



NATIONAL QUALITY FRAMEWORK REVIEW

Issues Paper

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GLOSSARY OF ACRONYMS

Acronym	Meaning
ACECQA	Australian Children’s Education and Care Quality Authority (also known as the National Authority)
AITSL	Australian Institute for Teaching and School Leadership
BBF	Budget Based Funded (former Australian Government funding program). BBFs are non-mainstream services which are typically provided in remote and very remote Indigenous communities where service provision would otherwise be unviable.
BCA	Building Code of Australia
CCCF	Community Child Care Fund
CCS	Child Care Subsidy (Australian Government funding program)
COAG	Council of Australian Governments
CRIS	Consultation Regulation Impact Statement
DRIS	Decision Regulation Impact Statement
ECEC	Early Childhood Education and Care
ECT	Early Childhood Teacher
FAL	Family Assistance Law (Australian Government legislation for child care subsidies)
FDC	Family Day Care
National Law	Education and Care Services National Law
National Regulations	Education and Care Services National Regulations 2011
NP NQA	National Partnership on the National Quality Agenda for Early Childhood Education and Care (former agreement detailing funding and governance for the administration of the NQF)
NQF	National Quality Framework
NQS	National Quality Standard
OSHC	Outside School Hours Care
PIDTDC	Person in day to day charge
PIN	Penalty Infringement Notice
PMC	Person with Management or Control

EXECUTIVE SUMMARY

The National Quality Agenda for Early Childhood Education and Care was developed by all Australian governments with the express goal of creating a national quality strategy for the early years, to ensure the wellbeing of children throughout their lives, and to deliver the vision of the Early Childhood Development Strategy (ECDS) endorsed by the Council of Australian Governments (COAG) in July 2009, that ‘by 2020 all children have the best start in life to create a better future for themselves, and for the nation’.¹

The NQA established the National Quality Framework (NQF), which has implemented a regulatory approach underpinned by the importance of learning and development opportunities for all Australian children. Regular reviews of the NQF are advantageous to ensure the regulatory system, agreed and supported by all Australian governments, remains current and fit for purpose.

The scope of the 2019 NQF Review is framed by the Terms of Reference, agreed by Education Council at Appendix A, and importantly does not duplicate the work of the previous review of the former National Partnership on the National Quality Agenda (NP NQA) in 2014. Building on the 2014 NQA Review, the 2019 NQF Review seeks to ensure that the NQF continues to meet the objectives stated in section 3 of the National Law.

The objectives of the National Law provide a framework for seeking feedback from the education and care sector. Specifically, feedback is sought on whether the NQF is operating in a way that ensures Australian children attending education and care services are safe and supported in their educational and development outcomes.

This Issues Paper starts with an overview of the objectives of the National Law. This is followed by a description of the consultation process to be undertaken during the review, the operating context of the NQF and a background to the National Partnership underpinning the NQF. Following this opening section, issues for public discussion have been divided into four key categories: approvals, operation, public awareness of quality, and compliance and enforcement.

This Issues Paper will be used as the basis for Australia wide consultations on the NQF and to seek feedback on any further important or critical issues. Questions presented within this paper have been compiled in Appendix B for ease of reference.

Following public consultations on the Issues Paper, governments will develop options for improving the NQF in a Consultation Regulatory Impact Statement (CRIS). The CRIS will be used for a second round of public consultation, specifically on the proposed options for change.

Both consultation processes will inform the development of a Decision Regulatory Impact Statement (DRIS) which will outline the preferred approaches to the issues raised in the NQF Review process. The DRIS will be used by governments to inform future policy or legislative changes.

PURPOSE OF REVIEW

The 2019 Review of the National Quality Framework (the NQF Review) seeks to ensure that the NQF continues to meet the objectives stated in section 3 of the National Law:

- a) to ensure the safety, health and wellbeing of children attending education and care services;
- b) to improve the educational and developmental outcomes for children attending education and care services;
- c) to promote continuous improvement in the provision of quality education and care services;
- d) to establish a system of national integration and shared responsibility between participating jurisdictions and the Commonwealth in the administration of the national education and care services quality framework;
- e) to improve public knowledge, and access to information, about the quality of education and care services;
- f) to reduce the regulatory and administrative burden for education and care services by enabling information to be shared between participating jurisdictions and the Commonwealth.

Each of the issues in this paper relates to one or more of the above objectives. The objectives of the NQF particularly relevant for each issue are indicated by the use of the following key:



Safety, health and wellbeing



National integration/ shared responsibility



Educational and developmental outcomes



Public knowledge



Continuous improvement



Information sharing



The 2019 NQF Review will build on the last review and also consider possible improvements to the system that support effective, sustainable and best practice regulation.

The Terms of Reference for this review, which outline the scope of the review as agreed by Education Council in December 2018, are at Appendix A.

Education Council is a subgroup of the Council of Australian Governments (COAG) made up of Education Ministers from around Australia. The NQF Review will be led by the Early Childhood Policy Group, of the Education Council, with representatives from each jurisdiction.

Consultation Process

This Issues Paper is the first step of the 2019 NQF Review. The next steps are:

- Phase 1 public consultation on this Issues Paper.
- Development of policy options in response to issues identified in consultation and issues being considered by governments. This includes development of a Consultation Regulation Impact Statement (CRIS) by the end of 2019. A CRIS is a statement developed by government which articulates the likely impacts of any regulatory changes that are under consideration on business, community organisations or individuals. The CRIS will be used for further consultation with those groups.
- Phase 2 public consultation on the CRIS in the first half of 2020.
- Development of a Decision Regulatory Impact Statement (DRIS) by the end of 2020. A DRIS is a statement developed by governments which has been informed by consultation, and articulates the likely impacts of regulatory changes on business, community organisations or individuals. The DRIS contains proposed options and the rationale behind the recommended options. The DRIS provides input to the final decisions and recommendations made by Education Council.





This Issues Paper:

- Sets out background information about the NQF.
- Asks how education and care services should continue to be regulated in the context of the objectives of the NQF and the scope of this review.
- Considers how continuous quality improvement of education and care services is promoted to ensure children have access to safe, high quality education and care.
- Seeks feedback on any further important or critical issues impacting on the effectiveness and sustainability of the NQF.

This Issues Paper does not seek consultation on all issues relating to the National Law that are intended to be considered for the 2019 NQF Review. Alongside the issues contained in this paper, a number of other technical and governance issues are being considered by governments, and any potential options for changes to the NQF as a result of this work will be included in the CRIS, for Phase 2 of public consultation.

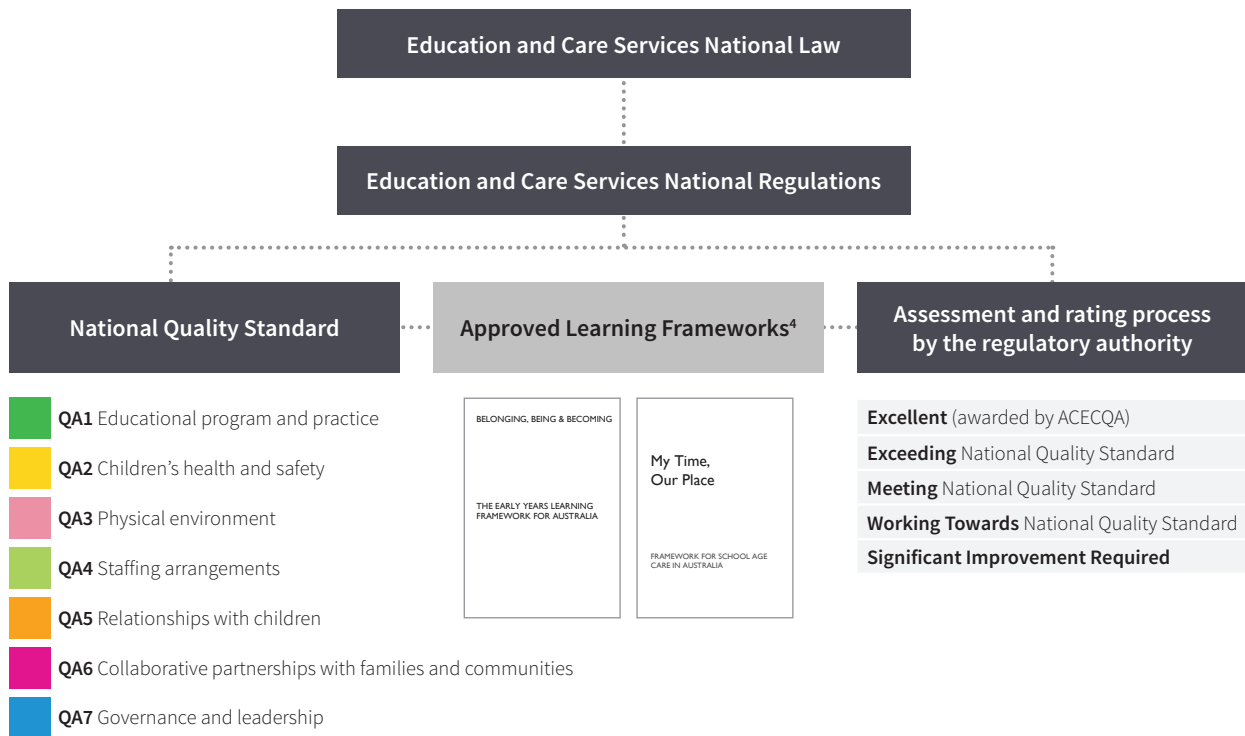
In reviewing the NQF, governments are committed to the principles of best practice regulation.² In particular, that regulation pursues nationally consistent outcomes, while recognising Regulatory Authorities need to be able to respond flexibly to address emerging issues from the changing education and care sector.

THE NATIONAL QUALITY FRAMEWORK

The NQF provides a national approach to regulation, including quality ratings for early childhood education and care and outside school hours care services across Australia. The NQF consists of the National Law and National Regulations, National Quality Standard, assessment and quality rating process and approved learning frameworks. As a whole, these elements form the regulatory system for education and care services.

More information on the NQF can be found in the Guide to the NQF published by ACECQA.³

The National Quality Framework



Background to the NQF Review

The NP NQA, signed on 9 December 2009, established a national regulatory system for education and care services. The implementation of the NQF has achieved national consistency in the regulation of education and care services across Australia. The NQF replaced separate state based licensing and accreditation schemes with a consistent national framework. This has meant increased transparency for parental choice with over 94% of the over 15,000 services nationally with a quality rating. It has also resulted in increased transparency for services around the regulatory requirements of providing education and care services in Australia.



The initial NP NQA provided for a review of the Agreement by the Council of Australian Governments (COAG) in 2014,⁵ primarily in regard to whether the National Quality Agenda (NQA) was achieving its agreed objectives and outcomes. Thereafter, a review of the Agreement was to be undertaken every 5 years, with the next review to be undertaken in 2019.

A review of the NP NQA commenced in 2014, and significant engagement with the education and care sector occurred at that time. The 2014 Review focused on ensuring the NQF was improving the quality of education and care in Australia in the most efficient and effective way. It looked at balancing achievement of quality outcomes for children with reducing red tape and unnecessary administrative burden for approved providers and educators.

The 2019 Review is limited to the NQF, including the National Law and National Regulations, and the assessment and quality rating process. It has been four years since the last review, with the implementation of final regulatory changes agreed through the 2014 Review in February 2018 (October 2018 in Western Australia).

As this has already resulted in change for the education and care sector, it is not the intention of the 2019 Review to duplicate work completed by the previous review. The approved learning frameworks and the Quality Areas, Standards and Elements of the National Quality Standard (NQS) are outside of the scope of this review, as outlined by the Terms of Reference at Appendix A. Additionally, some issues that were not resolved by the 2014 Review have been carried over to this review for further consideration.

There are other recently completed or ongoing reviews which relate to the NQF Review. These include a review of ACECQA's functions and delivery against its functions, the Royal Commission into Institutional Responses to Child Sexual Abuse, the National Review of Teacher Registration and the Review of the Australian Qualifications Framework. This Issues Paper refers to those reviews where their findings are relevant to the NQF. Any changes required to respond to the recommendations of those reviews may be presented in the CRIS for consultation in 2020.

ISSUES FOR CONSULTATION

This Issues Paper examines how outcomes for children are impacted by regulation of providers and their services under the NQF. It is divided into four sections, with particular questions for consideration sitting under each section.

Issues incorporated in this paper have arisen from stakeholder feedback, raised by Regulatory Authorities. Some issues have been carried forward from the 2014 NQA Review to be reconsidered by this review process.

Approvals

This section considers the scope of services regulated by the NQF and process and requirements for providers and services seeking to enter the education and care sector.

Operation

This section considers how the operation of providers and services should be regulated and the ongoing approach to regulation under the NQF.

Public Awareness of Service Quality

This section considers how to improve public awareness and understanding of quality ratings.

Compliance and Enforcement

This section focuses on how compliance with the NQF can best be achieved, including responses to non-compliance that poses a risk to the safety, health and wellbeing of children.

In addition, the Issues Paper invites comment on other significant issues for approved providers, educators, families and the community that aren't explicitly covered by this paper.

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

1 APPROVALS



1.1 **Scope of services regulated under the NQF**



1.1.1 **Issue**

Long day care (LDC), family day care (FDC), preschool⁶ and outside school hours care (OSHC) services are regulated under the NQF. Other service types are excluded including former Budget Based Funded (BBF) services, mobile preschools, In Home Care (IHC) and occasional care.



Significant changes have occurred in the education and care sector since the introduction of the NQF. This includes services, regulated by the NQF, adjusting to the needs of their communities through different service offerings, such as transporting children and extended hours of care. Additionally, the BBF program concluded and the IHC program changed in 2018, as part of the Australian Government's new child care package, to refocus on the provision of education and care by qualified educators.

The definition of education and care in the National Law requires consideration in light of these developments to ensure it remains fit for purpose.

1.1.2 **Discussion**

Services regulated under the NQF

The National Law and National Regulations exclude certain services from the NQF.⁷

The 2014 Review examined expanding the scope of the NQF and recommended there be no change to out of scope services because further work on the costs and benefits was needed before a decision could be made to bring any out of scope services under the NQF. This meant exempt services, including former BBF services, occasional care services, playschools and mobile services, remained out of scope of the NQF.

Since 2014, the Australian Government has worked with former BBFs to introduce quality standards through their Commonwealth grant agreements. Many of these standards align with the NQF including recording progress against the NQS in an annual Quality Improvement Plan.

From 2 July 2018, with transition to the new child care package, these quality standards are now included either under subordinate legislation, or in Community Child Care Fund (CCCF) grant agreements, or alternatively to funding programs such as the Indigenous Advancement Strategy. Some former BBF services may also be regulated through state-based legislation. The change from being fully grant funded to administering child based fee subsidies and grant CCCF grant funding represents the most significant change in the history of these services with many requiring ongoing support. Further change to include former BBF services in the NQF could be considered in light of these changes.

The 2014 Review found that the quality improvement expected to flow from out of scope service participation in the NQF would result in greater benefits for vulnerable and disadvantaged children, based on research showing that vulnerable children experience greater benefit from participation in quality early childhood education and care. However, the benefits would only be realised if the costs of NQF compliance requirements and regulation did not result in higher fees thus creating a barrier to access.

Expansion of service provision

Education and care providers continue to innovate and respond to changing family needs by adapting their service models. Sometimes this occurs in ways that were not fully considered at the start of the NQF, for example by providing regular transport and overnight care services.⁸ The scope of the National Law requires consideration in light of these developments including how best to assess quality and regulate service delivery in different contexts.

Further, any particular considerations arising from the age of the child being educated and cared for should be considered.

While governments and ACECQA have published guidance on transporting children, service providers have queried its clarity and application for example, supervision obligations and ratios for transport that is not for an excursion. Consideration of the definitions of education and care within the National Law, as well as associated regulatory requirements such as ‘working directly with children’ could assist in providing increased clarity around the delivery of these types of services within the education and care context.

1.13 Questions

2. Should service types that are currently out of scope of the National Law but which provide a substantially similar education and care service to those that are in scope be brought under the NQF? What should be considered if any of these services was to be included in future?
3. Considering the range of contexts for the provision of overnight care, how should the supervision and ratio requirements in the NQF apply?
4. Considering the range of contexts where regular transport is provided by a service, how should the supervision and ratio requirements in the NQF apply?



1.2 Application efficiency and effectiveness



1.2.1 Issue

Application processes under the National Law and National Regulations involve significant regulatory and administrative effort for Regulatory Authorities and applicants. While these processes are necessary for promoting the safety, health and wellbeing of children, reviewing the processes may allow for efficiencies to be identified which do not compromise outcomes for children.

1.2.2 Discussion

Duplication under National Law and Family Assistance Law

During the application process, service providers are required to interact with both State and Territory Regulatory Authorities and the Australian Government under the NQF and the Family Assistance Law (FAL). This is because for most service types, both levels of government are involved in determinations of whether an applicant is a fit and proper person, however, the capabilities required to establish fitness and propriety vary between the two systems.

There may be opportunity to develop approvals processes that streamline the administrative burden on providers and reduce any potential overlap of administrative processes undertaken by State and Territory Regulatory Authorities and the Australian Government. The ultimate aim of application efficiency is to reduce the regulatory burden on all parties, while ensuring only fit and proper persons are involved in the delivery of education and care services. Finding administrative efficiencies between the two systems may improve the consistency of application processes, and facilitate robust reviews of applications and increased information sharing.

Processing applications and incomplete information

Currently the National Law refers to the Regulatory Authority making a grant or refusal of an application for approval within the specified timeframe after the Regulatory Authority receives the application.⁹ The National Law or National Regulations do not specifically outline when an application for service/provider approval begins or ends, especially in the case of incomplete applications.

Clarification of what an incomplete application is, and whether a Regulatory Authority may reject an incomplete application, may be beneficial. This is especially relevant for new services that involve new buildings. Some providers submit an early application, while waiting for an occupancy certificate and wanting to promote their service.¹⁰ However only complete applications, which include all the required documentation, can be considered by Regulatory Authorities.

Assessing fitness and propriety

Regulatory Authorities must be satisfied that an applicant for provider approval is a fit and proper person in order for an approval to be granted.¹¹ A more robust and consistent approach across jurisdictions to assessing fitness and propriety may improve outcomes for children.

The National Law allows the Regulatory Authority to seek further information for the purpose of carrying out an assessment as to whether a person is fit and proper,¹² however makes no reference to the method of testing/assessing how a person is a fit and proper person, for example running a written assessment test. Jurisdictions generally apply a risk-based approach to reviewing and assessing provider applications.

1.2.3 Questions

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



1.3 **Maintaining current information about service delivery**

1.3.1 **Issue**

Regulatory Authorities require up to date information to support service providers and respond to any potential risks within services. This is reflected in the obligations on providers to notify the Regulatory Authority, or apply for approval for certain changes to service delivery, such as changes to the location or hours of the service.¹³ Providers are able to indicate the nature of care type through the NQA ITS portal, however currently there is no specific requirement in the National Law or National Regulations for providers to notify the Regulatory Authority of changes to service type and nature of care. This also impacts on the accuracy of data in the Report on Government Services and ACECQA Snapshots, which report on the ‘nature of care’.

1.3.2 **Discussion**

Applications for centre-based service approval require a description of the nature of the service.¹⁴ However no requirement to notify the Regulatory Authority exists for updating service type/nature of care under the NQF once a service is approved, for example expanding the age of children cared for by incorporating an OSHC within a LDC. The provider or service may apply for amendment to service approval,¹⁵ however the regulations are not specific about the details required to be provided in an application for amendment to service approval.¹⁶

A change to the age of children educated and cared for in a service may present a potential risk to children, such as a failure to comply with age specific regulations like toilet facilities.

1.3.3 **Questions**

9. Should services be required to apply to or notify the Regulatory Authority when there is a change to the age of children for which they provide education and care services?
10. Are there other changes to the nature of the service being provided which should require notification to the Regulatory Authority? If so, what?



1.4 Physical environment



1.4.1 Issue

This section issue invites consideration of how best to ensure services have safe, quality physical environments that promote educational and developmental outcomes for children.

There are two interacting considerations for this issue, firstly whether current terminology and definitions in the National Law and National Regulations are sufficient to ensure quality physical environments in education and care services at all times the service is operating. Secondly, how interactions between planning approvals and approvals under the National Law could be used to ensure the safety of education and care service premises.

1.4.2 Discussion

Physical space requirements

Governments are concerned some service providers seek waivers to avoid properly addressing physical environment requirements of the NQF. Waivers were intended to be used in exceptional circumstances, for example in the case of older buildings that are unable to meet the requirements of the NQF but serve an important role for the community in supplying education and care services. A question exists as to whether, and when, waivers should be granted for physical space requirements in a way that ensures the safety, health and wellbeing of children. In particular, this relates to whether new buildings should be able to have the standards set out in the NQF waived in some instances.

In determining an application for a service approval, the Regulatory Authority must have regard to:

- the suitability of the service premises including the site and location of the premises; and
- the adequacy of policies and procedures of the service.¹⁷

A service approval is granted subject to the condition that the service is operated in a way that ensures the safety, health and wellbeing of the children at the service, and meets the educational and developmental needs of the children.¹⁸ The Regulatory Authority may impose other conditions on a service approval.¹⁹

Indoor and outdoor space requirements of service premises are specified in the National Regulations.²⁰ Further space requirements exist for centre-based services in regard to administrative space, shaded area and nappy change facilities.²¹ Access to outside environments, adequate ventilation and natural light are important for developmental outcomes for children in education and care.

Clarification of definitions such as natural light and ventilation may be needed.²² This is especially relevant given the increase in services operating in multi-storey facilities.

An additional question is whether space requirements should be different depending on the age of children in attendance. Currently, the space available for school children during school hours may be less than space required for OSHC, however greater space is required per child for OSHC services. This can present issues for the supply of OSHC services operating in high demand areas where the number of places available is restricted by space requirements.

Planning Approvals

Currently, navigating planning approval and service approval can be a highly complex process, subject to requirements by different authorities at different times. Issues may arise with new buildings that are approved by planning authorities that are subsequently found to be non-compliant with the NQF. The interactions between planning approval and approval under the National Law differ across jurisdictions. Establishing links between these processes could support providers through the approval process.

For example, NSW currently operates a ‘concurrency system’ where multiple Government agencies can give an initial indication of approval prior to work commencing and the application being finalised. The NSW planning system was changed in 2017 to require development applications that do not meet the NQF indoor and outdoor space requirements to be referred to the Regulatory Authority for concurrence. The planning consent authorities are not able to issue development approvals without the concurrence of the Regulatory Authority. Conditions may be imposed on concurrence.²³ This system is shortly to be reviewed in NSW. The ultimate aim of the concurrence system is to align new building designs to the physical environment requirements of the NQF.

1.4.3 Questions

11. Under what circumstances, if any, is it acceptable for new premises to be eligible for waivers to the physical environment requirements of the NQF?
12. How can governments streamline service approvals to ensure new builds meet the requirements of the NQF early in the build process?
13. Are the NQF’s physical space requirements for school age children suitable for their learning and development, and proportionate to risks for children of this age?

2 OPERATION



2.1 Sustainability of the NQF

2.1.1 Issue

In order to administer the NQF, Regulatory Authorities and the National Authority (ACECQA) require sufficient funding. Since the cessation of the NP NQA (2015-2016 to 2017-2018), funding for ACECQA is provided directly by the Australian Government, supplemented by revenue from fees. While the Australian Government contributed to jurisdictions' regulatory costs during the establishment and first six years of the NQF, from 1 July 2018 the Australian Government no longer provides funding to Regulatory Authorities for the administration of the NQF.

Jurisdictions fund their Regulatory Authorities, with costs supplemented by revenue from fees. Fees are an important component of supporting an effective regulatory system. The National Law and National Regulations prescribe fees for Regulatory Authority consideration of certain applications from providers.

2.1.2 Discussion

Governments are currently reviewing the governance arrangements for the administration of the NQF. In this context, governments will also consider fees for providers and their services in the context of the Australian Government Charging Framework, as well as relevant policies from jurisdictions, to ensure that they remain fit for purpose and appropriate to the particular circumstances of providers and their services within each jurisdiction.

Fees are prescribed in Schedule 2 of the National Regulations and published on the ACECQA website.²⁴ The Australian Government Charging Framework²⁵ sets out six principles underpinning charging fees for government activities:

- Transparency
- Efficiency
- Performance
- Equity
- Simplicity
- Policy consistency

Revenue from fees accounts for less than 10% of the costs of Regulatory Authorities administering the NQF. Determining fees could include consideration of a reasonable proportion of cost recovery.

2.13 Questions

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



2.2 Regulatory approach



2.2.1 Issue

The national approach to regulation of the NQF was previously influenced by performance indicators specified in the NP NQA that required particular results from governments.²⁶ Following the cessation of the NP NQA, governments are in a position to consider changes to the regulatory approach taken by jurisdictions. An opportunity exists to ensure the regulatory approach better aligns with best practice regulation principles contained within the Guide to the NQF.²⁷ Consideration of priorities for regulatory action and use of a flexible regulatory approach for high quality providers is needed.



The regulatory approach also needs to take into account the change in the sector since the NQF was established in 2012. The services available to families and the types of organisations providing services have continued to evolve over time. Under the NQF, individual services are assessed against the NQS. However, the regulatory framework does not currently allow for performance to be assessed for quality at the provider level, where a provider operates multiple services.

2.2.2 Discussion

Regulatory Authorities have access to a range of regulatory tools including assessment and rating, regular compliance and monitoring. The growing number of education and care services, and the range of service types and offerings, requires consideration of what an appropriate approach to regulation, including assessment and other regulatory activities, would look like.

For example, there is room to explore whether flexible regulatory approaches, such as increased autonomy for consistently high performing services, could be used as a means of encouraging quality.

While the NQF was originally designed to hold providers accountable through assessment and rating of service quality, reporting by Regulatory Authorities and public attention has largely been on the performance of individual services, rather than the providers of those services.

Accountability for the provider is generally on the basis of breaches of the National Law and National Regulations rather than the overall quality of services. For example, there is no mechanism for assessing the overall quality of a provider who operates several compliant, but underperforming services (for example, rated Working Towards NQS). Likewise, there are no mechanisms for recognising a provider who operates several high performing services with minimal compliance concerns. Regulatory Authorities can gain some understanding of quality at the provider level, however the focus of NQF regulation to date has generally been at the service level.

2.2.3 Questions

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



2.3 Qualification requirements



2.3.1 Issue

NQF qualification requirements aim to promote educational and other benefits in education and care services. There is a question whether current educator qualification requirements promote positive educational and developmental outcomes for children attending education and care services.

Consideration is needed whether qualification requirements ensure comparable standards of education and care is provided between service types, ages of children and across jurisdictions. This is critical to the quality of education and care services and comparable compliance costs for service providers, regardless of location or service type, and for families utilising multiple types of care.

A person who is 'actively working towards' a qualification can be recognised as having that qualification for the purposes of meeting staffing requirements. Governments have identified instances where a person who is 'actively working towards' a qualification does so for a prolonged period of time, with no substantial progress being made to achieving the relevant qualification. In particular, this may have potential impacts on the educational outcomes for children attending FDC services due to the relative isolation of FDC educators compared to educators in a centre-based service.²⁸

2.3.2 Discussion

Part 4.4 of the National Regulations prescribes staffing requirements in education and care services. The Guide to the NQF contains guidance for service providers on applying these requirements.²⁹

The NQF currently recognises educators that are ‘actively working towards’ a qualification of a certificate III level or above as having that qualification for the purposes of meeting staffing requirements. The National Regulations outline that an educator is ‘actively working towards’ a qualification if the educator:

- Is enrolled in a course and provides evidence to the approved provider that they have commenced the course, and are making progress toward completion. Educators must demonstrate they are meeting the requirements for maintaining enrolment.
- In the case of diploma level courses, the educator must show they hold an approved certificate III qualification, or have completed an equivalent number of units of study.³⁰

The provision is intended to encourage a highly qualified workforce, and support existing educators to upskill, recognising that the supply of qualified educators may not meet demand in all areas. Previous feedback from the education and care sector indicates that the provision is supporting services to meet their qualification requirements and is of particular value in areas of high demand.

However, the 2014 Review identified evidence of relatively low course completion rates for ECEC qualifications, raising concerns that the ‘actively working towards’ provisions were not leading to development of a more highly skilled workforce. This raises a question around the appropriateness of accepting an ‘actively working towards’ qualification as a sufficient standard on an ongoing basis, beyond a transitional period.

Substantial work has occurred to improve qualification requirements in the education and care sector, including through ACECQA submissions to the Review of the National Vocational Education and Training Regulatory Act 2011 and consultation on unduly short courses and training product reform.³¹ Further, stakeholders have raised concerns about the practicalities and barriers to meeting these requirements, particularly in rural and remote localities. The solutions to these issues are outside the scope of the NQF as they involve, for example the way qualifications are delivered and structured. These issues are being considered through work facilitated by ACECQA.

It is timely to review the ‘actively working towards’ provision definition to ensure it promotes a staffing standard that is a consistent and transparent input to educational and developmental outcomes for children.

2.3.3 Questions

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



2.4 Protecting children and staff in an emergency

2.4.1 Issue

Emergency and evacuation procedures are a common issue that are “not met” during assessment and rating visits. Clearer guidance or definitions may be required regarding emergency and evacuation requirements.

2.4.2 Discussion

The National Regulations require services to have procedures setting out what must be done in the event of an emergency, and an emergency and evacuation plan. The approved provider must ensure that a risk assessment is conducted for the service. Likewise, approved providers must ensure that the emergency and evacuation procedures are rehearsed every 3 months by the staff members, volunteers and children present on the day of the rehearsal.

Quality Area 2 of the NQS requires development of plans to effectively manage incidents and emergencies in consultation with relevant authorities. These plans must be practised and implemented.

A number of issues have been raised by the education and care sector regarding the exact requirements for emergency and evacuation procedures, for example special requirements in bushfire prone areas, multi-story buildings and the interaction with Australian Standards such as Australian Standard AS1851-2012 *Routine Service of Fire Protection Systems and Equipment* which sets out the requirements including frequency of servicing for fire safety equipment.

At the National Building Ministers Forum on 6 October 2017, Planning Ministers directed the Australian Building Code Board (ABCB) to examine fire safety measures of child care facilities and ensure this work is prioritised. A detailed investigation into the fire safety of child care facilities in high-rise buildings is part of the ABCB Work program for 2018-19.

2.4.3 Questions

18. Are the current requirements for service emergency and evacuation procedures effective and proportionate to the risks? If not, what could strengthen them?



2.5 **Education and care in OSHC**

2.5.1 **Issue**



OSHC services are regulated under the NQF as centre-based services. The majority of requirements for centre-based services apply to OSHC, with some exemptions and modifications to reflect the education and care of children above preschool age. The different operating context of OSHC compared to other centre-based services warrants consideration of the specific regulatory requirements for OSHC services.



2.5.2 **Discussion**

Specific regulatory requirements for OSHC services are generally at jurisdictional level, including programming expectations, exemptions from some physical environment requirements and educator qualification requirements.

OSHC services are unique in offering learning through play and leisure under the My Time, Our Place approved learning framework for school aged children and often utilising school premises where they have limited control of the physical environment. Currently within the National Law and National Regulations, the requirements for OSHC services that differ from the requirements for early childhood services refer to the age of the children attending the services. This can cause some confusion for services in how to comply with the regulations for services offering before and after school care to children where there could be preschool aged children, as well as children over preschool age, in attendance.

The different operating context of OSHC services may require consideration of whether they should operate as a separate service type under the National Law, similar to the separation of FDC from centre-based care. This could acknowledge that some differences in the operation of these services are not purely based around the age of children.

2.5.3 **Questions**

19. How can the requirements of the NQF better reflect the unique operating context of OSHC?



2.6 Education and care in FDC



2.6.1 Issue

FDC services have distinct regulatory requirements in recognition of the different context under which they operate. While requirements for FDC services have been strengthened through the previous NQF review, further review of these requirements is warranted to continue to ensure the safety, health and wellbeing of children attending FDC services with single educators providing care from a residence or approved venue.



2.6.2 Discussion

FDC is a type of service where an individual educator provides education and care to a small group of children in a residence or approved venue. The inclusion of FDC services under the NQF aims to provide families with an alternative quality option and confidence about the benefits of this type of care.

Emergency Placements in Family Day Care

The National Regulations permit a FDC educator to care for a maximum of 7 children at any one time, of which no more than 4 can be preschool age and under.³² An approved provider can give permission for an educator to operate over ratio in 'exceptional circumstances' which are prescribed in the National Regulations.³³ It is up to the approved provider to ascertain if exceptional circumstances, as defined in the regulations, exist and approve each additional child. Currently, there is no defined time frame for how long an FDC educator is able to operate over ratio in exceptional circumstances, and the provider is not required to notify the Regulatory Authority when this exception is being used.

This could present a risk to children where a service inappropriately operates above prescribed ratios, warranting consideration of:

- The amount of time a FDC educator can provide care for additional children;
- Whether the exceptional circumstances prescribed by the National Regulations are appropriate;
- Whether the supervision and support for educators providing care for additional children is adequate.

FDC Co-ordinators

Requirements for FDC providers were updated following the 2014 Review in October 2017. These changes included:

- A requirement that the Regulatory Authority place a limit on the number of educators in a FDC service;

- minimum requirements for FDC providers to take reasonable steps to ensure FDC educators have adequate knowledge and understanding of providing education and care to children, and to consider the educator’s criminal and NQF compliance history;
- requirements for addressing serious incidents and complaints;
- a requirement to keep an accurate register of educators, co-ordinators and assistants; and
- co-ordinator to educator ratios.³⁴

Clarification of the FDC co-ordinator role may assist in outlining responsibilities in light of the new changes, such as ratios. For example, whether there is a need for FDC co-ordinators to be in attendance at the service (e.g. physically present in undertaking their duties).

One role of FDC co-ordinators is to ensure FDC services are able to identify and respond to child protection issues. Unlike persons in day-to-day charge and Nominated Supervisors,³⁵ FDC co-ordinators are not specifically required to successfully complete an approved child protection training course. FDC co-ordinators must hold a diploma level education and care qualification³⁶ that may include child protection training as a required module.

2.6.3 Questions

20. Should the education and care of additional children during emergency placements in FDC be notified to the Regulatory Authority?
21. What are appropriate timeframes for the length of emergency placements?
22. Is further guidance on the role of FDC co-ordinators needed? If so, what form should this take? E.g. in regulation, online guidance materials etc.
23. Should the child protection training obligations of Nominated Supervisors similarly apply to FDC co-ordinators?

3 PUBLIC AWARENESS OF SERVICE QUALITY



3.1 Value of quality rating for families



3.1.1 Issue

Research with families³⁷ has established there is limited community understanding of the NQS, and some confusion about terminology used in quality ratings. This means the NQS currently does not adequately provide the transparency and accountability intended by the NQF.

3.1.2 Discussion

A key output of the 2009 NP NQA which established the NQF was:

A national quality rating system based on the NQS that provides greater transparency and accountability and combines the agreed quality areas with a rating scale that describes the quality of education and care services that all parents, carers and the community should expect to find in the diverse education and care settings available across Australia.³⁸

The components of the NQS (i.e. the quality areas, standards and elements) are outside of the scope of this review. However, reviewing the rating terminology may help to identify approaches to rating terminology that could improve public knowledge about quality in education and care services.

The Regulation Impact Statement developed during the establishment of the NQF notes the importance of public awareness of quality within education and care services in facilitating parent choice as well as incentivising continuous improvement in the provision of quality education and care services.³⁹ Essentially, it notes that parent awareness and responsiveness to quality is essential to increasing the incentive to provide higher quality services.

Consultation on the rating system undertaken during the 2014 Review found that the Working Towards rating was seen as holding negative connotations, and that further work was required to clearly communicate to parents and the education and care sector precisely what ratings mean.⁴⁰

While significant communication with parents and the community on the rating system has occurred since that time, research conducted by ACECQA in 2018, indicates that many parents still have a limited understanding of the quality rating system, and that the presentation of and language used in the rating scale suggested to parents that services with a ‘Working towards NQS’ rating had failed to meet minimum standards.⁴¹ This suggests a prevailing misconception about the operation of the quality assessment and rating system and compliance enforcement action taken by regulators under the NQF where minimum standards are not met.

The 2014 Review considered the option of abolishing the overall service rating in favour of only providing ratings for each of the 7 quality areas. Despite relatively strong support for abolishing the overall rating, this option was not accepted as part of the Review, on the basis that a single overall rating makes it easier for families to discern the difference in quality between services.⁴²

Considering that previous reviews and current research have both indicated the ratings labels are not fully understood, it is possible that communication of the ratings is not sufficient to address this issue. The rating terminology should be considered in this context to determine how a services quality rating can best be conveyed to families.

3.13 Questions

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

4 COMPLIANCE AND ENFORCEMENT



4.1 Appropriateness of sanctions



4.1.1 Issue

The profile of the education and care sector has changed considerably and it is therefore appropriate to consider the effectiveness of current offences and associated penalties in ensuring compliance with the National Law and National Regulations.

Reviewing the appropriateness of sanctions under the NQF seeks to ensure that Regulatory Authorities have the necessary regulatory tools to respond to harm or potential harm to children.

This includes consideration of offences in the National Law and National Regulations to determine:

- Whether the offences defined in the National Law and National Regulations address behaviours that are counter to the objectives of the NQF, and any behaviours that aren't currently captured;
- Whether the sanctions for non-compliance are appropriate and proportionate to the non-compliant behaviour;
- Whether the financial penalties currently set out in the National Law are effective to encourage compliance, and the utility of penalty infringement notices (PINs) for compliance.

The 2014 Review did not specifically examine appropriateness of sanctions under the NQF. Considering the changes to the profile of the education and care sector it is appropriate to consider the effectiveness of current offences and associated penalties in ensuring compliance with the National Law and National Regulations.

4.1.2 Discussion

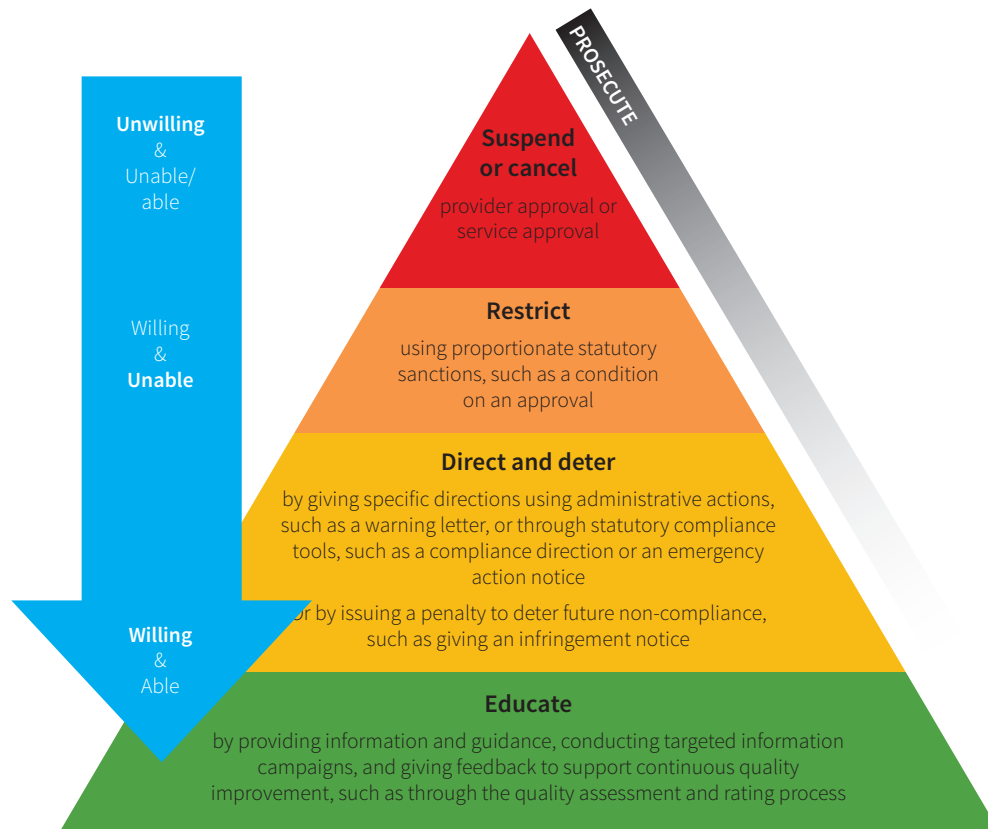


Figure: Ayres and Braithwaite enforcement pyramid.⁴³

Enforcing compliance under the NQF is based on a responsive regulatory model. This seeks to ensure a risk based, proportionate response to non-compliance. This approach is articulated in the diagram below (taken from the Guide to the NQF).

There are multiple considerations for government and stakeholders in reviewing appropriateness of sanctions. Firstly, whether existing offences are appropriate and proportionate deterrents to non-compliant behaviour. An example is within section 295 of the National Law which prohibits a person from knowingly giving false or misleading information to a Regulatory Authority or an authorised officer. The current provision only covers circumstances where the person knows the information or document is false or misleading. This means in circumstances where the person ought to have known it was false or misleading there is no associated offence.

Another consideration is whether liability for an offence is targeted at the correct person. Extending liability to individual educators was consulted on during the 2014 Review in relation to section 165 (adequate supervision) and section 167 (protection from harm or hazard). A decision not to change the law was made. There was a mixed response to the proposal, with evidence that the potential negative impacts outweighed the benefits.⁴⁴

Individual educators are currently only liable for a limited number of offences, notably using inappropriate discipline.⁴⁵ In line with the Terms of Reference of this review, consideration of extending liability to educators will not be considered again as part of this issue. However, extension of liability to persons with management and control of approved providers was referred from the 2014 Review for consideration in this review.⁴⁶

Regulators require the ability to use appropriate sanctions as a tool to change behaviour, or reduce risk of further harm to children where there has been non-compliance with the National Law or National Regulations.

The National Law includes the use of PINs instead of prosecuting a person for an offence. PINs allow Regulatory Authorities to issue an immediate penalty, of 10% of the maximum penalty amount in the National Law and National Regulations, for a breach of an infringement offence. The payment of an infringement penalty expiates the offence and cannot be considered by the Regulatory Authority in assessing whether a person is fit and proper or in the assessment and rating process. PINs are intended to be used as a specific deterrent where the offending behaviour is relatively minor and does not warrant prosecution.

4.13 Questions

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



4.2 Protected disclosures



4.2.1 Issue

The National Law ensures protection from reprisal where a person has made a protected disclosure. This aims to ensure that non-compliance, and in particular risks to the safety, health and wellbeing of children, is brought to the attention of Regulatory Authorities. However this protection, if interpreted strictly, only protects employees of services who assist the Regulatory Authority and not other individuals such as contractors, parents or FDC educators.

The underlying issue is to ensure that non-compliance, and in particular risks to the safety, health and wellbeing of children, is brought to the attention of Regulatory Authorities.

4.2.2 Discussion

Consideration of the definition of ‘serious detrimental action’ in section 296 was referred to this review by Education Council, in its final recommendations on the 2014 Review, noting that:

The current definition of ‘serious detrimental action’ as drafted, if interpreted strictly, would limit the protection from reprisal against this action to only employees who assist the regulatory authority. This potentially limits the protection of other individuals such as contractors, parents or FDC educators from reprisal. Therefore it is proposed that the definition be extended to cover this class of other individuals.⁴⁷

Protected disclosures in section 296 include the disclosure of information or provision of documents to the Regulatory Authority:

- a) pursuant to a request under the National Law or
- b) where the person making the disclosure has a reasonable belief that—
 - (iii) an offence against this Law has been or is being committed; or
 - (iv) the safety, health or wellbeing of a child or children being educated and cared for by an education and care service is at risk;

The National Law makes it an offence for a person to take serious detrimental action against a person in reprisal for a protected disclosure. In addition, it allows a person who has been subject to serious detrimental action, or who believes serious detrimental action may be taken against them, to seek damages or apply for an injunction or order in relation to the action through the appropriate court.

While the law is framed to allow any person to make a protected disclosure, the definition of ‘serious detrimental action’ may inadvertently limit the protection to employees.

4.2.3 Questions

27. Should persons besides employees be protected from serious detrimental action when making a protected disclosure? If so, who?
28. What could ‘serious detrimental action’ look like for those people?



4.3 Prohibition notices



4.3.1 Issue

Governments have identified a number of instances where persons who do not meet the threshold of posing an unacceptable risk of harm to children, but are otherwise inappropriate to be involved in the provision of an approved education and care service, are engaged in the education and care sector. Where this would have negative impacts on the safety, health and wellbeing of children attending education and care services, consideration may be given to expanding prohibition notices to these cases.

4.3.2 Discussion

The Regulatory Authority may issue a prohibition notice to any person involved in the provision of an approved education and care service, if it considers that there may be an unacceptable risk of harm to children if the person were allowed to remain on the premises or provide education and care to the children.⁴⁸

The Regulatory Authority may also issue a prohibition notice prohibiting a person from being a nominated supervisor if they are not a fit and proper person.⁴⁹ The assessment of whether someone is fit and proper could include consideration of fraudulent behaviour by the person.

4.3.3 Questions

29. What other factors should be considered when the Regulatory Authority is determining whether a person is unsuitable to be involved in the provision of education and care?
30. Are there roles besides the nominated supervisor where a prohibition notice based on not being fit and proper should apply?

APPENDIX A — TERMS OF REFERENCE

Introduction

The 2019 National Quality Framework Review (2019 NQF Review) is commissioned by Education Council under its functions set out in section 220 of the *Education and Care Services National Law Act 2010* (Vic) (National Law).

The National Quality Framework (NQF) was introduced in 2012 and first reviewed in 2014. This review is intended to build on the 2014 Review of the National Quality Agenda, which led to the successful implementation of significant improvements to the NQF that were well received by the early childhood education and care sector. Regular review is required to ensure the NQF is current, fit for purpose and implemented through best practice regulation.

The commissioning of the 2019 NQF Review reflects the intention of the original National Partnership on the National Quality Agenda for Early Childhood Education and Care (NP NQA) for a first review in 2014 with subsequent reviews every five years. It also reflects the education and care sector expectation for a second review in 2019. The 2019 NQF Review will be led by the Early Childhood Policy Group through a working group comprising all jurisdictions and chaired by New South Wales.

Objectives

The 2019 NQF Review seeks to ensure that the NQF continues to meet the objectives stated in section 3 of the National Law.

The 2019 NQF Review will also consider the ongoing effectiveness and sustainability of the NQF in light of the continuing evolution of the early childhood education and care sector, and whether the regulatory framework enables contemporary best practice regulation.

Principles

The 2019 NQF Review will be guided by the principles contained within section 3 of the National Law and will be undertaken in line with the Council of Australian Governments requirements for best practice regulation.

Scope

The 2019 NQF Review will assess whether the objectives of the NQF are being met.

The 2019 NQF Review will consider possible improvements to the system, including:

- The most appropriate governance arrangements for the National Quality Framework;
- Whether fees should be more closely linked to the cost of regulatory services, in line with best practice guidelines for cost recovery;

- Any changes required from the recommendations and referred matters from the Improving Quality in Family Day Care program of work commissioned by Education Council that require legislative and policy change;
- Any changes required from the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), as they relate to the NQF and services regulated under the NQF;
- Issues emerging from the review of the Australian Children’s Education and Care Quality Authority (ACECQA), commissioned by Education Council, where they are more relevant to this review; and
- Any further important or critical issues which may emerge from consultation with the education and care sector, if agreed by Education Council.

As agreed by Education Council when it endorsed the final recommendations of the 2014 Review, the 2019 NQF Review will also consider residual issues deferred from the 2014 Review.

Additional issues that have emerged through national working groups and committees (ECPG, ECPG sub-groups and the Regulatory Practice Committee) may be referred to the 2019 NQF Review if agreed by all jurisdictions.

The following areas of the NQF are out-of-scope of this review:

- The Quality Areas, Standards and Elements of the National Quality Standard.
- Issues already resolved by the 2014 Review except where they have been expressly deferred to the 2019 NQF Review, have been raised in other ECPG programs of work (such as the Family Day Care projects) or raised by the education and care sector for further consideration.
- The Approved Learning Frameworks.

Key Deliverables

The 2019 NQF Review will include (as a minimum):

- Analysis of existing recommendations (Royal Commission and Family Day Care projects) and their implications for the NQF
- Development of an Issues Paper for consideration and endorsement by Education Council
- Consultation with jurisdictions and relevant regulatory bodies
- Consultation with the Early Childhood Education and Care sector, including peak bodies
- A consultation report outlining any further important or critical issues which may emerge from consultation with the education and care sector, to be endorsed by Education Council.



- A Draft Consultation Regulation Impact Statement (CRIS) for endorsement by Education Council
- A comprehensive overall communications plan, with detailed plans and messages at relevant stages.

Following the delivery of the draft Consultation RIS to Education Council, further deliverables by ECPG will include:

- Consultation on, and finalisation of, the Consultation Regulation Impact Statement (CRIS)
- A Decision Regulatory Impact Statement (DRIS)
- A final report with proposed policy recommendations.

Oversight

The 2019 NQF Review will be progressed by ECPG. ECPG will report to the Australian Education Senior Officials Committee (AESOC) and through AESOC to the Education Council.

When the review has identified potential areas and recommendations for change to the NQF, an interim report will be provided to Education Council for endorsement of the issues to progress to the Draft Consultation RIS.

Proposals for change to the NQF will undergo regulatory impact analysis in accordance with the Council of Australian Government (COAG) guidelines on best practice regulation.

ECPG will provide regular updates to Education Council throughout the review process. Once the 2019 NQF Review has been concluded, ECPG will provide a final report to Education Council on the findings and outcomes of the review.

It is noted that the Education Council's 2019 schedule may impact on the Review's timelines. To ensure that the Review is not unduly delayed, the Review may seek advice from AESOC on these key deliverables.

Output

The 2019 NQF Review report, including a Draft Consultation RIS, will be presented to Education Council for consideration within 12 months of commencement.

Any recommendations for legislative or regulatory change identified in the Review report will undergo a public Consultation Regulation Impact Statement process in 2020.

A final report with a Decision Regulatory Impact Statement and final proposed policy recommendations will be provided to Education Council by December 2020. Any subsequent legislative or regulatory amendments to the NQF will be developed through the Legislation Working Group for approval by Education Council.

APPENDIX B – QUESTIONS FOR CONSULTATION

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

Scope of services regulated under the NQF

2. Should service types that are currently out of scope of the National Law but which provide a substantially similar education and care service to those that are in scope be brought under the NQF? What should be considered if any of these services was to be included in future?
3. Considering the range of contexts for the provision of overnight care, how should the supervision and ratio requirements in the NQF apply?
4. Considering the range of contexts where regular transport is provided by a service, how should the supervision and ratio requirements in the NQF apply?

Application efficiency

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

Maintaining current information about service delivery

9. Should services be required to apply to or notify the Regulatory Authority when there is a change to the age of children for which they provide education and care services?
10. Are there other changes to the nature of the service being provided which should require notification to the Regulatory Authority? If so, what?

Physical Environment

11. Under what circumstances, if any, is it acceptable for new premises to be eligible for waivers to the physical environment requirements of the NQF?
12. How can governments streamline service approvals to ensure new builds meet the requirements of the NQF early in the build process?
13. Are the NQF's physical space requirements for school age children suitable for their learning and development, and proportionate to risks for children of this age?

Sustainability of the NQF

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

Regulatory approach

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

Qualification requirements

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

Protecting children and staff in an emergency

18. Are the current requirements for service emergency and evacuation procedures effective and proportionate to the risks? If not, what could strengthen them?

Education and Care in OSHC

19. How can the requirements of the NQF better reflect the unique operating context of OSHC?

Education and Care in FDC

20. Should the education and care of additional children during emergency placements in FDC be notified to the Regulatory Authority?
21. What are appropriate timeframes for the length of emergency placements?
22. Is further guidance on the role of FDC co-ordinators needed? If so, what form should this take? E.g. in regulation, online guidance materials etc.
23. Should the child protection training obligations of Nominated Supervisors similarly apply to FDC co-ordinators?

Value of quality ratings for families

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

Appropriateness of Sanctions

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

Protected Disclosures

27. Should persons besides employees be protected from serious detrimental action when making a protected disclosure? If so, who?
28. What could 'serious detrimental action' look like for those people?

Prohibition Notices

29. What other factors should be considered when the Regulatory Authority is determining whether a person is unsuitable to be involved in the provision of education and care?
30. Are there roles besides the nominated supervisor where a prohibition notice based on not being fit and proper should apply?

NOTES

- 1 Council of Australian Governments, *National Partnership on the National Quality Agenda for Early Childhood Education and Care 2015–16 to 2017–18*.
- 2 ACECQA, *Guide to the National Quality Framework* (February 2018) <<https://www.acecqa.gov.au/nqf/about/guide>> p 584-587.
- 3 ACECQA, *Guide to the National Quality Framework* (February 2018) <<https://www.acecqa.gov.au/nqf/about/guide>>.
- 4 Note there is also a jurisdiction-specific approved learning framework in Victoria.
- 5 The review was undertaken by the Early Childhood Policy Group of Education Council on behalf of COAG.
- 6 Note that in Western Australian and Tasmania preschools operate in the school system rather than under the NQF.
- 7 National Law s 5, National Regulations reg 5.
- 8 New requirements were introduced in October 2017 that require the approved provider to ensure that sleep and rest policies and procedures are in place at the service and applied at each centre, residence or venue. ACECQA, *Requirements for Family Day Care Providers* (18 September 2017) <<https://www.acecqa.gov.au/sites/default/files/2018-09/RequirementsFDCProviders.pdf>>.
- 9 National Law s 15: provider approval (within 60 days of receiving the application); s 48: service approval (within 90 days of receiving the application).
- 10 National Law s 104: A person must not advertise for an education and care service unless it is an approved education and care service, or has a current application for service approval.
- 11 National Law s 12.
- 12 National Law s 14.
- 13 National Regulations reg 175.
- 14 National Regulations reg 24(h).
- 15 National Law s 22, 54.
- 16 National Regulations reg 17, 34.
- 17 National Law s 47.
- 18 National Law s 51.
- 19 National Law s 51(5).
- 20 National Regulations reg 107-108: Centre-based services and FDCs.
- 21 National Regulations reg 111-115.
- 22 The Guide currently provides a short summary of ventilation and natural light requirements, see: ACECQA, *Guide to the National Quality Framework* (February 2018) <<https://www.acecqa.gov.au/nqf/about/guide>> p 396.
- 23 *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (NSW)*.
- 24 ACECQA, *Indexation of Fees* (2018) <<https://www.acecqa.gov.au/resources/applications/indexation-offees>>.
- 25 Australian Government, Department of Finance, *Australian Government Charging Framework – Resource Management Guide No. 302* (July 2015) <<https://www.finance.gov.au/sites/default/files/RMG302-Australian-Government-Charging-Framework.pdf>>.
- 26 Council of Australian Governments, *National Partnership on the National Quality Agenda for Early Childhood Education and Care 2015–16 to 2017–18*. The NP NQA required 15% of the number of services within a jurisdiction to be assessed and rated each year as at 1 July 2015. Each government could have its own specific benchmarks beyond this standard.
- 27 ACECQA, *Guide to the National Quality Framework* (February 2018) <<https://www.acecqa.gov.au/nqf/about/guide>> p584-586>.

- 28 FDC educators in South Australia are already required to have an approved certificate III level qualification under Regulation 325 prior to the provision of education and care.
- 29 ACECQA, *Guide to the National Quality Framework* (February 2018) <<https://www.acecqa.gov.au/nqf/about/guide>> p 404-428.
- 30 National Regulations reg 10.
- 31 ACECQA, *Research and Reports* <<https://www.acecqa.gov.au/resources/research#AS>>.
- 32 National Regulations reg 124.
- 33 National Regulations reg 124(5).
- 34 ACECQA, *Requirements for Family Day Care Providers* (18 September 2017) <<https://www.acecqa.gov.au/sites/default/files/2018-09/RequirementsFDCProviders.pdf>>.
- 35 National Law s 162A.
- 36 National Regulations reg 128.
- 37 ACECQA, *Annual Performance Report* (2018) <<https://www.acecqa.gov.au/resources/research/apr>> p 39.
- 38 Council of Australian Governments, *National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care 2009*, p 8.
- 39 Council of Australian Governments, *Regulatory Impact Statement for Early Childhood Education and Care Quality Reforms* (December 2009) <<https://www.acecqa.gov.au/resources/research>> p 55.
- 40 Education Council, *Decision Regulatory Impact Statement for changes to the National Quality Framework* (January 2017) <<https://www.acecqa.gov.au/resources/research>> p 37.
- 41 ACECQA, *Families Qualitative Research Project* (2018) <<https://www.acecqa.gov.au/resources/research>> p 85.
- 42 Education Council, *Decision Regulatory Impact Statement for changes to the National Quality Framework* (January 2017) <<https://www.acecqa.gov.au/resources/research>> p 37.
- 43 Ian Ayres and John Braithwaite enforcement pyramid as cited in ACECQA, *Guide to the National Quality Framework* (February 2018) <<https://www.acecqa.gov.au/nqf/about/guide>> p. 587.
- 44 Education Council, *Decision Regulatory Impact Statement for changes to the National Quality Framework* (January 2017) <<https://www.acecqa.gov.au/resources/research>> RIS Proposal 4.1, p 55-57.
- 45 For other offences applicable to all staff members, see pages 574-5 of the *Guide to the NQF*
- 46 Education Council, *Decision Regulatory Impact Statement for changes to the National Quality Framework* (January 2017) <<https://www.acecqa.gov.au/resources/research>> RIS Proposal 4.1, p 155.
- 47 Education Council, *Decision Regulatory Impact Statement for changes to the National Quality Framework* (January 2017) <<https://www.acecqa.gov.au/resources/research>>, p 155.
- 48 National Law s 182(1).
- 49 National Law s 182(3).