



NQF Review: Template Response (for the survey)

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HIGHLIGHTED TEXT denotes OSHC-related

HIGHLIGHTED TEXT denotes LDC-related

HIGHLIGHTED TEXT denotes LDC&OSHC-related

DISCLAIMER: Every effort has been undertaken to provide accurate information. The questions’ numbers may still not be correct only due to the nature of how the Review of the NQF’s electronic survey is presented based on answers given to earlier questions. Notwithstanding, the text are correct at the time of this assembly.

INSTRUCTIONS

The recommended and highlighted responses contained in this document have been drafted for use by long daycare (LDC) and out-of-school-hours-care (OSHC) service providers.

You can download the hardcopy version of the official Review of the NQF survey via <https://www.nqfreview.com.au/44851/widgets/328490/documents/195053>.

The following drafted responses correspond to the questions (as shown by their numbers). These make referencing to each question easier.

There will be gaps in the questions' numbers as those missing questions and corresponding recommended answers either:

- do not relate to long daycare or OSHC services; or
- require personal or service information (for example, "which state or territory do you live in", "how many services does your organisation operate").

Should you have any further questions relating to these drafted responses, please do not hesitate to contact the Australian Childcare Alliance NSW on 1300 556 330 or nsw@childcarealliance.org.au.

What has the Consultation Regulatory Impact Statement (CRIS) NOT addressed?

Since the commencement of the second and current Review of the NQF in 2019, and compared to the proposed government options that were released in 2021, it is worth noting that the following are not currently addressed at this stage of the Review:

1. The Early Years Learning Framework and the My Time Our Place Framework
2. Higher staff:children ratios in NSW than across Australia (for example Regulation 271)
3. Absence of recognition of children's outcomes in terms of educational and social well-being as a measure of the quality of services
4. A more predictable timing schedule for when assessment and rating ought to be conducted
5. The appropriateness of fines/penalties/sanctions matched to breaches/non-compliances
6. The need for national consistency and easier processes for teacher registration
7. Service approvals that contribute toward childcare oversupply
8. The handling of protected disclosures as well as natural fairness
9. The use and maintenance of prohibition notices as well as natural justice
10. Increasing use of the Waiver Policy
11. Simulated Outdoor Spaces
12. The absence of the Long Day Care Professional Development Program (LDCPDP)
13. In Home Care

We are also concerned that decisions made by government authorities can at times not be harmonised. A recent example would be ACECQA's announcement of the new First Aid qualification (HLTAID012) that is not enforced by the NSW Regulatory Authority nor recognised by the Australian Skills Quality Authority (ASQA) (see <https://nsw.childcarealliance.org.au/the-new-first-aid-course-hltaid012-can-have-negative-consequences>). This not only created confusion, but additional costs and risk of non-compliance from a qualifications perspective.

It continues to be the view of the Australian Childcare Alliance NSW that any/all proposed regulatory changes must be tested in live environments of relevant samples of early childhood education and care services over a period of say 6-12 months prior to their adoption so that positive education, social wellbeing and financial outcomes can be measured, considered and achieved.

Section 3.1: Safety of children during transitions between services (including school) (OSHC-related)

QUESTION 7: Would you like to answer questions about this issue (3.1)?

☒ Yes

QUESTION 8: In your opinion, what is the scale of this problem?

Not a problem



Minor problem



Moderate problem



Significant problem



Very significant problem



QUESTION 9: Based on the options presented in the CRIS, which do you consider to be the most suitable solution to the stated problem?

#4

A. No change.

#5

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

#1

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

#2

D. Require that where relevant, an education and care service has a policy and procedure for the transition period between education and care services (for example between school and OSHC, or OSCH and preschool), including a risk assessment process.

#3

E. Develop further guidance to support policies and procedures relating to the delivery of children to, and the collection from, education and care service premises, with an emphasis on transition periods between services, as well as further guidance for parents and families around notifying when a child is unable to attend an education and care service.

QUESTION 10: In your opinion, what would be the benefits or negative impacts of the proposed options? You may like to focus on your preferred option, or any of the other options listed above.

The existing legislation which can be applied to this scenario does not clearly stipulate whether it is the school or the Outside School Hours Care (OSHC) which ultimately holds the responsibility for the child between the student leaving the school premises and arriving at the OSHC premises (sometimes on the school site).

If the child leaves the school premises, the OSHC generally takes responsibility. If the child stays on the school premises, this responsibility stays with school. However the transition responsibility changes from school to school depending on school start/finish times, so there is a lack of clarity around where the responsibility for the child's welfare lies.

We concede the difficulty of legislating for every varying circumstance.

We therefore oppose legislative change in this space and believe it is up to each school and OSHC to work together to develop a collaborative, agreed approach to this issue.

Based on the statistics presented in the CRIS (page 28), it can be estimated that the rate of the number of missing children per service is 1.07 per 7.5 years. This incident rate should be compared against school children (aged 6 to 18 years old) whose transportation are their schools' responsibility. That said, such a rate can only be improved by continuing to have competent personnel with appropriate skills and experiences in assessing and mitigating risks.

QUESTION 11: Are there any other comments you would like to make about this issue (ie page 28 of the CRIS)?

In fairness to all children, the state/territory's respective Departments of Education must publicly release the equivalent incident rate of missing children (aged 6 to 18 years old) whose transportation are their schools' responsibilities. Thank you.

Section 3.2: Sleep and rest requirements (LDC-related)

QUESTION 12: Would you like to answer questions about this issue (3.2)?

☒ Yes

QUESTION 13: In your opinion, what is the scale of this problem?

Not a problem



Minor problem



Moderate problem



Significant problem



Very significant problem



QUESTION 14: Based on the options presented in the CRIS, which do you consider to be the most suitable solution to the stated problem?

#2

A. No change.

#1

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

#4

C. Further guidance developed to support policies and procedures for sleep and rest, and to provide information to families on safe sleeping practices.

#5

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

#3

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

#6

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

QUESTION 15: In your opinion, what would be the benefits or negative impacts of the proposed options? You may like to focus on your preferred option, or any of the other options listed above.

Although deaths of children will always be tragic, there has been 2 deaths in New South Wales since 1 January 2012 to date. And while all services would benefit from training based on Red Nose's safe sleep practices (see <https://education.rednose.org.au/>), this should be combined with educator:child ratios during rest periods as expressed in Regulation 299C (<https://www.legislation.nsw.gov.au/view/html/inforce/current/sl-2011-0653#sec.299C>) for centre-based services for all jurisdictions and not just for Queensland.

It should also be noted that many service providers are already running training programs for their staff from Red Nose Safe Sleep Education & Training packages and other training providers.

QUESTION 16: Are there any other comments you would like to make about this issue?

Queensland's Regulation 299C (<https://www.legislation.nsw.gov.au/view/html/inforce/current/sl-2011-0653#sec.299C>) should be trialled by all NSW' centre-based services who are rated Meeting or higher for a duration of at least 12 months. Should the trial prove successful, the NSW Department of Education can replicate Regulation 299C for the NSW jurisdiction.

Section 3.3: Improving children's safety during regular transportation (LDC & OSHC-related)

QUESTION 17: Would you like to answer questions about this issue (3.3) ([page 42 of the CRIS](#))?

☒ Yes

QUESTION 18: In your opinion, what is the scale of this problem?

Not a problem

☐

Minor problem

☐

Moderate problem

☒

Significant problem

☐

Very significant problem

☐

QUESTION 19: Based on the options presented in the CRIS, which do you consider to be the most suitable solution to the stated problem?

#6

A. No change.

#5

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

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

For example, transportation specific ratio requirements could require:

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

Noting that for FDC services the FDC age limitations continue to apply.

#1

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

#2

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

#3

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

#4

F. Further guidance around adequate supervision/risk assessment as it related to transportation.

QUESTION 20: In your opinion, should the driver be counted in the ratio of staff members for the vehicle during transportation?



QUESTION 21: In your opinion, what would be the benefits or negative impacts of the proposed options? You may like to focus on your preferred option, or any of the other options listed above.

Particularly for rural, remote and low socio demographic areas where there is a higher percentage of care for disadvantaged, at risk and vulnerable children, we are concerned for such services who operate a bus service for children to transport children to and from the service and also is used for before-and-after-school-care at their long daycare service of:

- Increased costs to families (the bus and transport service offered in majority of service is free for families, if we are required to have additional staff or capped at 7 children this would not be viable and many services would have to increase fees significantly to help cover costs or stop the service all together (which would mean children would not attend/be able to participate in a approved learning program); and
- lower participation rates in all ages, but specifically in kindergarten, in lower socio demographic - vulnerable and disadvantaged communities where providers and the government are working hard to increase such services and the bus service ensures these services can operate.

It must also be a constant reminder to all that staff:children ratios is not the go-to solution as evidenced by the Exceeding rated service in Queensland where there were two adults transporting one child via their service's bus (see <https://9now.nine.com.au/a-current-affair/childcare-company-goodstart-responsible-for-toddler-death-left-girl-on-bus-two-years-prior/ac4bd42b-4075-4589-90b8-399288796458>).

For school aged children, considering that there can be 58 children in a government bus with only the driver, fairness should also be extended to those in OSHC-services with services that operate buses.

QUESTION 22: Are there any other comments you would like to make about this issue ([page 42 of the CRIS](#))??

Usually, breaches of safety, health and wellbeing of children can be predicted by the Approved Provider's past and current behaviours. As such, regular and sometimes higher spotchecks/compliance visits may be required for certain services. Moreover, in New South Wales, Approved Providers do not have access to their respective sets of alleged, confirmed, resolved and unresolved breaches/non-compliances. The sooner ACECQA's NQAITS is upgraded, the sooner Approved Providers can address their services' risks and weaknesses (see <https://nsw.childcarealliance.org.au/news/906-demanding-transparent-and-fair-process-for-every-service-provider-dealing-with-alleged-breaches-non-compliances>).

Section 3.4: Improving children's safety during emergency evacuations from multi-storey buildings (LDC-related)

QUESTION 23: Would you like to answer questions about this issue (3.4) ([page 50 of the CRIS](#))?

☒ Yes

QUESTION 24: In your opinion, what is the scale of this problem?

Not a problem



Minor problem



Moderate problem



Significant problem



Very significant problem



QUESTION 25: Based on the options presented in the CRIS, which do you consider to be the most suitable solution to the stated problem?

#4

A. No change.

#2

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

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

#1

C. Strengthen service approval processes to require that for centre-based services located in multi-storey buildings, the regulatory authority, in assessing the suitability of the education and care service premises, is to consider the need for direct egress to safe evacuation areas for very young children and non-ambulatory children.

This option would also apply to FDC requiring approved providers to assess the FEC residence as part of their approval processes, where located in multi-storey buildings.

#3

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

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

QUESTION 26: Based on the options presented in the CRIS, please indicate your level of support for the following Victoria and ACT specific solution (Option D) to the stated problem:

	Strongly Oppose	Oppose	Neither Support or Oppose	Support	Strongly Support
Amend service approval processes to require approved providers wishing to operate a centre-based service from premises in a multi-storey building in Victoria and ACT to apply to the regulatory authority for pre-approval of development and building plans for the proposed premises prior to development and construction (Victoria and ACT only).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

QUESTION 27: In your opinion, what would be the benefits or negative impacts of the proposed options? You may like to focus on your preferred option, or any of the other options listed above.

Given the limited experiences nationally and globally of fire incidences affecting early childhood education and care services in multi-storey buildings, there can be varying expert opinions as to proposed solutions, especially from a retrofitting perspective. The regulatory approaches taken thus far ignores two simple yet effective standards that should be applied for services in multi-storey buildings – the maximum time limit for safe and effective evacuation, and the appropriate locations for assembly or co-assembly (given services would potentially need to co-occupy the public spaces with other non-calm tenants from the same multi-storey buildings).

Please note that the consideration of fire emergencies and evacuations must apply to both long daycare services, family daycare services and occasional care services whenever they are in multi-storey buildings.

QUESTION 28: Are there any other comments you would like to make about this issue?

Concerns for children's safety during emergency evacuations should not be limited to multi-storey buildings. Recent proposals for a number of new services in other commercial as well as residential settings have been designed by experts where comprehensive consideration of the safety of children (including babies and disabled children) and staff had not been made, nor where these future young to very young children and staff would evacuate to and assemble at and within a suitable time limit, safety from local traffic and appropriateness of the location(s) for temporary assembly. The local Regulatory Authorities should harmonise with relevant planning and emergency authorities in order to develop local solutions (ie performance solutions).

Please note that the consideration of fire emergencies and evacuations must apply to both long daycare services, family daycare services and occasional care services whenever they are in multi-storey buildings.

Section 4.1: Embedding the National Child Safe Principles (LDC&OSHC-related)

QUESTION 29: Would you like to answer questions about this issue (4.1) ([page 60 of the CRIS](#))?

☒ Yes

QUESTION 30: In your opinion, what is the scale of this problem?

Not a problem



Minor problem



Moderate problem



Significant problem



Very significant problem



QUESTION 31: Based on the options presented in the CRIS, which do you consider to be the most suitable solution to the stated problem?

#4

A. No change.

#1

B. Amend the “assessment guide” in the Guide of the NQF to align with the assessment of all the National Principles.

#2

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

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

* Ensure that policies and procedures for their service/s address the National Principles for both staff members and volunteers.

* Ensure all volunteers and staff at their service/s are advised of the existence and application of the National Principles.

#3

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

* Clarify the volunteers must be aware of the existence and application of any child protection law and any obligations held under it.

* Require that all FDC coordinators complete child protection training prior to commencing employment and undertake annual refresher training.

* Include working with vulnerable people/children check details on volunteer staff records.

* Clarify that service providers’ child safe environment policies and procedures must also cover the creation of a child safe culture.

* Require services to develop and implement a policy and procedure around the safe use of online environments.

* Require service complaint handling policies to include policies and procedures for managing complaints about children exhibiting harmful sexual behaviours.

QUESTION 32: In your opinion, what would be the benefits or negative impacts of the proposed options? You may like to focus on your preferred option, or any of the other options listed above.

The negative impacts of the proposed options are that they arguably introduce additional requirements of service providers without removing the primary barrier, which is the processes to report to multiple authorities can be unnecessarily time consuming, and at times conflicting if not frustrating when one authority accepts the report while another advises it does not need to receive the report. The current processes must be harmonised into a simplified, user-friendly and singular portal with a human concierge approach of triage and investigation if required. (Note: Any online portal must also allow Approved Providers to extract their information for their own record keeping purposes offline for at least 25 years or as legally required.)

Moreover, it would be useful to all Approved Providers and services to learn from real but de-identified examples and their subsequent investigations and outcomes. Such would not only help Approved Providers and services to understand the processes as a whole, but also their practical significance in relation to the protection of children.

QUESTION 33: Are there any other comments you would like to make about this issue?

Similar to statistics on serious incidences as recorded in the Commonwealth Government's annual Report on Government Services (see Table 3A.33 from <https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/child-care-education-and-training/early-childhood-education-and-care>), it will be useful to publish the annual number of reports of (a) possible incidences of sexual abuse of children, and (b) confirmed incidences of sexual abuse of children.

Equally for reference and comparison, it would will also be useful to publish the same statistics from schools of their reports of (a) possible incidences of sexual abuse of school-aged children, and (b) confirmed incidences of sexual abuse of school-aged children. Such are also not included in the Commonwealth Government's annual Report on Government Services for schools (see <https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/child-care-education-and-training/school-education>).

Section 4.2: Updating record keeping requirements (LDC&OSHC-related)

QUESTION 34: Would you like to answer questions about this issue (4.2) ([page 64 of the CRIS](#))?

☒ Yes

QUESTION 35: In your opinion, what is the scale of this problem?

Not a problem



Minor problem



Moderate problem



Significant problem



Very significant problem



QUESTION 36: Based on the options presented in the CRIS, which do you consider to be the most suitable solution to the stated problem?

#1

A. No change.

#2

B. Improved guidance to assist providers on record keeping utilising existing best practice instructions developed by relevant Commonwealth, State and Territory Archive Authorities (for example, the National Archives of Australia General Records Authority 41) as per Recommendation 8.3, along with the five high-level record keeping principles recommended by the Royal Commission in Recommendation 8.4.

#4

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

#3

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

QUESTION 37: In your opinion, what would be the benefits or negative impacts of the proposed options? You may like to focus on your preferred option, or any of the other options listed above.

Although it is the Royal Commission into Institutional Responses to Child Sexual Abuse (<https://www.childabuseroyalcommission.gov.au/final-report>) that has recommended the retention of records for 45 years, the consideration and response to this **must** be at whole-of-governments level not just for the early childhood education and care services but for all entities (including all schools) who have responsibilities of care of children.

Such consideration and response must address the technological changes that would no doubt occur over any 45 year period, and the operational, practical and financial challenges and consequences of maintaining such records (even if they are all electronic) over such a significant period of time.

Only after when whole-of-governments propose plausible, cost-effective and feasible solutions (including state/territory governments bearing such costs and responsibilities), should then the early childhood education and care sector consider these solutions and not before.

QUESTION 38: Are there any other comments you would like to make about this issue?

Given the Royal Commission's recommendation of retention of records for 45 years, other government agencies (including schools, hospitals and police) and non-government agencies (including special needs homes, sporting groups, scouts/guides, church groups, youth groups) will also need to retain person-related records so that any future investigation of alleged child sexual abuse(s) can be comprehensive. Without such completeness, retaining records by some entities and not all for that length of time could produce false positives or situations of insufficient evidences. Such in turn can create the futility of retaining records for 45 years.

Section 6.1: Assessment and rating of OSHC services (OSHC-related)

QUESTION 43: Would you like to answer questions about this issue (6.1) ([page 82 of the CRIS](#))?

☒ Yes

QUESTION 44: In your opinion, what is the scale of this problem?

Not a problem



Minor problem



Moderate problem



Significant problem



Very significant problem



QUESTION 45: Based on the options presented in the CRIS, which do you consider to be the most suitable solution to the stated problem?

#3

A. No change.

#1

B. Modify assessment and rating methodology for services whose main purpose is providing education and care to over preschool age.

#2

C. Development of additional guidance to support the OSHC sector and regulatory authorities with assessment and rating.

QUESTION 46: In your opinion, what would be the benefits or negative impacts of the proposed options? You may like to focus on your preferred option, or any of the other options listed above.

Despite the Review of the NQF is currently occurring in the ten (10th) year since its introduction on 1 January 2012 via the National Law and National Regulations, it is appreciated that the NSW Department of Education is trying in earnest to assess OSHC-services with school aged children differently to those early childhood education and care services with children aged 0-6 years old.

QUESTION 47: Are there any other comments you would like to make about this issue?

We believe the assessment and ratings methodology for educational programs under the NQF are entirely reasonable for children aged 0-5 years old, but not appropriate for school-aged children in out-of-school-hours-care. We therefore request that there a parallel but distinctively different Guide to the NQF that is specifically for OSHC services and not for children aged 0-5 years old. Such a different Guide will assist Authorised Officers to see OSHC services in their proper perspective, context and mission.

There may also be an existing rigid interpretation of what programming is for OSHC. While there is a significant view that children attending OSHC services should be encouraged to participate in non-academic activities before and after school, especially to support them in their physical and well-being development, there remains confusion as to whether programming for educational outcomes is a mandatory obligation on all OSHC services. This confusion appears to continue in relation to the conduct of assessment and rating of OSHC services.

Section 7.1: Restrictions on short term relief for early childhood educators (LDC-related)

QUESTION 48: Would you like to answer questions about this issue (7.1) ([page 88 of the CRIS](#))?

☒ Yes

QUESTION 49: In your opinion, what is the scale of this problem?

Not a problem

☐

Minor problem

☐

Moderate problem

☐

Significant problem

☐

Very significant problem

☒

QUESTION 50: Based on the options presented in the CRIS, which do you consider to be the most suitable solution to the stated problem?

#3

A. No change.

#2

B. Extend the requirements for “short-term” absences to 80 days.

#1

C. Broaden the qualification requirements for short-term staff replacements. For example, by allowing primary teachers and/or certificate III qualified educators to replace diploma educators on a short-term basis.

QUESTION 51: Based on the options presented in the CRIS, please indicate your level of support for the following NSW specific solution (Option D) to the stated problem:

	Strongly Oppose	Oppose	Neither Support or Oppose	Support	Strongly Support
Allow Suitably Qualified Persons (SQPs) to replace a third or fourth ECT to address workforce shortages (NSW only).	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

QUESTION 52: In your opinion, what would be the benefits or negative impacts of the proposed options? You may like to focus on your preferred option, or any of the other options listed above.

As the NSW Productivity Commissioner's Green Paper has identified, NSW's higher requirements are out-of-step with all other jurisdictions across Australia and bears negative consequences (<https://nsw.childcarealliance.org.au/news/939-aca-nsw-asks-nsw-government-to-financially-offset-more-costly-nsw-regulations-toward-achieving-parity-with-other-states-and-fee-affordability-for-parents>).

And in light of now well-recognised skill shortages across all qualification levels in the ECEC sector (see Page 24 of <https://childcarealliance.org.au/documents/reports-of-interest/161-aca-pre-budget-submission-dec-2020/file>), we support policy provisions that allow greater flexibility in the context of meeting the need for short term staff replacement in the early childhood sector.

That said, we understand that services in other states/territories (outside of NSW) have also found difficulty in recruiting their equivalents of Suitably Qualified Persons when their ECT requirements were increased from 1 to up to 2 ECTs.

As a plausible alternative for NSW-based services who are legally obligated to have a third or fourth ECT, especially during the current severe labour shortages, we strongly urge the NSW Department of Education to accept Diploma qualified educators with at least 3 years full-time equivalent experience in long daycare to be accepted as replacements for the third or fourth ECTs.

QUESTION 53: Are there any other comments you would like to make about this issue?

The exponentially increasing number of waivers to Regulation 272 should also reinforce the need for NSW to instead repeal Regulation 272's requirement to have a third or fourth ECT, and be realigned with all other jurisdictions (ie follow Regulations 132, 133 and 134). The nett number of employees would not change due to Regulation 123 and the underlying labour costs would be reduced by up to 17.44% as outlined in Section 2.1 of the Australian Childcare Alliance NSW's latest report, *A State of Possibilities – Volume 1: Immediate Solutions*

([https://nsw.childcarealliance.org.au/images/2021/Documents/ACA_NSW - A State of Possibilities - Vol 1 - Immediate Solutions.pdf](https://nsw.childcarealliance.org.au/images/2021/Documents/ACA_NSW_-_A_State_of_Possibilities_-_Vol_1_-_Immediate_Solutions.pdf)).

While the NSW Department of Education continues to allow for exponentially increasing waivers of Regulation 272, it can be assumed that there does not exist negative impact on children if NSW were to be re-aligned with all other Australian states.

Section 7.2: Educators who are 'actively working towards' a qualification (LDC-related)

QUESTION 54: Would you like to answer questions about this issue (7.2) ([page 94 of the CRIS](#))?

☒ Yes

QUESTION 55: In your opinion, what is the scale of this problem?

Not a problem



Minor problem



Moderate problem



Significant problem



Very significant problem



QUESTION 56: Based on the options presented in the CRIS, which do you consider to be the most suitable solution to the stated problem?

#1

A. No change.

#5

B(i). Limit the “actively working towards” provision by:

* introducing a minimum proportion of educators with a completed qualification (as opposed to 50 percent of educators within ratios to be qualified or “actively working towards” a qualification).

#4

B(ii). Limit the “actively working towards” provision by:

* introducing a timeframe in which “actively working towards” a qualification must complete their qualification in order to be counted in ratios.

#3

B(iii). Limit the “actively working towards” provision by:

* Specifying a threshold staff must meet to make “satisfactory” progress through their course in order to be counted in ratios.

#2

C. Develop guidance for providers to ensure staff who are “actively working towards” qualifications are making satisfactory progress.

QUESTION 57: In your opinion, what would be the benefits or negative impacts of the proposed options? You may like to focus on your preferred option, or any of the other options listed above.

In addition to severe labour shortages of degree-qualified early childhood teachers, there are also critical labour shortages across all other qualifications in the ECEC sector (see page 24 of <https://childcarealliance.org.au/documents/reports-of-interest/161-aca-pre-budget-submission-dec-2020/file>). Hence,

there is a very real necessity to continue with the “actively working towards” a qualification provision until such time that supply of such diploma qualified educators become reliable.

That said, as Registered Training Organisations (RTOs) regularly update their training plans for students, we believe this practice is sufficient to ensure that students are making progress in their studies.

QUESTION 58: Are there any other comments you would like to make about this issue?

It is grossly unfair for the NQF Review’s government options to exclude the higher educator:children ratio requirements as imposed by NSW Regulation 271 (<https://www.legislation.nsw.gov.au/view/html/inforce/current/sl-2011-0653#sec.271>). In fact, NSW is now the only jurisdiction with this higher requirement. And as recommended by the Australian Childcare Alliance NSW in their latest report (see page 6 of [https://nsw.childcarealliance.org.au/images/2021/Documents/ACA NSW - A State of Possibilities - Vol 1 - Immediate Solutions.pdf](https://nsw.childcarealliance.org.au/images/2021/Documents/ACA_NSW_-_A_State_of_Possibilities_-_Vol_1_-_Immediate_Solutions.pdf)), the NSW Government must repeal Regulation 271.

Section 8.1: The quality ratings system (LDC&OSHC-related)

QUESTION 60: Would you like to answer questions about this issue (8.1)? ([page 103 of the CRIS](#))

☒ Yes

QUESTION 61: In your opinion, what is the scale of this problem?

Not a problem



Minor problem



Moderate problem



Significant problem



Very significant problem



QUESTION 62: Based on the options presented in the CRIS, which do you consider to be the most suitable solution to the stated problem?

#3

A. No change.

#1

B. Modify the quality rating terminology.

#4

C. Introduce a visual representation for communicating and promoting the quality ratings.

#2

D. Provide further guidance and advice to the community about the purpose of quality ratings, and the differentiation between a quality rating and minimum standards required under the National Law.

QUESTION 63: In your opinion, what would be the benefits or negative impacts of the proposed options? You may like to focus on your preferred option, or any of the other options listed above.

We support the collective States and Federal Government objective to raise quality and drive continuous improvement and national consistency in children's education and care services and the role of the NQF and the Quality Ratings in achieving this goal.

However, we are always concerned that in the context of the Quality Ratings, the terminology "Working Towards National Quality Standards", which technically indicates that a service "provides a safe education and care program and has 1 or more areas identified for improvement", would be and in fact IS widely interpreted as a failure of the service, by the media as well as by families.

The constant media attention surrounding the Quality Ratings scores does not inspire confidence among families. This problematic issue was reflected recently by ACECQA's decision to talk to the media with comments from Gabrielle Sinclair, CEO of ACECQA, to assure the general public that the "working towards" rating still provides a safe choice (ie a safe environment and program) for families (see <https://www.heraldsun.com.au/news/victoria/more-than-500-victorian-childcare-centres-failing-national-standards-of-care/news-story/359f4e50bec840a66ca6683da353e97e>).

We therefore recommend revising the term "Working Towards National Quality Standards" to more accurately reflect the technical meaning behind each category, with a view to instilling greater confidence among families and the media around the ongoing operations of Australia's individual early learning services as well as the early learning sector at large.

We also acknowledge the NSW Department of Education who has implemented a version of the assessment and ratings process that is a significant improvement since late 2019.

And while there continues to be the need for improvement with the Regulatory Authorities, especially with the human challenges of Authorised Officers achieving consistencies and avoidance of subjectivity, the underlying problem with the NQF's quality ratings system is that it fails to recognise educational and social well-being outcomes of children.

In fact, the quality rating system does not record children's outcomes as described by the Federal Government's Starting Blocks (<https://www.startingblocks.gov.au/your-childs-development/>), for example, and can allow a service to be rated as Working Toward in perpetuity.

As such, parents may instead be far better served by having a quality ratings system where services are either rated as Meeting or Not Meeting.

We are also concerned about the proposal to increase to 5 years for any service to hold an Excellent rating and the corresponding increases in fees. That said, it is somewhat ironic that out of 16,414 services nationally with 33 being rated Excellent as of April 2021, there are 1,589 services who are rated Exceeding in all 7 Quality Areas that are not rated Excellent.

With such a significant disparity, ACECQA's fees and process to consider applications for Excellent rating appear to have become instead a barrier. It is our proposal that should any service achieve Exceeding in all 7 Quality Areas, then such a service should be automatically rated Excellent without the need for fees or application to ACECQA, and that such a rating be held by the service for a period of no less than 3 years.

Congruously, those rating Working Toward must be reassessed in 12 months' time. Those rated Meeting must be reassessed in at least 1 years' time. And those rated Exceeding should be reassessed in at least 2 years' time. These progressions should assist in creating incentives for services to strive for a higher quality rating.

QUESTION 64: Are there any other comments you would like to make about this issue?

Given the NQF's quality ratings system is highly reliant on the human abilities of Authorised Officers, this introduces a level of variability both within jurisdiction as well as across jurisdictions.

And since ACECQA tests every Authorised Officers and generates their respective Drift Reports (ie how they differ from other Authorised Officers within the jurisdictions as well as nationally), then summary resumes of Authorised Officers and their corresponding Drift Reports ought to be presented to every service they engage with so that both parties can be properly calibrated to each other in terms of their communications and understanding of each other, especially those Authorised Officers who have no qualifications or experiences in early childhood education and care.

Section 9.1: Changes in fees for regulatory authorities (LDC&OSHC-related)

QUESTION 65: Would you like to answer questions about this issue (9.1)? ([page 108 of the CRIS](#))

☒ Yes

QUESTION 66: In your opinion, what is the scale of this problem?

Not a problem



Minor problem



Moderate problem



Significant problem



Very significant problem



QUESTION 67: If all proposed fee increases for Regulatory Authority functions were to be adopted, what would be the level of impact on you?

Substantial negative impact



Negative impact



Minimal or no impact



Positive impact



Substantial positive impact



QUESTION 68: In your opinion, what would be the benefits or negative impacts of the proposed options? You may like to focus on your preferred option, or any of the other options listed above.

While we understand there is a cost to government to administer the National Law and National Regulations, we believe any increases to the operation of early learning services should be approached with caution, in the context of recognising the critical need for affordable early learning services for all Australians.

Any increased costs of administering an early learning service will generally be passed on to the families, making them a consumer cost which drives the cost of early learning services up.

All proposed options appear to have fees increased and not in any small amounts. And given the fee affordability for families issue that continues to pervade public discussion, especially while COVID-19 bears such a broad and negative impact, fee increases should not be considered at this point in time or in the foreseeable future.

That said, a much fairer approach to the Regulatory Authority's requirement to impose fees for at least some cost recovery would be to impose fees on services that are proportional to the average number of children attended for that service. In other words, introduce a formula that is used to calculate based on the attendance of children per year.

Moreover, such fees can increase based on a simple factor calculation subject only to the number of confirmed breaches bear financial penalties per year. Hence, services will also have the self-interest to ensure they are operating properly.

QUESTION 69: Are there any other comments you would like to make about this issue?

Given the existence of the NSW Productivity Commission's Green Paper (<https://www.productivity.nsw.gov.au/green-paper>) which has exposed the existence of higher regulatory requirements in NSW for no better outcomes, it is morally inappropriate for governments to seek higher fees before they remove excessive/unnecessary regulatory burden.

Section 9.2: Changes in application fees for ACECQA functions (LDC&OSHC-related)

QUESTION 70: Would you like to answer questions about this issue (9.2)? ([page 114 of the CRIS](#))

☒ Yes

QUESTION 71: In your opinion, what is the scale of this problem?

Not a problem



Minor problem



Moderate problem



Significant problem



Very significant problem



QUESTION 72: If all proposed fee increases for ACECQA functions were to be adopted, what would be the level of impact on you?

Substantial negative impact



Negative impact



Minimal or no impact



Positive impact



Substantial positive impact



QUESTION 73: In your opinion, what would be the benefits or negative impacts of the proposed options? You may like to focus on your preferred option, or any of the other options listed above.

While we understand there is a cost to government to administer the NQF, we believe any increases to the operation of early learning services should be approached with caution, in the context of recognising the critical need for affordable early learning services for all Australians.

Any increased costs of administering an early learning service will generally be passed on to the families, making them a consumer cost which drives the cost of early learning services up.

All proposed options appear to have fees increased and not in any small amounts. And given the fee affordability for families issue that continues to pervade public discussion, especially while COVID-19 bears such a broad and negative impact, fee increases should not be considered at this point in time or in the foreseeable future.

That said, a much fairer approach to ACECQA's requirement to impose fees for at least some cost recovery would be to impose fees on services that are proportional to the average number of children attended for that service. In other words, introduce a formula that is used to calculate based on the attendance of children per year.

Moreover, such fees can increase based on a simple factor calculation subject only to the number of confirmed breaches that bear financial penalties per year. Hence, services will also have a further self-interest to ensure they are operating properly.

QUESTION 74: Are there any other comments you would like to make about this issue?

It is interesting that the Review of the NQF has not facilitated discussion about structural changes to the responsibilities and powers of ACECQA versus those of the local Regulatory Authorities. In fact, the Review of the NQF should have provided an opportunity of greater responsibilities and powers of ACECQA, which would then provide appropriate justification for discussing ACECQA's revenue sources.

Section 10.1: Assessing suitability of individuals to work directly or indirectly with children (LDC&OSHC-related)

QUESTION 75: Would you like to answer questions about this issue (10.1)? ([page 118 of the CRIS](#))

☒ Yes

QUESTION 76: In your opinion, what is the scale of this problem?

Not a problem

☐

Minor problem

☐

Moderate problem

☒

Significant problem

☐

Very significant problem

☐

QUESTION 77: Based on the options presented in the CRIS, which do you consider to be the most suitable solution to the stated problem?

- | | |
|----|---|
| #5 | A. No change. |
| #3 | B. Align the matters that must be taken into account in a fitness and proprietary assessment under the National Law to be the same as the FAL, including defining who is a PMC. |
| #4 | C. Specify in the National Law that the regulatory authority can administer questions to an applicant in any format, in addition to the already existing powers to ask the person to provide further information and undertake inquiries in relation to the person. |
| #2 | D. Make provision in the National Law to require applicants to undertake an assessment of their knowledge of the NQF prior to making an application, if requested by the regulatory authority. |
| #1 | E. Include an explicit obligation for FDC educators to notify the approved provider of circumstances arising that pose a risk to the health, safety or wellbeing of children of the service and that APs use this information in a risk assessment. |

QUESTION 78: In your opinion, what would be the benefits or negative impacts of the proposed options? You may like to focus on your preferred option, or any of the other options listed above.

The intent of the National Law was such that an Approved Provider recognised by one Regulatory Authority would automatically be recognised by all others. This is not necessarily the case in the tenth (10th) year of the NQF. Instead, the level of scrutiny is inconsistent across the jurisdictions.

It would therefore be of great benefit to not only have consistent levels and processes of scrutiny across all jurisdictions, but also have a once-approved-all-jurisdictions-recognised approach. This includes approval not just as an Approved Provider (whether you are a Person with Management or Control or a Contact (<https://nsw.childcarealliance.org.au/news/946-clarification-contacts-vs-persons-with-management-or-control>)), but also in relation to the Family Assistance Law in order to receive the Commonwealth's Child Care Subsidies.

In other words, a harmonised and consolidated applications process should be nationally consistent objective.

QUESTION 79: Are there any other comments you would like to make about this issue?

The Commonwealth Government in late 2020 had begun to streamline approvals process(es) (<https://nsw.childcarealliance.org.au/news/1005-consultation-over-governments-proposal-to-streamline-approvals-process-es>). And such improvements need to continue across tiers of governments.

Section 10.2: Cancellation of provider approval under the Family Assistance Law (LDC&OSHC-related)

QUESTION 80: Would you like to answer questions about this issue (10.2)? ([page 126 of the CRIS](#))

☒ Yes

QUESTION 81: In your opinion, what is the scale of this problem?

Not a problem



Minor problem



Moderate problem



Significant problem



Very significant problem



QUESTION 82: Based on the options presented in the CRIS, which do you consider to be the most suitable solution to the stated problem?

#3

A. No change.

#1

B. Legislative change that provides for FAL cancellation as explicit grounds for cancellation of provider approval under the NQF in circumstances where the FAL cancellation relates to fitness and proprietary and/or a breach of the NQF.

#2

C. Legislative change that provides for refusal of provider approval under the FAL as explicit grounds for cancellation of provider approval under the NQF, where the FAL refusal relates to fitness and proprietary and/or a breach of the NQF.

QUESTION 83: In your opinion, what would be the benefits or negative impacts of the proposed options? You may like to focus on your preferred option, or any of the other options listed above.

Assuming undeniable evidence of loss of fitness and/or confirmation of breaches that are both serious in nature and attract financial penalties, the availability of a fair and trusted appeals process (including access to the Civil Administrative Tribunals), then cancellation of further receipt of Commonwealth Child Care Subsidies and/or provider approval would be warranted.

That said, there remains significant concerns about the reference of breaches (that are not yet confirmed and remains as allegations) as a consideration for the revocation of receiving Commonwealth Child Care Subsidies and/or provider approval given that most breaches currently recorded are not serious nor do they attract financial penalties.

And the fact that there are exponential year-on-year increases in the number of breaches recorded over the last few years in the Commonwealth Productivity Commissioner's Report on Government Services (see Table 3A.33 of <https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/child-care-education-and-training/early-childhood-education-and-care>), there is a lack of faith over using the gross number of breaches as an appropriate corresponding consideration.

QUESTION 84: Are there any other comments you would like to make about this issue?.

Given the exponential year-on-year increases in the number of breaches recorded over the last few years in the Commonwealth Productivity Commissioner's Report on Government Services (see Table 3A.33 of <https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/child-care-education-and-training/early-childhood-education-and-care>), the Education Council is yet to approve an upgraded portal for Approved Providers to access their own breaches/non-compliances whose status are alleged, withdrawn, confirmed, or resolved (see <https://nsw.childcarealliance.org.au/news/906-demanding-transparent-and-fair-process-for-every-service-provider-dealing-with-alleged-breaches-non-compliances>). Hence, until only confirmed breaches can be consistently recorded against services, then breaches cannot be used as a measure for cancelling or suspending Commonwealth Child Care Subsidies and/or service approval.

And while it was proposed in the Consultation Regulation Impact Statement (page 140) but not in the survey of government options, we would be strongly opposed to the cancellation of the "provider approval upon notification of a death of the approved provider if they were a sole trader (or partnership of two persons where one is deceased)". While we understand the underlying concern, further alternate options should be canvassed. One possible alternative solution could be that sole traders be given a 12-month period in the near future where they can nominate another person to be the Approved Provider in the event of their death. Such a person would of course need to be pre-approved by the relevant Regulatory Authorities. And upon death, that the transition to the alternate person be facilitated within 30-60 days upon death of the sole trader. As for in situations of partnerships, one possible alternative solution could be that the surviving partner be allowed to continue as the Approved Provider but be given up to 90 days to nominate another partner or have the legal structure changed.

Section 10.3: Arrangements to transfer a service to another approved provider (LDC&OSHC-related)

QUESTION 85: Would you like to answer questions about this issue (10.3)? ([page 129 of the CRIS](#))

☒ Yes

QUESTION 86: In your opinion, what is the scale of this problem?

Not a problem

☐

Minor problem

☐

Moderate problem

☒

Significant problem

☐

Very significant problem

☐

QUESTION 87: Based on the options presented in the CRIS, which do you consider to be the most suitable solution to the stated problem?

#3

A. No change.

#2

B. Develop guidance for services and providers about the service transfer process and how to best advise families about the transfer (for example, in relation to storage of children's records)

#4

C. Minor legislative changes to address challenges associated with timeframes including:

1. increasing the notification period to 60 days
2. allowing the regulatory authority to refuse or delay a transfer if a significant issue arises after the intervention period has ended (intervention period is at least 28 days prior to intended transfer date) but before the transfer date; and/or
3. making it mandatory for transferring and receiving providers to notify the regulatory authority of any change or delay to the intended date of transfer.
4. increase the notice period to families from 2 to 7 days.

#1

D. Amend the National Regulations to "deem" the transfer to have occurred based on the advice of the receiving provider only, with receipt of the receiving provider's right to occupy.

QUESTION 88: In your opinion, what would be the benefits or negative impacts of the proposed options? You may like to focus on your preferred option, or any of the other options listed above.

In the absence of a harmonised process for approval of service as well as to receive the Commonwealth's Child Care Subsidy, then the "easier" way to streamline would be Option D.

This is on the presumption that all government authorities have no issue with the receiving Approved Provider.

QUESTION 89: Are there any other comments you would like to make about this issue?

We understand that refining and improving the process of transferring a service to a new provider and informing the families is important. There are a number of requirements in this context which are unique to the various circumstances for which a transfer can take place, and it is critical that the regulation supports the variety of scenarios.

Section 10.4: Maintaining current information about service delivery (LDC&OSHC-related)

QUESTION 90: Would you like to answer questions about this issue (10.4)? ([page 132 of the CRIS](#))

☒ Yes

QUESTION 91: In your opinion, what is the scale of this problem?

Not a problem



Minor problem



Moderate problem



Significant problem



Very significant problem



QUESTION 92: Based on the options presented in the CRIS, which do you consider to be the most suitable solution to the stated problem?

#2

A. No change.

#3

B. Amend the National Regulations to require notification of changes to the ages of children being cared for and nature of care provided to the regulatory authority, with an associated offence for failing to notify.

#4

C. Amend the National Regulations to introduce an approval requirement, which obliges providers to apply to the regulatory authority to change the ages of children cared for and nature of care delivered by a service.

#1

D. Regulatory authorities to provide guidance and resources in relation to age-appropriate programs and facility requirements.

QUESTION 93: In your opinion, what would be the benefits or negative impacts of the proposed options? You may like to focus on your preferred option, or any of the other options listed above.

Given that the NQF already obligates services and Approved Providers to continually assess risk particularly through the requirements of Regulation 168 (<https://www.legislation.nsw.gov.au/view/html/inforce/current/sl-2011-0653#sec.168>), it is unlikely to be of any special value to impose another layer of requirements in terms of reporting changes to the ages and environments.

It would instead be argued that additional layers of regulatory burden would further confuses the effective management of risk by services and Approved Providers, and can therefore introduce new problems of miscommunications and operational costs without demonstrable benefit.

QUESTION 94: Are there any other comments you would like to make about this issue?

Not at this time.