usual government activities and may not impose additional costs). Regulatory Authorities would continue to regulate related providers through existing regulatory tools on an ad-hoc and nationally inconsistent manner.

Option 3A: Providing a definition of related providers; powers for Regulatory Authorities at the related provider level; and requirements for related provider disclosure (regulatory)

Option 3A comprises three distinct but related components, including legislative amendments to add a definition of related providers, powers for Regulatory Authorities to take compliance and enforcement action at the related provider level, and requirements for providers to disclose they are related. The FAL definition provides a starting point but would require further consideration in this context.

Impact on child safety

Enacting regulatory powers at the related provider level will ensure that monitoring and compliance for related providers effectively reduces instances of child harm, and that regulatory resources are used efficiently. For example, in QLD, compliance action for a group of related providers has meant focusing the use of compliance action on the member of that group that operates the most services; however, if powers at the related provider level were enacted, then compliance action could apply to all related providers, with minimal additional administrative burden.

The lack of a National Law definition for related providers can result in varying levels of compliance action being taken against providers operated by a common entity. A shared understanding and definition of related providers will ensure that non-compliance among related providers can be consistently identified and addressed.

Impact on stakeholders

Providers would be required to understand and assess themselves against the related provider definition under National Law, which may result in a broader set of obligations for that subset of providers.

This action will generate administrative costs for approved providers that operate in a group of related providers. This is because the entity or group of PMCs in common across multiple approved providers will need to ensure that they (1) understand the definition of related providers as defined in the National Law, and that (2) all members of a group of related providers are accurately reported to the relevant Regulatory Authority.

This action will generate administrative costs for Regulatory Authorities. Specifically, Regulatory Authorities will need to allocate resources to the monitoring of related providers in line with these new regulatory powers. Further, it is expected that for regulatory powers to operate at the related provider level, there will be some additional costs borne by ACECQA associated with making enhancements to the NQA ITS.

In contrast, Regulatory Authorities will experience a significant reduction in manual effort to identify related providers and address child safety concerns in taking individual action against each related provider separately.

Option 3B: Legislative amendment to require notice of acquisition to the Regulatory Authority when ownership of an approved provider is transferred to another entity. (regulatory)

Option 3B proposes a legislative requirement to notify Regulatory Authorities when groups of related providers are created or expanded. For example, if entity A (which may or may not be an approved provider) purchases entity B (which is an approved provider), the National Law does not currently stipulate that the Regulatory Authority be notified or approve the effective change in management or control from entity B to entity A. A requirement to notify Regulatory Authorities of such instances would provide early oversight of the change of management or control and an opportunity for intervention if entity A presents a risk to child safety.

Impact on child safety

The benefits of a notification of acquisition to the Regulatory Authority are that Regulatory Authorities have increased ability to monitor creation or expansion of related providers which jeopardise child safety (e.g. if a problematic provider seeks to expand its service provision by acquiring a different provider).

Impact on stakeholders

The main cost generated by this option would be compliance costs for approved providers – particularly those in a group of related providers. For example, if entity A is required to inform the relevant Regulatory Authority that it will be acquired by entity B this will require additional time and effort to notify the Regulatory Authority of the acquisition.

Consultation considerations

Feedback is sought on:

- **how the proposed options would affect you or your service both positively and negatively if they were to be implemented**
- **which option (or combination of options) is your preferred option for the purposes of reducing harm to children, and why?**
- **the factors that should be considered in a definition of ‘related providers’**
- **what additional powers, if any, Regulatory Authorities should be granted to ensure that related providers are regulated effectively**
- **the factors that may influence an increase or decrease in the number of related providers in the education and care sector**

8.2 Extending the limitation period for commencing proceedings under the National Law

Under the National Law there is a two-year statute of limitations on prosecutions for offences contained in the National Law and National Regulations. This means that under section 284 of the National Law, proceedings for an offence under the National Law must commence

within two years of the date of the alleged offence. This ensures that legal action is taken within a reasonable timeframe, allowing for timely resolution.⁷⁵

The extended period recognises there are complexities involved with investigating and preparing legal action for offences under the National Law when compared to other summary offences. It also recognises that Regulatory Authorities face limited resourcing relative to law enforcement agencies.

It is proposed that Regulatory Authorities have a longer time period in which to prosecute, including in cases where children have suffered serious harm due to the failure of approved providers, nominated supervisors or educators.

Regulatory Authorities can commence proceedings against an approved provider for regulatory breaches, such as inadequate supervision or failing to report concerns, even while police proceedings against a defendant are ongoing for a criminal offence. In such cases, both proceedings occur simultaneously but address different offences arising from the same incident.

What is the problem?

The current limitation period does not consider circumstances where there is a reasonable delay in reporting and investigation due to the nature of the offence, such as child abuse. This delay prevents Regulatory Authorities from commencing prosecution proceedings within the two-year limitation period.

There have been several matters involving serious harm to children attending an education and care service, where prosecution would have been a proportionate sanction in the public interest, however prosecution did not commence because the statute of limitation had expired.

The Royal Commission into Institutional Responses to Child Sexual Abuse found that it takes 23.9 years on average, for survivors to disclose childhood abuse.⁷⁶ These timeframes present a significant obstacle to Regulatory Authorities taking prosecution action against providers and individuals, unless the limitation period in the National Law is amended.⁷⁷

⁷⁵Note that this period of two years takes precedence over limitation periods typically applied to summary offences in states and territories. Limitation periods vary between 6 and 12 months, across jurisdictions. See *Criminal Procedure Act 1986 (NSW)* s 179(1); *Criminal Procedure Act 2009 (VIC)* s 7(1)(a); *Justices Act 1886 (QLD)* s 52(1); *Local Court (Criminal Procedure) Act 1928 (NT)* s 52; *Justices Act 1959 (TAS)* s 26(1); *Criminal Procedure Act 2004 (WA)* s 21; *Criminal Procedure Act 1921 (SA)* s 52, *Legislation Act 2001 (ACT)*, s 192(2).

⁷⁶Royal Commission into Institutional Responses to Child Sexual Abuse (2017). Volume 4, *Identifying and disclosing child sexual abuse*. <https://www.childabuseroyalcommission.gov.au/identifying-and-disclosing-child-sexual-abuse>

⁷⁷Even if a limitation period applies under the National Law, it should be noted that a statute of limitations does not generally apply for indictable criminal offences i.e. a person can be charged and prosecuted many years after the alleged offence.

What are the policy options under consideration?

Two options, including the status quo and one regulatory option are under consideration.

Table 8.2: Policy options under consideration – Extending the limitation period for commencing proceedings under the National Law

Option	Description
1	Status quo (no change).
2	Regulatory Amend section 284 of the National Law so that the limitation period commences two years from the date that the alleged offence comes to the notice of the Regulatory Authority of each jurisdiction.

What are the impacts of each option?

Option 1: Status quo

Under the status quo, there will be no regulatory, administrative or compliance costs borne by any relevant parties. Similarly, any benefits from extending limitation periods will not be realised.

Regulatory Authorities will continue to lack the power to initiate proceedings in serious cases of harm to children if the two-year limitation period has expired, even where it would be in the public interest. The extent to which prosecution of an alleged offence can commence crucially depends on when that offence is brought to the attention of a Regulatory Authority.

Option 2: Amend the beginning of the limitation period for offences under the National Law (regulatory)

Option 2 would amend the National Law so that the limitation period would take effect two years from the date that the alleged offence comes to the notice of the relevant Regulatory Authority.

This regulatory change will ensure that where there has been a significant delay (more than two years) between an offence under the National Law and the point in time that the Regulatory Authority has been notified, prosecution can occur. This would apply to all offences under the National Law and National Regulations. It is not feasible to restrict the application of the amended limitation period to offences related to child abuse as there are no direct offences of child abuse under the National Law and National Regulations.

Amending the limitation period in the National Law would be a move consistent with other regulatory schemes. For example, child abuse offences identified in the *Children and Young Persons (Care and Protection) Act 1998* (NSW) carry a limitation period of two years of the Secretary becoming aware of the alleged offence, where the offence is against a regulation made in relation to children's services. Moreover, Australian jurisdictions (following Victoria's amendments to the *Limitation of Actions Act 1958* in 2015) removed limitation periods for civil claims involving childhood sexual and physical abuse. These trends in Australian jurisprudence underscore that limitation periods as they relate to offences under the National Law should be the subject of a critical review.

Impact on child safety

This option will increase the number of National Law breaches that proceed to prosecution, which may deter unsuitable individuals from breaching the National Law.

Impact on stakeholders

This policy option generates no additional administrative or compliance costs for approved providers. However, some administrative costs are expected for Regulatory Authorities. Since a longer window for prosecution implies a relatively greater number of non-compliance issues to be investigated, Regulatory Authorities may need to invest in additional regulatory resources to maintain a high standard of investigation across their caseload.

Consultation considerations

Feedback is sought on:

- **how the proposed options would affect you or your service both positively and negatively if they were to be implemented**
- **which option is your preferred option for the purposes of reducing harm to children, and why?**

8.3 Information sharing provisions for recruitment agencies

The use of educators under labour hire arrangements (agency educators) from recruitment agencies to meet prescribed staffing requirements is very common, especially given the workforce shortages across Australia. Agency educators often work across multiple services, for multiple approved providers (host providers) at minimal notice, and for very short periods of time.

The CSR highlights the importance of strong recruitment processes to ensure educators working with children are suitable and appropriate.

What is the problem?

The current recruitment strategies adopted by some approved providers for agency educators are insufficiently rigorous. Additionally, recruitment agencies may not provide the same levels of oversight, vetting processes, mentoring, professional development, and ongoing monitoring of educators as approved providers do. Despite providing significant numbers of agency educators to education and care services, recruitment agencies may not be aware of required qualification and other regulatory requirements, with no accountability under the National Law and no reporting function. This potentially poses risks of child harm.

Inclusion of recruitment agencies as specified persons

Agency educators are staff members under the National Law. The National Law (section 175) requires approved providers to keep staff records, including contact information, evidence of relevant qualifications and training and documents relating to WWCCs. This practice is inconsistent across approved providers and it is common for providers to keep minimal staff records for agency educators.

Where an allegation is made against an agency educator and a host provider has an incomplete staff record, Regulatory Authorities have no power to promptly obtain additional information about agency educators from recruitment agencies, such as contact details or copies of qualifications.

Authorised officers have the power to gather from 'specified persons' any relevant information required for monitoring compliance or other prescribed purposes (section 206). Further, Regulatory Authorities can, by written notice, gather relevant information from specified persons if there are reasonable grounds to suspect an offence has or may have been committed (section 215). A specified person means a person who is or has been:

- (a) an approved provider, a nominated supervisor, or a staff member of, or a volunteer at, an approved education and care service; or
- (b) a family day care educator (section 206(4)).

Currently, agency educators who have worked at an education and care service are specified persons under the National Law; however, the recruitment agency through which an agency educator is engaged under labour hire arrangements *is not* a specified person.

Recruitment agencies subject to the *Privacy Act 1988* (Cth) or equivalent, may be prevented from disclosing personal information to Regulatory Authorities, in the absence of an authorising law.

Without complete records or the power to obtain them from recruitment agencies, Regulatory Authorities can be hampered in their ability to promptly obtain evidence from agency educators and in their ability to take urgent action to mitigate risks to children.

Sharing information about prohibited educators

Under section 188 of the National Law, an approved provider must not engage a person as an educator, family day care educator, employee, contractor, or staff member of, or allow a person to perform volunteer services for, an education and care service if the provider knows, or ought to reasonably know, a prohibition notice⁷⁸ is in force under the National Law in any jurisdiction.

Under the National Law, ACECQA and Regulatory Authorities are not permitted to publish information about individuals who are prohibited under section 182 or permitted to share information about prohibited educators with recruitment agencies to ensure they are no longer working with children.

There is no ability for a Regulatory Authority to advise a recruitment agency that one of their employed/engaged agency educators is prohibited or ability for a Regulatory Authority to *proactively* advise a host provider that they have a prohibited agency educator working at one of their services. The Regulatory Authority is restricted to advising the relevant WWCC agency and awaiting those processes to take effect; such processes vary across jurisdictions. In the meantime, prohibited agency educators may still be working with children across multiple services.

What are the policy options under consideration?

Five options, including the status quo, one non-regulatory option, and three regulatory options are under consideration. Options 2 to 5 are not mutually exclusive, and the preferred option for these recommendations can be any combination of the proposed regulatory and non-regulatory approaches.

This recommendation should be considered alongside the potential policy options detailed in chapter 5.2, so that policy options concerning sharing information about agency educators with their recruitment agency or host provider mirror policy options concerning sharing

⁷⁸ A prohibition notice in the education and care sector means a person is barred from working in or holding a specific role within an approved education and care service, as they may pose an unacceptable risk of harm to children.

information about a person (such as whether they're subject to a prohibition notice, suspension order, or enforceable undertaking) with that person's approved provider.

Table 8.3: Policy options under consideration – Information sharing provisions for recruitment agencies

Option	Description
1	Status quo (no change)
2	Non-regulatory Guidance/messaging for approved providers regarding the requirement to keep staff records for agency educators.
3	Regulatory Amend section 206(4) of the National Law to include recruitment agencies supplying educators to education and care services.
4	Regulatory Amend section 272 of the National Law to allow a Regulatory Authority to share information about an agency educator with that person's recruitment agency (including mirroring any amendments to section 272 regarding proactive sharing with providers) and consider whether recruitment agencies may have access to the prohibited persons register.
5	Regulatory Amend section 188A of the National Law to include giving an approved provider or recruitment agency any information about the content or existence of the prohibition notice that is false or misleading in any material particular.

What are the impacts of each option?

Option 1: Status quo

Under the status quo, there will be no regulatory, administrative or compliance costs borne by any relevant parties. Similarly, direct benefits from implementing this recommendation will not be realised. In particular:

- Regulatory Authorities will remain limited to obtaining information from recruitment agencies on a voluntary basis where a provider has not retained a complete agency staff

record (noting it is an offence under section 175 of the National Law for approved providers to not retain prescribed documents for inspection, with associated financial penalties). Whilst Regulatory Authorities can request information from recruitment agencies on a voluntary basis, this process may be time-consuming, and the recruitment agency may refuse to provide the information.

- Providers may be unaware of any allegations made against an agency educator working in their service.
- Recruitment agencies may be unaware that they are supplying a prohibited educator for work in an education and care service.
- ACECQA and Regulatory Authorities are unable to share information about prohibited agency educators with their recruitment agency.
- ACECQA and Regulatory Authorities are unable to proactively share information about prohibited agency educators with their host provider.

Option 2: Guidance and messaging around compliant staff records for agency educators (non-regulatory)

Option 2 requires the development of guidance for approved providers around the requirement to keep complete and compliant staff records for agency educators.

Impact on child safety

Non-compliance may result in an increased risk of harm to children whenever Regulatory Authorities are unable to obtain information from recruitment agencies on a voluntary basis. Where approved providers choose to act on the guidance and improve their information collection and record keeping procedures for agency educators, there may be an improvement in child safety outcomes.

Impact on stakeholders

The cost of developing this guidance and messaging may incur costs for government, depending on the complexity of the guidance and the extent to which it cannot be developed with the support of existing government resources and as part of business-as-usual activity.

Guidance may address the lack of compliance with staff record requirements within the existing legal framework, particularly when it comes to staff record requirements for agency educators. However, given that this guidance is not mandatory, the level of benefit generated is contingent upon compliance with guidance, and the ease of record keeping (e.g. the availability of digital systems to support record keeping). In particular, services that

rely on a significant number of agency educators may find it difficult to prepare detailed employee records (due to the fact that agency educators are typically engaged for a short amount of time); similarly, some providers may be unaware that such records must be prepared for agency educators.

Option 3: Include recruitment agencies as a specified person in section 206(4) (regulatory)

Policy option 3 would amend section 206(4) of the National Law to include recruitment agencies supplying educators to education and care services.

Impact on child safety

This option helps Regulatory Authorities ensure that risks to children can be mitigated quickly in circumstances where an allegation has been made against an agency educator, who may be working at multiple services and have minimal oversight. By including recruitment agencies in section 206(4), the costs for Regulatory Authorities to pursue investigations will be reduced. Including recruitment agencies as a specified person provides an efficient way to obtain relevant information about agency educators from recruitment agencies.

In cases where an agency educator is alleged to have committed child abuse or sexual abuse or may otherwise pose an unacceptable risk of harm to children, Regulatory Authorities will have greater access to information (including contact details and current host provider) to act on allegations and issue prohibitions or other enforcement action. This will limit the cases in which a prohibited agency educator or an educator subject to other enforcement action may move on to another service.

Impact on stakeholders

It is anticipated that this legislative amendment will generate administrative costs for recruitment agencies. In particular, recruitment agencies will need to devote relatively more time collecting information on agency educators – since they would need to provide any relevant information required by Regulatory Authorities in certain circumstances.⁷⁹ Additionally, there will be some additional legislative costs involved with progressing the legislative amendment.

⁷⁹ An authorised officer may obtain relevant information from a specified person for any of the following purposes (s206):

- monitoring compliance with the National Law
- a rating assessment of an approved education and care service
- obtaining information requested under other sections of the National Law

Additionally, Regulatory Authorities (under s215 of the National Law) have the power to obtain information, documents and evidence by notice (s215) where there is a reasonable suspicion that an offence under the National Law may have been committed.

Option 4: Sharing information about prohibited agency educators with their recruitment agency (regulatory)

Policy option 4 would amend section 272 of the National Law so that Regulatory Authorities can share information about an agency educator with the recruitment agency that educator is employed / engaged with. Regulatory Authorities would be able to proactively share this information with recruitment agencies, mirroring any amendments to section 272 around proactive information sharing with approved providers (refer to chapter 5.2). Additionally, consideration is given to whether recruitment agencies may be granted access to the prohibited persons register.

Impact on child safety

The likelihood of prohibited or suspended educators finding employment is reduced: if recruitment agencies are aware (or able to be aware) of prohibition notices or suspensions (in the case of FDC educators) in effect for current or potential clients⁸⁰, then they will likely suspend all efforts to obtain employment for that individual. This will reduce the likelihood of recruitment agencies assisting prohibited or suspended educators in gaining employment.

The likelihood of an educator contravening an enforceable undertaking is reduced: if recruitment agencies are aware (or able to be aware) of an enforceable undertaking in effect for current or potential clients, there will likely be reduced likelihood of contravention of any provisions of that enforceable undertaking, e.g., always working under supervision.

Impact on stakeholders

It is anticipated that this legislative amendment will generate administrative costs for: Regulatory Authorities, as sharing prohibition or other enforcement information with recruitment agencies will require regulatory resources.

Option 5: False or misleading information about a prohibition notice must not be shared with a recruitment agency (regulatory)

Section 188A of the National Law states that

A person who is subject to a prohibition notice under this Law as applying in any participating jurisdiction must not give an approved provider any information about the content or existence of the prohibition notice that is false or misleading in any material particular.

⁸⁰ In this context, a *client* of a recruitment agency is an early childhood educator who is seeking employment in an education and care service.

Policy option 5 would amend section 188A to prohibit giving an approved provider or recruitment agency any information about the content or existence of the prohibition notice that is false or misleading in any way.

Impact on child safety

This option may generate some benefits by reducing the instances in which prohibited educators who attempt to bypass their prohibition by gaining employment through a recruitment agency and then providing false or misleading information. However, the prevalence by which false or misleading information is currently given is unknown, and this would determine the size of the potential benefit. Similarly, prohibited educators who seek employment through a recruitment agency by providing false or misleading information are already acting unscrupulously by seeking employment despite their prohibition and may be undeterred by an additional penalty.

Impact on stakeholders

This legislative change is unlikely to generate any additional compliance costs for relevant parties.

Consultation considerations

Feedback is sought on:

- **how the proposed options would affect you or your service both positively and negatively if they were to be implemented**
- **which option (or combination of options) is your preferred option for the purposes of reducing harm to children, and why?**
- **the number of agency educators currently working in education and care services across Australia.**
- **how frequently approved providers have allegations against agency educators.**
- **approved provider responses to allegations against agency educators.**
- **the current record keeping practices used by approved providers in relation to agency educators.**
- **the capability of recruitment agencies to collect information on agency educators.**

- the frequency by which host providers request information on prohibited agency educators from Regulatory Authorities.

9. Consultations

9.1 Consultations to date

To undertake the CSR, the Australian Government and jurisdictions undertook targeted consultations with Regulatory Authorities, the National Office for Child Safety, within the Commonwealth Attorney-General's Department, the Department of Social Services and the eSafety Commissioner. These consultations were undertaken for the purposes of conducting the CSR and helped to inform recommendations that form the basis for this CRIS. Ongoing policy analysis and engagement with experts informed the policy options outlined in this CRIS, however broader public consultation on the CRIS options and their impacts is yet to be undertaken.

9.2 Consultation on CRIS options

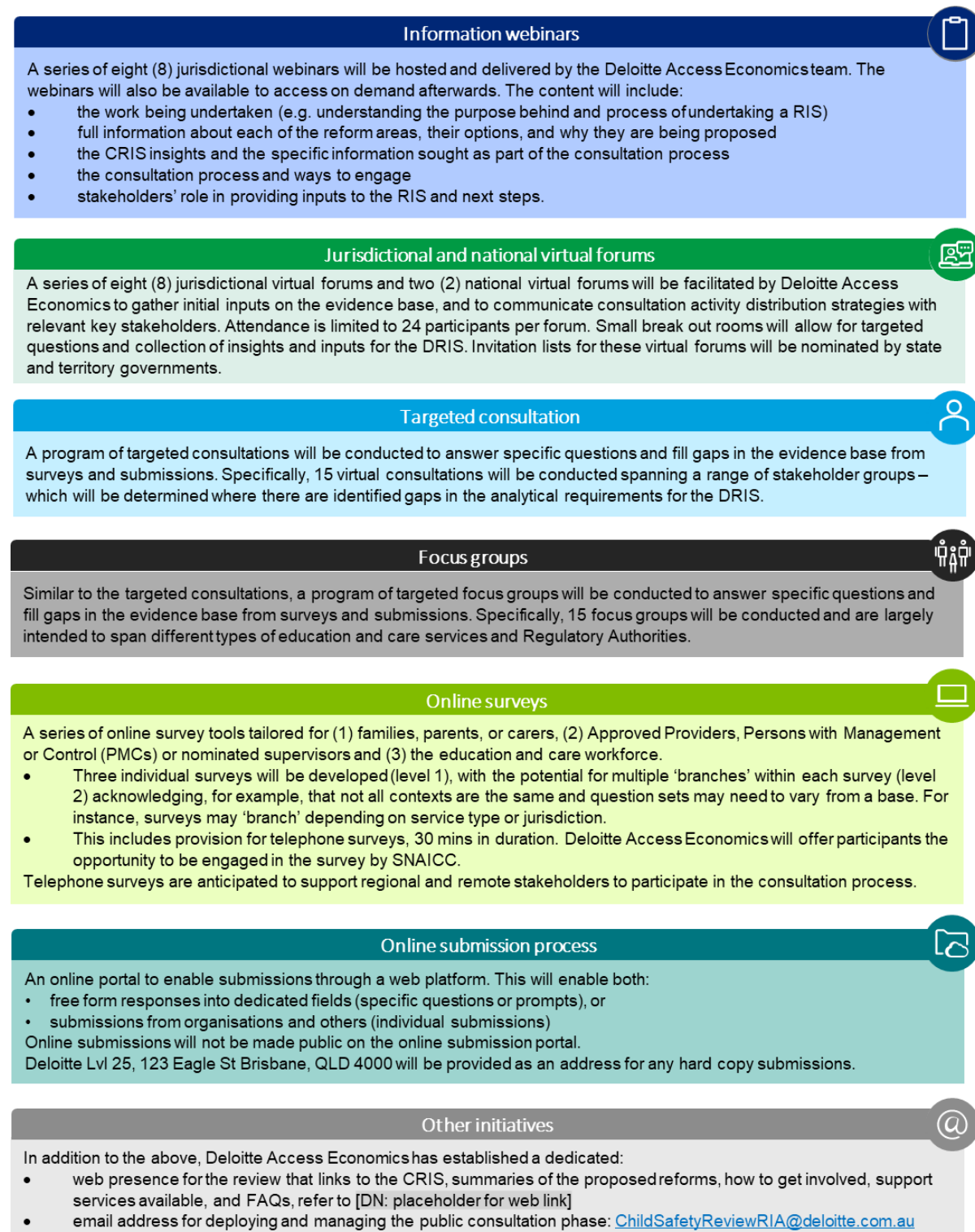
Consultation on the CRIS will encompass an extensive suite of stakeholders (excluding children) that are likely to be impacted by the proposed options, through a range of different types of engagement. Key consultation mechanisms include: jurisdictional and national virtual forums, targeted consultation, focus groups, online surveys, telephone surveys, and written submissions. Each of these is detailed in Figure 9.1. Information webinars explaining the content of this CRIS will be provided for each jurisdiction, with a 'Frequently Asked Questions' document produced on the basis of questions during the webinar.

Opportunities for the public to engage with the consultation on CRIS options will also be detailed on [DN: placeholder for website URL].

Deloitte Access Economics has been engaged on behalf of the Australian Government together with Australian state and territory governments to undertake a Regulatory Impact Analysis process (RIA) for proposed policy options aimed at improved child safety arrangements in education and care services across the country. The proposed policy options for RIA address recommendations from the [Review of Child Safety Arrangements under the National Quality Framework](#). A key part of this RIA is public consultation to seek feedback on the proposed policy options, including proposed changes to the National Law and National Regulations. For the public consultation process, Deloitte Access Economics will be supported by SNAICC – National Voice for our Children – throughout the consultation process. SNAICC will play an important role in enabling Aboriginal and Torres Strait Islander voices to be heard and incorporated throughout the consultation process. SNAICC will be

involved in ensuring the consultation is culturally safe and considered by facilitating consultations and focus groups, including Aboriginal and Torres Strait Islander Community Controlled Organisations. SNAICC will also support in the interpretation of consultation findings and provide guidance on how to incorporate these findings into the DRIS.

Figure 9.1: Approach to consultation process



Across the consultation activities provided in Figure 9.1, a wide range of stakeholders impacted by the proposed reforms will be invited to participate. Participants will include Regulatory Authorities, approved providers, PMCs and nominated supervisors, members of the education and care workforce, peak bodies, government departments, WWCC screening agencies, parents, families and caregivers, Aboriginal and Torres Strait Islander organisations and additional representatives nominated by Australian, and state and territory governments.

Purpose of CRIS consultation

The purpose of CRIS consultation is to engage with stakeholders across the education and care sector to ensure that:

- the important voices of stakeholders who will be most affected by these proposed changes are captured
- evidence is collected (where available) to demonstrate the risk of harm in the absence of policy intervention (i.e., in the status quo)
- a comprehensive list of incremental impacts (costs and benefits) are considered for each policy option
- estimates of costs and benefits are reflective of the *actual* (or likely) costs and benefits that stakeholder expect to bear from the implementation of the proposed options.

Findings from the consultation process will be reflected in a CBA undertaken for each option, the findings of which will be reflected in the DRIS. The use of CBA as a tool provides advice on what the preferred option(s) are for each proposed intervention by identifying which option may result in the greatest net benefit for all stakeholders. CBA is considered the 'best practice' approach for government decision making and is the Australian Government's preferred decision-making approach for assessing regulatory proposals.

9.3 Consultation timeframe

The consultation period on the CRIS will take place over a six week period, commencing on 28 April 2025 and concluding on 11 June 2025.

10. Appendix

10.1 Evolution of CSR recommendations to the proposed options

Appendix Table 1: Overview of CSR recommendations and proposed options

CSR recommendation	Summary of proposed policy options ⁸¹	Clarification of changes
Recommendation 2.1 Removal of building waivers Remove the ability to apply for a waiver of Reg 115, except in exceptional circumstances. [Regulation 115 - Approved provider of a centre-based service must ensure the premises (including toilets and nappy change facilities) are designed and maintained to facilitate supervision of children at all times.]	<ol style="list-style-type: none"> 1. No change/status quo. 2. Non-regulatory: Providing guidance to promote the importance of designing and maintaining premises in a way that facilitates supervision of children at all times. 3. Regulatory: Amend the National Regulations to remove the ability to apply for a <i>service</i> waiver of regulation 115. 4. Regulatory: Amend the National Regulations to remove the ability to apply for <i>service and temporary</i> waivers of regulation 115. 	<ul style="list-style-type: none"> • Additional options proposed for RIA. • CSR recommendation is option 4.
Recommendation 2.3 & 2.4 Management of electronic devices Recommendation 2.3 Amend the National Regulations to mandate only service-issued /approved devices may be used in centre-based services when taking images or videos of children, with further requirements for approved providers to have strict controls in place for the appropriate storage and retention of images. and Recommendation 2.4 Amend the National Regulations so that anyone who is working or engaged in a centre-based service in any capacity is prohibited from having personal electronic devices that can take images or video, such as tablets and phones, on their person whilst with children.	<p>[Joint implementation of Recs 2.3 & 2.4]</p> <ol style="list-style-type: none"> 1. No change/status quo. 2. Regulatory: Amend the National Law/Regulations to enact standalone provisions to mandate that only service issued digital devices can be used when taking images/video of children whilst providing education and care. This amendment would be an offence provision with a penalty attached. 3. Regulatory: Amend the National Law/Regulations to enact standalone provisions for all education and care services (including FDC settings) to mandate that other than in the case of defined exempt circumstances, personal devices that can take images or videos (such as tablets, phones, digital cameras, and smart watches) and personal storage and file transfer media (such as SD cards, USB drives, hard drives and cloud storage) cannot be in the possession of any person while providing education and care and working directly with children. Including penalties for non-compliance (i.e. create offence provisions). This amendment would be an offence provision with a penalty attached. 	<ul style="list-style-type: none"> • No change <u>except</u> the inclusion of FDC settings in both options to consider if in scope for delivery.

⁸¹ Based on advice from the Office of Impact Analysis, a status quo option and at least one non-regulatory option and a regulatory option is proposed for each recommendation for public consultation, where possible.

CSR recommendation	Summary of proposed policy options ⁸¹	Clarification of changes
<p>Recommendation 4.2 Areas of access in FDC</p> <p>Require approved providers to conduct risk assessments on all areas of an FDC during the initial assessment and all subsequent visits and approvals of all areas of the residence and place (expand National Regulation 116).</p>	<ol style="list-style-type: none"> 1. No change/status quo. 2. Non-regulatory: Guidance to FDC approved providers on obligations under the current National Regulations (reg 116). 3. Regulatory: Amend the National Regulations (reg 116) to explicitly require <u>assessment</u> of not just the FDC residence but areas near the residence that may be accessible to children. These changes would apply to new assessments and the next annual reassessment (not retrospectively). 4. Regulatory: Amend the National Regulations (e.g. reg 116) to formalise an approval process for the FDC service premises, as part of the FDC residence, i.e., explicitly require <u>approval</u> from the approved provider to confirm areas that are used as the FDC service premises. For existing premises, the approval should be confirmed or amended at the next annual assessment. 	<ul style="list-style-type: none"> • Additional options proposed for RIA. • The CSR recommendation is split between options 3 and 4.
<p>Recommendation 5 Areas of access in FDCs</p> <p>Amend the powers of entry in the National Law to enable authorised officers' access to all areas of an FDC residence and venue, not just the area being used as part of the approved service (service premises).</p>	<ol style="list-style-type: none"> 1. No change, status quo. 2. Non-regulatory: Short guidance or information sheet aimed at authorised officers, FDC approved providers and FDC educators to explain powers of entry and nationally agreed practices. 3. Regulatory: Amend the National Law to enable authorised officers' access to areas of a FDC residence or property, beyond the service premises, in specific instances or for specific purposes which may include: a serious incident has occurred/ suspected to have occurred; to assess or monitor compliance with reg 116; and to assess or monitor compliance with reg 97. 	<ul style="list-style-type: none"> • Additional options proposed for RIA with CSR recommendation amended to seek access only for 'specified instances' as described in option 3.
<p>Recommendation 9.1 WWCCs</p> <p>Clarifying beyond doubt that an approved provider cannot allow a person to commence work or volunteer in an approved education and care service without a current WWCC or confirmed teacher registration/accreditation.</p>	<ol style="list-style-type: none"> 1. No change, status quo. 2. A Non-regulatory: Additional guidance about WWCC and teacher registration/ accreditation requirements and the importance of WWCCs in conjunction with the implementation of child safety training. Guidance to include best practice approaches. 3. Regulatory: Jurisdiction specific National Regulation amendment in WA, ACT and NT to require that an approved provider of an education and care service must ensure that staff, students, and volunteers of that service hold a valid WWCC before they can be engaged/commence their roles. In addition, a jurisdiction specific National Regulation amendment in NSW will clarify this same requirement beyond doubt. 	<ul style="list-style-type: none"> • All options are additional or different to the CSR recommendation.
<p>Recommendation 9.2 WWCCs</p>	<ol style="list-style-type: none"> 1. No change, status quo. 2. Non-regulatory: Additional guidance about current WWCC and teacher registration/ accreditation notification requirements and the importance 	<ul style="list-style-type: none"> • All options are additional or different to the CSR Review recommendation.

CSR recommendation	Summary of proposed policy options ⁸¹	Clarification of changes
<p>Requiring all staff regardless of roles/service types to notify their approved provider of a change in status to their WWCC or teacher registration/accreditation obligations and the approved provider to notify the Regulatory Authority (RA).</p>	<p>of WWCCs in conjunction with the implementation of child safety training. Guidance to include best practice approaches.</p> <p>3. Regulatory:</p> <p>A. New requirement for all centre-based staff (and FDC educators) to notify their approved provider of a change in WWCC or teacher registration/ accreditation status (in NSW, TAS, ACT and NT <u>only</u>). <u>and</u></p> <p>B. New requirement for approved providers to notify the RA of a change in WWCC or teacher registration/ accreditation status for all staff with penalties/offences for non-compliance (in all jurisdictions except QLD and WA and including an exemption in SA in instances where the change to WWCC status is directly communicated with the RA.</p>	
<p>Recommendation 10 Inappropriate conduct</p> <p>Expand section 166 of the National Law (inappropriate discipline – corporal punishment and unreasonable discipline) to include inappropriate interactions as an offence.</p> <p>Note: To be read in conjunction with Recs 11A and 11B.</p>	<p>1. No change, status quo.</p> <p>2. Non-regulatory: Develop more communications and resources encouraging approved providers to address appropriate and inappropriate conduct within their contracts of employment, Code of Conduct and policies and procedures under regulation 168(2) of the National Regulations.</p> <p>3. Regulatory: Amend the National Law to introduce ‘inappropriate conduct’ as an offence applicable to approved providers, nominated supervisors, educators, other staff members and FDC educators as follows: The approved provider and a nominated supervisor must ensure that no child being educated and cared for by the service is subjected to any form of inappropriate conduct: <u>and</u> A staff member of, or volunteer at an education and care service, or FDC educator must not subject any child being educated and cared for by the service to any form of inappropriate conduct.</p>	<ul style="list-style-type: none"> • All options are additional or different to the CSR recommendation.
<p>Recommendation 11(A) Information Sharing</p> <p><i>The original CSR Review recommendation 11 has been separated into two parts, Rec 11(A) and Rec 11(B)</i></p> <p>Consider enhancing the ability to prohibit and share information e.g. enabling the RA to share information about a prohibition with a prospective educator’s approved provider, without a request being received from the approved provider.</p>	<p>1. No change, status quo.</p> <p>2. Non-regulatory: Develop more communications on the current process for accessing the NQA ITS solution that provides an approved provider with the ability to perform an initial check <u>and</u> subsequent prohibition checks.</p> <p>3. Regulatory: Amend s272 of National Law to allow the RA to share information about a prohibited person or suspected FDC educator with that person’s current approved provider, without a request from the approved provider.</p> <p>4. Regulatory: Amend National Law to allow the RA to share information about a person’s current enforceable undertaking with that person’s current approved provider, without a request.</p>	<ul style="list-style-type: none"> • All options are additional or different to the CSR recommendation.

CSR recommendation	Summary of proposed policy options ⁸¹	Clarification of changes
<p>Recommendation 11 (B) Enforceable Undertakings</p> <p>Potential expansion of the use of enforceable undertakings with educators, including in situations where the threshold for prohibition is not met, could be used as another risk management strategy.</p> <p>(An enforceable undertaking is an agreement between the Regulatory Authority (RA) and an individual educator who agrees to undertake or refrain from certain actions to comply with National Law.)</p>	<ol style="list-style-type: none"> 1. No change, status quo. 2. Non-regulatory: Develop more communication and guidance to encourage approved providers to address appropriate and inappropriate conduct within their contracts of employment and their required Code of Conduct and policies and procedures under regulation 168(2) of National Regulations. 3. Regulatory: Amend the National Law to enable RAs to impose a suspension notice/order from providing education and care to children for a specified period of time, applicable to educators, other staff members and volunteers, where a certain threshold of risk has been met to address an alleged contravention of contravention of the National Law, where the person does not pose an unacceptable risk of harm to children, A show cause process would apply and the action would be internally and externally reviewed. 4. Regulatory: Amend the National Law to enable the RA to impose a supervision order on approved providers, applicable where a staff member or volunteer has contravened the National Law <u>and</u> where that contravention also sits with the approved provider. This is to keep approved providers accountable in addressing conduct that contravenes the National Law but the person does not pose an unacceptable risk of harm to children. A show cause process would apply and the action would be internally and externally reviewed. 5. Regulatory: Amend the National Law to enable the RA to impose mandatory training/re-training for staff members (with the staff member paying for the cost of any training/re-training) to address staff member conduct that contravenes the National Law but the staff member does not pose an unacceptable risk of harm to children. A show cause process would apply and the action would be internally and externally reviewed. 	<ul style="list-style-type: none"> • All options are additional or different to the CSR recommendation.
<p>Recommendation 12 Mandatory child safety training</p>	<ol style="list-style-type: none"> 1. No change, status quo. 2. Non-regulatory: Improved, nationally consistent resource and training guidance materials to provide to Registered Training Organisations (RTOs) and Higher Education institutions to insert into courses. 	<ul style="list-style-type: none"> • All options are additional or different to the CSR recommendation.

CSR recommendation	Summary of proposed policy options ⁸¹	Clarification of changes
<p>Amend s162A of the National Law to require mandatory child safe training for any Approved Providers, Persons with Management or Control (PMCs), nominated supervisors and staff who work with children, including volunteers.</p> <p>Describes four topics that must be included to be provided through a combination of pre-service qualifications and in-service professional development (micro-credentials) with a refresher course every two years.</p>	<ol style="list-style-type: none"> 3. Regulatory: Amend s162A of the National Law to <i>require nominated supervisors, persons in day-to-day charge and FDC coordinators</i> to complete child protection training. This would be supported by publication of approved list of child protection training with an amendment to reg 137. 4. Regulatory: Amend s162A of the National Law to require <i>staff who work with children including FDC educators, volunteers and students</i> to complete child protection training. This would be supported by publication of approved list of child protection training with an amendment to reg 137. 5. Regulatory: Amend reg 84 so all staff and volunteers (whether or not they work with children) <i>must be made aware</i> of the existence and application and obligations of current child protection law. 6. Regulatory: Legislative change to require mandatory child safety training, which is nationally consistent, of a high quality and tailored <i>for all people involved in the provision of education and care services</i> (including people who do not directly work with children) with a requirement to complete refresher training every two years. 	
<p>Additional Recommendation AR1 Related providers</p> <p>Increasing Regulatory Authority (RA) powers to identify, investigate and take appropriate action to address systemic child safety risks with services operating under multiple provider approvals.</p>	<ol style="list-style-type: none"> 1. No change, status quo. 2. Non-regulatory: Guidance for the sector and families to improve awareness of an increase in the number of services with multiple approved providers that are being operated by a single controlling entity and/or Persons with Management or Control (PMCs) in common. 3. Regulatory: <ol style="list-style-type: none"> A. Legislative amendment to add a definition of related providers to help RA efficiently and effectively identify and monitor related providers. Powers for RAs to take compliance and enforcement action at the related provider level would be needed, as well as requirements for providers to disclose they are related. B. Legislative amendment to require notice of acquisition to the Regulatory Authority when ownership of an approved provider is transferred to another entity. 	<ul style="list-style-type: none"> • This additional recommendation was identified subsequent to the publication of the CSR.
<p>Additional Recommendation AR2 Extend limitation period</p> <p>Extend the limitation period for offences within the National Law and National Regulations (primarily cases of physical or sexual abuse) to ensure prosecution can be undertaken.</p>	<ol style="list-style-type: none"> 1. No change, status quo. 2. Regulatory: Amend s284 of the National Law so that the limitation period commences two years from the date that the alleged offence comes to the notice of the RA of each jurisdiction. 	<ul style="list-style-type: none"> • This additional recommendation was identified subsequent to the publication of the CSR.

CSR recommendation	Summary of proposed policy options ⁸¹	Clarification of changes
[This would change the time when the limitation period commences from the date the ECEC Regulatory Authority (RA) is aware of the alleged offence.]		
<p>Additional Recommendation AR3 Recruitment agencies</p> <p>Ensuring Regulatory Authorities (RA) have the appropriate powers to engage with recruitment agencies, including the ability to access staff records and share information regarding with agencies regarding prohibited persons.</p>	<ol style="list-style-type: none"> 1. No change, status quo. 2. Non-regulatory: Guidance/messaging for approved providers regarding the requirement to keep staff records for agency educators. 3. Regulatory: Amend s206 (4) of the National Law to include recruitment agencies supplying educators to education and care services. 4. Regulatory: Amend s272 of the National Law to allow a RA to share information about an agency educator with that person's recruitment agency (including mirroring any amendments to s272 regarding proactive sharing with providers) <u>and</u> consider whether recruitment agencies may have access to the prohibited persons register. 5. Regulatory: Amend s188A of the National Law to include giving an approved provider or recruitment agency any information about the content or existence of the prohibition notice that is false or misleading in any material particular. 	<ul style="list-style-type: none"> • This additional recommendation was identified subsequent to the publication of the CSR.

10.2 The National Model Code and Guidelines⁸²

ACECQA, in partnership with all governments, developed the National Model Code and Guidelines. These documents were released on 1 July 2024 and address child safe practices for the use of electronic devices while providing education and care. Adopting the National Model Code is voluntary and designed for centre-based services, excluding OSHC services. In addition to OSHC, FDC is not covered by current documentation; however, they may choose to adopt similar practices.⁸³ The National Model Code consists of four parts:

1. Only service-issued electronic devices should be used when taking images or videos of children while providing education and care. The appropriate use of service-issued electronic devices should be clearly outlined in policies and procedures.
2. Personal electronic devices that can take images or videos, and personal storage and file transfer media, should not be in the possession of any person while providing education and care that is working directly with children. Any exceptions should be for limited, *essential purposes* that are authorised in writing by the approved provider of the service.
3. Essential purposes for use and/or possession of a personal electronic device in an education and care setting include personal health requirements, disability, family necessity or technological failure.
4. Approved providers and their services should have strict controls in place for the appropriate storage and retention of images and videos of children.

The National Model Code and Guidelines were intended as a first step while regulatory amendments are considered. While the National Model Code and Guidelines are voluntary in nature, initial consultation⁸⁴ with stakeholders during their development suggests there is strong support for greater education and regulation in this space – with some approved providers indicating they would prefer governments to introduce legislation to restrict personal device use in education and care settings. However, some stakeholders also raised concerns about the impact in regional and remote areas, on non-profit community-

⁸² The full title of this document is *The National Model Code and Guidelines for Taking Images or Videos of Children While Providing Early Childhood Education and Care*.

⁸³ The National Model Code states that while it targets centre-based services – and in particular LDC and preschool/kindergarten services), providers of other types of education and care services may wish to adopt similar practices fit for their own context.

⁸⁴ When developing the National Model Code and Guidelines, ACECQA communicated with education and care peaks, large providers, employee representatives and subject matter experts. SNAICC was also consulted to gain a First Nations' perspective on the intent and practical application of the National Model Code in the context of Aboriginal Community Controlled Organisations. These consultations occurred in the first half of 2024.

based providers, and on a feminised workforce, many of whom are primary caregivers in their families.

10.3 Child protection training and Child Safe Standards

Appendix Table 2: Overview of jurisdictional child protection training and status of Child Safe Standards implementation

	Child protection training	Child Safe Standards implementation status
NSW	<ul style="list-style-type: none"> Nominated supervisors, persons in day-to-day charge, and FDC coordinators <u>are required to complete an approved child protection course</u>. Approved child protection training courses include⁸⁵: <ul style="list-style-type: none"> CHCPRT002 – Support the rights and safety of children and young people CHCPRT025 – Identify and report children and young people at risk CHCPRT026 – Support the rights and safety of children and young people NSW Department of Education’s Child Protection Awareness Training (this can be completed instead of CHCPRT002). 	<ul style="list-style-type: none"> NSW introduced the Child Safe Standards in 2020 and legislated the statewide framework in 2022 under the NSW Child Safe Scheme.⁸⁶
VIC	<ul style="list-style-type: none"> Nominated supervisors, persons in day-to-day charge, FDC coordinators and early childhood teachers are required to complete an approved child protection course. The VIC Department of Education encourages all early childhood professionals to complete training on child protection and other obligations. Victoria offers a free online eLearning module Protecting Children – Mandatory Reporting and Other Obligations for the Early Childhood Sector (PROTECT). 	<ul style="list-style-type: none"> Victoria introduced Child Safe Standards in 2016 and amended them in 2022 to reflect the National Principles.⁸⁷
QLD	<ul style="list-style-type: none"> Persons in day-to-day charge, nominated supervisors and FDC coordinators are <u>required to complete a child protection course</u>. 	<ul style="list-style-type: none"> QLD passed the Child Safe Organisations Act 2024, with standards to be implemented from October 2025.⁸⁹

⁸⁵ Department of Education NSW, (February 2025), *Child protection training requirements – Government Protocol*, <<https://education.nsw.gov.au/early-childhood-education/regulation-and-compliance/regulation-assessment-and-rating/child-safety/child-protection-training-requirements#Refresher3>>.

⁸⁶ Safe Space Legal, (n.d), *Australian child Safe Standards – A state by state guide 2025*, <<https://www.safespacelegal.com.au/australian-child-safe-standards-a-state-by-state-guide-2025/>>.

⁸⁷ Ibid.

⁸⁹ Ibid.

	Child protection training	Child Safe Standards implementation status
	<ul style="list-style-type: none"> Approved child protection training courses include⁸⁸: <ul style="list-style-type: none"> CHCPRT025 – Identify and report children and young people at risk CHCPRT026 – Support the rights and safety of children and young people CHCECE057 – Use collaborative practices to uphold child protection principles. 	
WA	<ul style="list-style-type: none"> The Regulatory Authority for WA (Department of Communities) <u>does not specify that child protection training is mandatory</u>. No training courses are specified on the Department of Communities website. 	<ul style="list-style-type: none"> WA has yet to fully implement the Child Safe Standards or the National Principles into legislation.⁹⁰
SA	<ul style="list-style-type: none"> To work or volunteer in education, people <u>must undergo mandatory notification training about child protection in education</u>. Approved child protection training courses include:⁹¹ <ul style="list-style-type: none"> Fundamentals course: Responding to risks of harm, abuse and neglect – education and care Masterclass course: Responding to risks of harm, abuse and neglect – education and care. 	<ul style="list-style-type: none"> SA has adopted the National Principles as well as state-informed policy.⁹²
TAS	<ul style="list-style-type: none"> The TAS Department for Education, Children and Young People administers safeguarding training for those who are TAS Department for Education, 	<ul style="list-style-type: none"> TAS implemented the National Principles as their ten Child and Youth Safe Standards, mandatory and applicable to education and care services as of January 2024.⁹⁴

⁸⁸ Queensland Government, (November 2024), *Child protection requirements*, <<https://earlychildhood.qld.gov.au/regulation/health-and-safety/child-protection-requirements>>.

⁹⁰ Safe Space Legal, (n.d), *Australian child Safe Standards – A state by state guide 2025*, <<https://www.safespacelegal.com.au/australian-child-safe-standards-a-state-by-state-guide-2025/>>.

⁹¹ Department of Education SA, (January 2025), *RRHAN-EC mandatory notification training – list of courses*, <<https://www.education.sa.gov.au/working-us/rrhan-ec/rrhan-ec-mandatory-notification-training-list-courses>>.

⁹² Safe Space Legal, (n.d), *Australian child Safe Standards – A state by state guide 2025*, <<https://www.safespacelegal.com.au/australian-child-safe-standards-a-state-by-state-guide-2025/>>.

⁹⁴ Tasmanian Legislation, *Child and Youth Safe Organisations Act 2023*, <<https://www.legislation.tas.gov.au/view/whole/html/asmade/act-2023-006#:~:text=This%20Act%20may%20be%20cited,Youth%20Safe%20Organisations%20Act%202023%20.&text=This%20Act%20commences%20on%201%20July%202023.&text=Without%20limiting%20the%20provisions%20of,the%20best%20interests%20of%20children>>.

	Child protection training	Child Safe Standards implementation status
	Children and Young People employed workers ⁹³ , however this does not apply to the education and care sector as they are not employees of TAS Department for Education, Children and Young People.	
NT	<ul style="list-style-type: none"> The Regulatory Authority for NT (Department of Education) <u>does not specify that child protection training is mandatory.</u> 	<ul style="list-style-type: none"> The NT is still yet to implement the National Child Safe Standards.
ACT	<ul style="list-style-type: none"> The Regulatory Authority for ACT (Education Directorate) <u>does not specify that child protection training is mandatory.</u> Workers and volunteers may need to undertake training if they work for a state government organisation that works for children and are a mandatory reporter.⁹⁵ State-specific training is available for government or non-government staff who work with children and are mandatory reporters: Training to respond to child abuse and neglect. 	<ul style="list-style-type: none"> The ACT adopted the National Principles as their ten Child Safe Standards, mandatory as of August 2024.⁹⁶

⁹³Department for Education Children and Young People, (February 2025), Compulsory Safeguarding Training for Workers, <<https://www.decyp.tas.gov.au/safe-children/safeguarding-children/safeguarding-training/>>.

⁹⁵ ACT Government, (February 2024), Training to respond to child abuse and neglect, <<https://www.act.gov.au/community/child-protection-and-youth-justice/training-to-respond-to-child-abuse-and-neglect>>.

⁹⁶ Ibid.

10.4 Overview of jurisdictional WWCCs

Appendix Table 3: Summary of jurisdictional WWCC details

	Name of WWCC or equivalent	WWCC screening agency	WWCC duration	Cost to apply for a WWCC or equivalent
NSW	Working With Children Check	Office of the Children's Guardian	5 years	\$105.00 for paid workers and free for volunteers. ⁹⁷
VIC	Working with Children Clearance	Department of Justice and Community Safety	5 years	\$131.60 for employees and free for volunteers. ⁹⁸
QLD	Working with Children Check – Blue Card	Blue Card Services	3 years	\$101.30 for all applicants except for volunteers, students and exemption card holders who incur no fee. ⁹⁹
WA	Working with Children Check	Department of Communities, WWC Screening Unit	3 years	\$87.00 for employees and self-employed people. \$11.00 for volunteers, unpaid people and students on unpaid placement. ¹⁰⁰

97 Service NSW (2025), Apply for a Working with Children Check <<https://www.service.nsw.gov.au/transaction/apply-for-a-working-with-children-check#:~:text=The%20outcome%20of%20a%20check,and%20is%20free%20for%20volunteers>>.

98 Victorian Government (2025), The Working with Children Check explained, <<https://www.vic.gov.au/check-explained#fees-valid-until-30-june-2024>>.

99 QLD Government (2024), Pay for your blue card application, <<https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/regulated-industries-and-licensing/blue-card/applications/payment>>.

100 Western Australian Government (2025), Working with Children Check – Application and renewal process, <<https://www.wa.gov.au/organisation/departments-of-communities/working-children-check-application-and-renewal-process#fees>>.

	Name of WWCC or equivalent	WWCC screening agency	WWCC duration	Cost to apply for a WWCC or equivalent
SA	Working with Children Check	Department of Human Services, SA Screening Unit	5 years	\$117.00 for employees, \$64.50 for tertiary students and free for volunteers. ¹⁰¹
TAS	Working with Vulnerable People registration	Department of Justice	5 years	\$130.90 for employees and \$22.44 for volunteers. ¹⁰²
ACT	Working with Vulnerable People registration	Access Canberra	5 years	\$151.60 for paid employment purposes and free for volunteering purposes. ¹⁰³
NT	Working with Children Check clearance	Northern Territory Screening Authority	2 years	\$84 for paid employment (including student placement) and \$8 for volunteering purposes. ¹⁰⁴

Source: Information provided by the Department of Education in each jurisdiction unless otherwise stated.

¹⁰¹ South Australian Government (2024), Fees, <<https://www.sa.gov.au/topics/rights-and-law/rights-and-responsibilities/screening-checks/apply-for-a-screening-check/fees>>.

¹⁰² Service TAS (2024), Apply for a registration to work with vulnerable people, <https://www.service.tas.gov.au/services/education-and-skills/working-with-vulnerable-people-including-children/apply-for-registration-to-work-with-vulnerable-people#po_fees>.

¹⁰³ Access Canberra (n.d), Apply for or renew a WWVP registration, <<https://www.accesscanberra.act.gov.au/business-and-work/working-with-vulnerable-people/apply-for-or-renew-a-wwvp-registration#:~:text=If%20you're%20seeking%20WWVP,payment%20by%20VISA%20or%20MasterCard>>.

¹⁰⁴ NT Government (2025), Working with children clearance: apply and renew, <<https://nt.gov.au/emergency/child-safety/apply-for-a-working-with-children-clearance#:~:text=To%20work%20or%20volunteer%20with,%248%20%2D%20if%20volunteering>>.

10.5 Summary of relevant WWCC legislation and requirements

Appendix Table 4: Summary of WWCC legislation and key requirements relevant to education and care contexts

	Legislation	Who requires a WWCC in an education and care context?	WWCC employment requirements	Teacher registration/accreditation requirements
NSW	<ul style="list-style-type: none"> • <i>Child Protection (Working with Children) Act 2012</i> (NSW) No.51 • <i>Child Protection (Working with Children) Regulation 2013</i> (NSW) 	<ul style="list-style-type: none"> • Adults undertaking child-related employment or volunteering require a WWCC.¹⁰⁵ • Under 18s are exempt and are not required to hold a WWCC.¹⁰⁶ 	<ul style="list-style-type: none"> • A person can start working with children once they have an application number for a WWCC. However, some employers may require workers to hold a valid WWCC clearance before they commence paid child-related employment.¹⁰⁷ 	<ul style="list-style-type: none"> • All teachers must be NESA-accredited to work in a school or centre-based early childhood service.¹⁰⁸ • A WWCC clearance is a mandatory requirement for teacher accreditation.¹⁰⁹
VIC	<ul style="list-style-type: none"> • <i>The Worker Screening Act 2020</i> (Vic) • <i>Worker Screening Regulations 2021</i> (Vic) 	<ul style="list-style-type: none"> • Adults undertaking child-related employment or volunteering require a WWCC.¹¹⁰ • Under 18s are exempt and are not required to hold a WWCC.¹¹¹ 	<ul style="list-style-type: none"> • Services cannot engage anyone in child-related work who does not have a valid WWCC or has lodged an application that's currently being assessed.¹¹² 	<ul style="list-style-type: none"> • Early childhood teachers require teacher registration/accreditation prior to working in educational settings.

¹⁰⁵ NSW Office of the Children's Guardian (2024), *Who needs a Check*, <<https://ocg.nsw.gov.au/working-children-check/who-needs-check>>.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ NSW Government (2025), *Teacher Accreditation*, <<https://www.nsw.gov.au/education-and-training/nesa/teacher-accreditation>>.

¹⁰⁹ NSW Government (2025), *Working with Children Check*, <<https://ocg.nsw.gov.au/working-children-check>>.

¹¹⁰ Victorian Government (2025), *Do I need a Working with Children Check?* <<https://www.vic.gov.au/do-i-need-check>>.

¹¹¹ Ibid

¹¹² Victorian Government (2025), *Legal Obligations of organisations re Working with Children Check*, <<https://www.vic.gov.au/legal-obligations-organisations>>.

	Legislation	Who requires a WWCC in an education and care context?	WWCC employment requirements	Teacher registration/accreditation requirements
				<ul style="list-style-type: none"> All teachers registered with the Victorian Institute of Teaching (including early childhood teachers) are exempt from the WWCC if undertaking child-related work in a school or early childhood service.¹¹³
QLD	<ul style="list-style-type: none"> <i>Working with Children (Risk Management and Screening) Act 2000</i> (Qld) <i>Working with Children (Risk and management and Screening) Regulation 2020</i> (Qld) 	<ul style="list-style-type: none"> Adults working or volunteering with children require a blue card (i.e. a WWCC). Employed persons under 18 years old also require a blue card.¹¹⁴ A key exemption includes volunteers who are under 18 and are not restricted persons.¹¹⁵ 	<ul style="list-style-type: none"> A person must have a blue card before working or volunteering with children.¹¹⁶ 	<ul style="list-style-type: none"> Teacher registration is not compulsory for early childhood teachers in QLD.¹¹⁷ Registered teachers do not require a blue card when teaching in schools. However, registered teachers do need a blue card if providing other child-related services such as working at an early childcare centre.¹¹⁸

¹¹³ Ibid.

¹¹⁴ Queensland Government (2025), *Individuals requiring a blue card*, <<https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/regulated-industries-and-licensing/blue-card/required/individuals>>.

¹¹⁵ Queensland Government (2025), *Blue cards for young people*, <<https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/regulated-industries-and-licensing/blue-card/required/industries/young-people>>.

¹¹⁶ Australian Business Licence and Information Service (2025), *Working with children card (blue card) – Queensland*, <<https://ablis.business.gov.au/service/qld/blue-card-system-for-child-related-employment-and-businesses-also-known-as-the-working-with-children-check/4234>>.

¹¹⁷ Queensland Government (2025), *Become an early childhood teacher*, <<https://www.qld.gov.au/education/jobs/teacher/childhood#:~:text=and%20industry%20news.-,Registration,childhood%20education%20and%20care%20qualification>>.

¹¹⁸ QLD College of Teachers (2025), *Blue Card and Exemption Card*, <<https://www.qct.edu.au/registration/blue-card>>.

	Legislation	Who requires a WWCC in an education and care context?	WWCC employment requirements	Teacher registration/accreditation requirements
WA	<ul style="list-style-type: none"> • <i>Working with Children (Criminal Record Checking) Act 2004</i> (WA) • <i>Working with Children (Criminal Record Checking) Amendment Regulations 2023</i> (WA) • <i>Working with Children (Screening) Act 2004</i> (WA) • <i>Working with Children (Screening) Regulations 2005</i> (WA) 	<ul style="list-style-type: none"> • Adults undertaking child-related work on a paid, unpaid or volunteering basis require a WWCC. Employed persons under 18 years old undertaking paid work also require a WWCC.¹¹⁹ • Persons under 18 undertaking volunteering roles or unpaid student placements are exempt from WWCCs.¹²⁰ 	<ul style="list-style-type: none"> • A person can start working with children while their WWCC application is being processed (noting the Australia Post application receipt is required as proof).¹²¹ 	<ul style="list-style-type: none"> • Early childhood teachers are required to be registered with the Teacher Registration Board of WA.¹²² • Registered teachers require a current WWCC.¹²³
SA	<ul style="list-style-type: none"> • <i>Child Safety (Prohibited Persons) Act 2016</i> (SA) • <i>Children's Protection Law Reform (Transitional Arrangements and Related Amendments) Act 2017</i> (SA) 	<ul style="list-style-type: none"> • Persons require a WWCC if they are over 14 years and undertake child-related work as a volunteer or employee for more than seven days per year, or any work that involves 	<ul style="list-style-type: none"> • A person must have a valid WWCC before working or volunteering with children.¹²⁵ 	<ul style="list-style-type: none"> • Early childhood teachers must be registered as a teacher with the Teachers Registration Board of SA.¹²⁶ • Registered teachers require a current WWCC.¹²⁷

119 Government of WA (2025), *Working with Children Check – Who needs a WWC Check?* <<https://www.wa.gov.au/organisation/department-of-communities/working-children-check-who-needs-wwc-check>>.

120 Ibid.

121 Western Australian Department of Education (n.d), *Working with Children Check*, <<https://www.wa.gov.au/organisation/department-of-communities/working-children-check>>.

122 Teacher Registration Board of WA (2025), *Teaching in a centre-based education and care service*, <<https://www.trb.wa.gov.au/Teacher-Registration/Becoming-registered/Early-childhood>>.

123 Western Australian Department of Education (2023), *Working with Children Checks in Department of Education Sites Policy*, <<https://www.education.wa.edu.au/web/policies/-/working-with-children-checks-in-department-of-education-sites-policy>>.

125 South Australian Government (2025), *Working with Children Checks*, <<https://www.sa.gov.au/topics/rights-and-law/rights-and-responsibilities/screening-checks/screening-wwcc>>.

126 Education Standards Board SA (2023), *Early childhood teacher requirements*, <<https://www.esb.sa.gov.au/advice-and-guidance/early-childhood-teacher-requirements>>.

127 Teachers Registration Board of SA (n.d), *Working With Children Checks*, <<https://www.trb.sa.edu.au/home/working-with-children-checks>>.

	Legislation	Who requires a WWCC in an education and care context?	WWCC employment requirements	Teacher registration/accreditation requirements
	<ul style="list-style-type: none"> • <i>Child Safety (Prohibited Persons Regulations 2019 (SA)</i> 	an overnight stay or close contact with a child with disability. ¹²⁴		
TAS	<ul style="list-style-type: none"> • <i>Registration to Work with Vulnerable People Act 2013 (Tas)</i> • <i>Registration to work with Vulnerable People Regulations 2014 (Tas)</i> • <i>Registration to Work with Vulnerable People (Risk Assessment for Child-Related Activities) Order 2014 (Tas)</i> 	<ul style="list-style-type: none"> • Persons over 16 years old who work or volunteer with children require a Working with Vulnerable People (WWVP) registration.¹²⁸ 	<ul style="list-style-type: none"> • Persons can begin work once they have applied for a WWVP registration if they meet certain obligations. However, in the Education and Care sector (unrelated to WWVP legislation), staff, students and volunteers must hold a registration before they can engage in child-related work (regulation 344).¹²⁹ 	<ul style="list-style-type: none"> • Teacher registration is not compulsory for early childhood teachers in ECEC in TAS.¹³⁰ • Registered teachers require a current WWVP registration.¹³¹
ACT	<ul style="list-style-type: none"> • <i>Working with Vulnerable People (Background Checking) Act 2011 (ACT)</i> 	<ul style="list-style-type: none"> • Persons over 16 years old who work or volunteer with children require a Working WWVP registration.¹³² 	<ul style="list-style-type: none"> • Persons may work or volunteer in a regulated activity if (1) their employer agrees and they are supervised when undertaking 	<ul style="list-style-type: none"> • From 1 April 2024, early childhood teachers are eligible for teacher registration under a voluntary scheme. However, early childhood

124 South Australian Government (2025), *Who needs a Working with Children Check?* <<https://www.sa.gov.au/topics/rights-and-law/rights-and-responsibilities/screening-checks/screening-wwcc/who-needs-a-working-with-children-checky>>.

128 Australian National Character Check (2025), *Working with Vulnerable People check (WWVP) requirements across Australia*, <<https://www.australiannationalcharactercheck.com.au/working-with-vulnerable-people-registration.html?srlid=AfmBOopNFfsxKfY2q1dKmHj6rzgMtwW54P6ao65YnGyiTaRmevg-v>>.

129 Department of Education (n.d), *Requirements for registration to work with vulnerable people when working in the Education and Care sector in Tasmania*, <<https://publicdocumentcentre.education.tas.gov.au/library/Shared%20Documents/Information-Sheet-Working-With-Vulnerable-People.pdf>>.

130 Teacher Registration Board TAS (n.d.), *Types of Registration*, <<https://trb.tas.gov.au/types-of-registration/>>.

131 Teacher Registration Board TAS (n.d), *Registration to Work with Vulnerable People*, <<https://trb.tas.gov.au/wp-content/uploads/2022/10/Update-your-TRB-record-with-your-Registration-to-Work-with-Vulnerable-People-details.pdf>>.

132 Access Canberra (n.d), *Apply for or renew a WWVP registration*, <<https://www.accesscanberra.act.gov.au/business-and-work/working-with-vulnerable-people/apply-for-or-renew-a-wwvp-registration>>.

	Legislation	Who requires a WWCC in an education and care context?	WWCC employment requirements	Teacher registration/accreditation requirements
	<ul style="list-style-type: none"> • <i>Working with Vulnerable people (Background Checking) Regulation 2012</i> (ACT) • <i>Working with Vulnerable People (Background Checking) Risk Assessment Guidelines 2021</i> (ACT) 		<p>regulated activities or (2) are a kinship carer and have not been previously refused registration or had a previous registration cancelled.¹³³</p> <ul style="list-style-type: none"> • Persons aged under 16 can begin working or volunteering without a WWVP check. 	<p>teacher registration is not currently mandated.¹³⁴</p> <ul style="list-style-type: none"> • Registered teachers require a current WWVP registration.¹³⁵
NT	<ul style="list-style-type: none"> • <i>Care and Protection of Children Act 2007</i> (NT) • <i>Care and Protection of Children (Screening) Regulations</i> (NT) 	<ul style="list-style-type: none"> • Persons over 15 years old who work or volunteer with children require a WWCC.¹³⁶ 	<ul style="list-style-type: none"> • Some conditions and exemptions exist which allow a person to begin working or volunteering without a WWCC. For example, an employer can apply for a short-term temporary exemption.¹³⁷ 	<ul style="list-style-type: none"> • Currently only early childhood educators in working in school settings require teacher registration. However, under the Shaping our Future – National Early Childhood Education and Care Workforce Strategy, teacher registration will be required for early childhood teachers from 2026 (first phase of implementation).¹³⁸

¹³³ ACT Government Justice and Community Safety (2015), *A Guide to Working with vulnerable people in the ACT*, <<https://www.centresupport.com.au/wp-content/uploads/2020/06/Child-Protection-Guide-to-Working-with-Vulnerable-People-in-the-ACT.pdf>>.

¹³⁴ ACT Teacher Quality Institute (2024), *ECT Registration*, <<https://www.tqi.act.edu.au/registration/ECT-registration>>.

¹³⁵ Teacher Quality Institute (n.d), *Working with Vulnerable People (WWVP) Registration*, <https://www.tqi.act.edu.au/_nocache?a=2163357>.

¹³⁶ NT Government (2025,). *Working with children clearance: before you apply*, <<https://nt.gov.au/emergency/child-safety/working-with-children-clearance-before-you-apply>>.

¹³⁷ Ibid.

¹³⁸ NT Government (n.d), *Early Childhood Teacher Registration in the NT*, <<https://haveyoursay.nt.gov.au/early-childhood-teacher-registration-in-the-nt>>.

Legislation	Who requires a WWCC in an education and care context?	WWCC employment requirements	Teacher registration/accreditation requirements
			<ul style="list-style-type: none"> • Registered teachers require a WWCC.¹³⁹

¹³⁹ NT Department of Education and Training (2025), *Working with children clearance*, <[https:// education.nt.gov.au/careers-in-education/working-with-children-clearance](https://education.nt.gov.au/careers-in-education/working-with-children-clearance)>.

10.6 Family Assistance Law (FAL)

Identifying related providers has also proven challenging in relation to Family Assistance Law (FAL). After large structural changes in the ECEC sector, a provision was established which allows the Australian Government to have better visibility over 'related providers' where certain thresholds are reached or there is overlap across entities' PMCs.

Related providers are defined in relation to two concepts in the FAL. Subsection 4A(1) of the FAL considers a provider as a *large* provider if:

- the provider operates 25 or more approved child care services; or
- the provider is one of 2 or more related providers who together operate 25 or more approved child care services; or
- the provider proposes to operate, or is one of 2 or more related providers who propose to together operate, 25 or more child care services.

Subsection 4A(3) of the FAL then identifies related providers in circumstances where 25 or more services are held collectively across the approved providers:

- the providers have in common 25% or more of the persons who are concerned in, or take part in, their management (PMCs); or
- one provider owns 15% or more of the other provider; or
- one provider is entitled to receive 15% or more of any dividends paid by the other provider.

Jurisdictions have explored the idea of incorporating a definition of related providers into the National Law to align with the FAL definition. However, Regulatory Authorities have determined that strict alignment with the FAL may not be sufficient because:

- the definition would not capture all related providers operating under the National Law (as it only covers those receiving the Child Care Subsidy). Data suggests that 16.5% of services operating under the NQF do not receive the Child Care Subsidy¹⁴⁰, and so would not be covered by this definition.
- the FAL definition only captures related providers with more than 25 services collectively, which would not provide sufficient intelligence about smaller, but problematic, providers.

¹⁴⁰ 14,732 childcare services were approved to receive the Child Care Subsidy in March 2024, while 17,651 services were operating under the NQF over the same period (Productivity Commission (2025); ACECQA (2024)).

- the FAL model relies on self-reporting by providers which may not be appropriate under the National Law.
- any amendments to the definition under FAL would have implications for the National Law.
- there remain differences in personnel captured under the PMC definitions for both pieces of legislation, due to the differing purposes of the legislation. This is driven by whether these individuals have responsibilities for the operation of the approved provider (FAL) or in relation to an approved service (National Law). While one outcome of the 2019 NQF Review led to improvements in the alignment between the definitions of PMCs under both pieces of legislation, incorporating an existing definition of related providers that relies on the FAL definition may not provide sufficient oversight under the National Law.