CHILD SAFETY REVIEW

Consultation Regulation Impact Statement

FAMILY DAY CARE AUSTRALIA SUBMISSION

JUNE 2025

Family DAY CARE AUSTRALIA

Family Day Care Snapshot

71,340
children attend family day care nationally[1]

51,150
Australian families choose FDC[2]

357
family day care (FDC) services[3]

Over **9,000**
family day care educators across Australia[4]

42.5%
of all family day care services nationally provide weekend care (either day) compared to 0% of centre-based day care services[5]

72%
of children who attend family day care services are located in areas ranked in the 5 deciles of least advantage[6]

23.5%
of educators providing family day care in areas that are ranked in the two highest deciles on the SEIFA index[7]

28.1%
of families whose children attend family day care are located in regional and remote areas[8]

28.3%
of family day care services operate in regional and remote areas of Australia[9]

1 Department of Education, September 2024. Quarterly Report published at www.education.gov.au/early-childhood/about/data-and-reports/quarterly-reports
2 Ibid
3 Ibid
4 FDCA internal member data.
5 Productivity Commission (2025): Report on Government Services (RoGS), Part B: Early childhood Education and Care.
6 Australian Competition and Consumer Commission (ACCC), December 2023: Childcare Inquiry, Final Report: p.185.
7 Ibid, p.98
8 Department of Education, Child Care in Australia report, September Quarter 2024.
9 Ibid

1. INTRODUCTION

Family Day Care Australia (FDCA) is the not-for-profit national peak body representing approximately 9,000 family day care (FDC) educators and 357 approved family day care approved services. Our mission is to represent, support and promote the family day care sector in delivering high quality early childhood education and care (ECEC) to more Australian children.

We welcome the opportunity to respond to the Child Safety Review Consultation Regulation Impact Statement (CRIS). This submission draws upon:

- 165 responses from FDC educators collected via FDCA's educator survey;
- 35 fully completed survey responses from approved services;
- qualitative feedback from educators and coordinators across jurisdictions; and
- FDCA's extensive policy experience and consultation with child safety experts.

While FDCA supports the intent to strengthen child safety, we must stress the need for proportionate, evidence-based, and context-appropriate regulation, particularly given the unique characteristics of home-based early childhood education and care. It is also imperative that reform avoids unnecessary duplication or unreasonable regulatory burden and promotes co-regulation and collaborative engagement between services and regulators.

Survey responses and consultation feedback consistently reflected:

- Broad commitment to child safety, particularly around improving training, WWCC processes, and information sharing.
- Concerns about operational feasibility, especially regarding proposals for regulatory control over prohibition of personal digital device use, expanded inspection powers, and whole-property assessments.
- Strong preference for professional standards, support measures, and enforceable policies over prescriptive, one-size-fits-all regulatory interventions.

The results showed a strong alignment between approved providers and frontline educators across all policy and regulatory option areas and in supporting meaningful child safety reforms that are achievable, proportionate, appropriately considered for the family day care context and effective, which do not negatively impact on operations, increase administrative burden affect viability or represent unreasonable regulatory overreach.

> *"I think it's really important to acknowledge how different family day care is from centre-based care, and it needs to be treated as such. We operate as sole traders from our own homes, often without direct support staff, and we're subject to incredibly stringent checks, visits, and regulatory demands. Many of the proposed changes feel unnecessary and disconnected from the realities of what we do every day. This is not just a workplace, it's our home… Please consider the real impacts these proposals would have on us as professionals and as people with families of our own." (Educator, TAS)*

2. CONTEXT

This submission should be accepted in the context of a number of overarching considerations relating to the family day care sector more broadly, which are summarised below.

Child Safety is Paramount and Service Type Context is Important for Improved Child Safety

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

Cumulative Impact of Reform

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

If many of the proposals are adopted without due consideration, further consultation and appropriate implementation timelines, the additional regulatory burden and costs imposed on the family day care sector will result in some family day care services becoming unviable which will have significant flow on effects to families accessing family day care services.

A Sector in Decline

As identified in the Productivity Commission ECEC Inquiry Final Report and the ACCC Childcare Inquiry final report, the family day care sector is experiencing a sustained period of decline. FDCA's internal member data and the Department of Education's quarterly child care usage reports show that since the commencement of the Child Care Package there has been a 26.9% decrease in the number of approved services and a 41.3% decrease in the number of educators.

While FDCA acknowledges the impact of fraudulent and unscrupulous operators between 2013 and 2018 (and beyond, to a lesser extent), and has been an advocate for proportionate reform, the long-term viability of legitimate family day care services is being jeopardised by the sustained decrease in the sector. While there are many likely reasons for this decrease, including the cumulative effect of an increased regulatory and compliance burden on sustainable growth and financial viability, if left unaddressed, it will almost certainly lead to a reduction in the availability of flexible and affordable ECEC for Australian families.

Despite a common misconception, this decline is no longer a function of governments justifiably cancelling the approvals of unscrupulous operators but is in fact the demise of many of our sector's oldest and most respected services. Equally, the decline is not a product of waning demand, in fact, demand for family day care services has never been higher. Data from a survey of FDCA approved service members indicates that over 3,000 new educators are needed immediately just to meet current confirmed child waiting lists in family day care.

Occupational Burden and Remuneration

In 2023, FDCA commissioned an independent research firm ("Survey Matters") to undertake research to explore the socio-demographic profiles of educators that have exited the sector over the past 3 years, investigate contributing factors to the decision to leave the sector (including identifying any specific trigger points), and identify the primary and secondary rationales for educators exiting the sector.

While the reasons for leaving the sector were often interrelated, the time-intensive impact of regulatory compliance requirements and associated onerous administrative burden, in combination with financial viability pressures, emerged as significant factors contributing to educators' decision to leave:

- Almost 3 in 4 former educators (73%) cited the impact of regulatory and administration burden as demanding, with 42% citing these requirements were extremely demanding.

- In addition, 44% of former educators said that National Quality Framework (NQF) paperwork requirements was the key contributing factor to their decision to leave family day care.
- Half (50%) of respondents reported that the income they earned did not accurately reflect the responsibilities they held and the work they did.

In simple terms, it appears that the primary factors driving educators to exit the sector are a combination of "occupational burden" factors and considerations around inadequate remuneration, the intersection of which results in a "tipping point", whereby once both factors reach a certain threshold (i.e. occupational burden has increased and remuneration decreased), educators are exiting family day care.

Taken together, these considerations underscore the importance of approaching regulatory reform with a deep understanding of the unique structure, pressures, and contributions of the family day care sector. Without targeted, proportionate, and contextually informed policy responses, there is a significant risk that well-intentioned reforms could exacerbate existing challenges, further reducing service availability, straining remaining providers and educators, and ultimately compromising the accessibility and safety of early education for families who rely on family day care. FDCA urges that all proposals within the CRIS be assessed not only on their theoretical merit, but on their practical impacts within this distinct and essential component of the ECEC landscape.

3. MANAGEMENT OF DIGITAL DEVICES

Options for consideration (3.1: Managing the use of digital devices):

Option number	Description
3.1: 1	Status quo (no change). The status quo includes recent guidance for the education and care sector and a regulatory amendment proceeding to implementation in response to the CSR. In particular, it includes: • National Model Code and Guidelines • Development of the NQF Online Safety Guide • Amendments to regulation 168 of the National Regulations.
3.1: 2	Amend the National Law and National Regulations to enact standalone provisions to mandate that: • Only service-issued digital devices can be used when taking images or videos of children while providing education and care. This amendment would be an offence provision with a penalty attached.
3.1: 3	Amend the National Law and National Regulations to enact standalone provisions for all education and care services (including FDC settings) to mandate that other than in the case of defined exempt circumstances: • personal devices that can take images or videos (such as tablets, phones, digital cameras, and smart watches) and personal storage and file transfer media (such as SD cards, USB drives, hard drives, and cloud storage) cannot be in the possession of any person while providing education and care and working directly with children. Including penalties for non-compliance (i.e. create offence provisions). This amendment would be an offence provision with a penalty attached.

FDCA Position

Option number	Description
3.1: 1	Status quo (no change). The status quo includes recent guidance for the education and care sector and a regulatory amendment proceeding to implementation in response to the CSR. In particular, it includes: • National Model Code and Guidelines • Development of the NQF Online Safety Guide • Amendments to regulation 168 of the National Regulations.

FDCA supports Option 1 (status quo with new policies and guidance) in principle, provided additional considerations specific to family day care are considered in consultation with the sector.

FDCA is strongly opposed to Options 2 and 3 (for reasons outlined in more detail below), which is reflected clearly in survey results, which indicate the following:

- 81.82% of approved service respondents don't support Option 2 (3.03% "Unsure")
- 87.88% of approved service respondents don't support Option 3 (3.03% "Unsure")
- 78.63% of educator respondents don't support Option 2 (6.84% "Unsure")
- 90.43% of educator respondents don't support Option 3 (3.48% "Unsure")

The upcoming regulatory changes (effective September 2025) and the NQF Online Safety Guide will, if carefully considered and implemented (in consultation with individual service types, provide a strong foundation for improved child safety in relation to the use of digital devices particularly in a family day care context, as identified in the CRIS:

> *"Amendments to regulation 168 of the National Regulations will require approved providers to have policies and procedures in place relating to the use of digital devices in their education and care services. This will enable approved providers to tailor their personal device management policy to fit their specific context – this may be particularly relevant for different service types located in different geographies." (p.33).*

This approach reflects best practice: policy-led, adaptable, and proportionate to risk.

Consideration of the Family Day Care Context

Options 2 and 3 are grounded in a regulatory logic more appropriate for centre-based settings, which typically involve shared staff responsibilities, fixed infrastructure, and centrally controlled environments. In contrast, family day care services operate from educators' private homes, where educators:

- work alone;
- are responsible for emergency responses;
- rely on personal devices for both professional and personal purposes;
- often operate in geographically dispersed or remote areas; and
- Serve diverse cultural communities and CALD families.

The core risks in family day care generally stem from systemic and regulatory failures – not digital device misuse. These include:

- inadequate WWCC alert systems;
- professional isolation;
- lack of tailored training and tools; and
- gaps in oversight and policy implementation.

Blanket device mandates in family day care do not address risks specific to the sector type but rather are founded on the risk profile of centre-based services. As such, they do not address the risk adequately and instead risk damaging sector trust, functionality, and retention.

Evidence from recent reviews and guidance (e.g. the National Child Safety Review, the National Model Code and CRIS findings) did not demonstrate a causal or evidentiary link between personal device access and abuse or misconduct in family day care contexts. It appears that a significant proportion or recently cited misconduct incidents in ECEC settings (not family day care specifically) were more fundamentally contingent upon systemic or supervisory failures including:

- regulatory notification breakdowns;
- provider governance failures;
- inadequate enforcement; and
- poor information-sharing mechanisms.

Policy and regulatory reform should be evidence-driven, proportional to risk and respectful of sector variation – Options 2 and 3 do not meet these standards, in a family day care context.

Options 2 and 3 misdiagnose the root causes of risk in family day care and propose interventions that are likely to reduce, rather than improve, child safety. Rather than eliminating risk, these measures would create new operational barriers, communication gaps, and safety blind spots.

FDCA supports a more balanced, enforceable and context-appropriate approach which may include (but are not necessarily limited to):

- mandatory digital device use policies tailored to each service (as per amended Reg. 168);
- professional learning for educators and staff on safe, ethical, and appropriate device use;
- incident logging protocols and digital audit tools; and
- enforceable supervision and reporting expectations.

This strategy ensures child safety without overreach or disruption, respects the unique working conditions of family day care, supports child protection objectives, and maintains sector sustainability.

Cost and Operational Burden

The CRIS gives no reasonable level of consideration to the practicality and cost impact of implementing Option 2 and/or 3 in a family day care context beyond stating "FDC providers would need to purchase one service-issued device for each FDC educator that only that educator will use" (p.34) and going on to provide a general high-level statement relating to per unit device costs and ongoing costs.

While Option 2 may possibly be an appropriate measure to implement in a centre-based environment, it presents an unreasonable cost burden in a family day care setting (which of course in the context of improving child safety in ECEC is not the primary consideration) where large service providers may have up to 100-150 educators. Conversely, Options 2 and 3 would impose significantly increased operational and cost burdens that would disproportionally impact smaller and/or regional family day care services. Mandating service-issued devices imposes unjustified logistical and financial burdens on services, many of which operate with very limited resources and small teams. Purchasing, maintaining, and monitoring devices at scale is not feasible for many providers. This could reduce the viability of smaller and rural services, reducing access to early childhood education in high-need areas and increasing sector inequity.

Forcing services to purchase, distribute, maintain, and replace devices imposes major upfront and ongoing financial costs disproportionate to the small operating margins of most FDC services. Additionally, services are not equipped to directly manage technical support, software updates, cybersecurity protection, and troubleshooting remotely across potentially hundreds of independent home settings. Implementing service-issued devices clearly impose financial and logistical burdens on family day care providers without a corresponding increase in child safety.

Unintended Consequences and Additional Considerations

The CRIS briefly outlines other potential negative consequences of imposing Option 3, as follows:

> *"Option 3 has potential to adversely impact recruitment and retention, particularly in the case of a highly feminised workforce, many of whom are primary caregivers.*
>
> *Additionally, challenges exist to implementing option 3 in the home-based environment of FDC where educators may require access to their personal mobile phone to allow family contact and the management of emergency situations" (p.36).*

However, FDCA believes many critical consequences remain underexplored. These include:

- Workforce attrition: Educators will leave rather than accept invasive, poorly considered regulatory conditions in their private homes.
- Recruitment deterrents: New educators may be discouraged by loss of autonomy, especially where home and care spaces overlap.
- Privacy and legal risk: Services may become liable for personal data stored on service-issued devices, complicating compliance with privacy laws.
- Surveillance overreach: Real-time oversight of educators' devices may require inappropriate or intrusive monitoring technologies.
- Contradiction of professionalisation goals: National ECEC strategies aim to elevate the sector – hyper-control undermines this.
- Reduced safety in emergencies: Educators routinely use personal devices to contact emergency services, health professionals, and families. Prohibiting this access creates real safety delays.
- Cultural Insensitivity: Imposing rigid personal device bans within educators' own homes may also be culturally insensitive, particularly for educators in multigenerational homes and culturally and linguistically diverse (CALD) communities. Personal devices often support family caregiving and are integrated into daily life. A ban that forces educators to isolate from family or suppress cultural caregiving norms may reduce recruitment, retention, and trust in regulatory frameworks. Such an approach undermines cultural safety, educator wellbeing, and trust in regulation.

Summary

Options 2 and 3 represent an unjustified expansion of regulatory power without commensurate safety benefit. They impose unmanageable costs, disrespect the nature of home-based care, and risk further fragmenting a fragile workforce.

FDCA urges governments to support:

- policy- and training-led solutions;
- professional accountability frameworks; and
- context-specific enforcement.

This approach keeps children safe, services viable, and educators supported. Effective child protection in family day care cannot be achieved through prescriptive or inflexible regulation that disregards the operational realities of the sector. Options 2 and 3 apply a centre-based logic to a distinctly home-based model of care, leading to proposals that are not only disproportionate and impractical, but likely to compromise both educator capacity and child safety outcomes. FDCA calls for a regulatory response that is evidence-based, proportionate to the actual risks present in family day care, and developed in close partnership with the sector. A collaborative, policy-driven approach that builds capability, preserves educator autonomy, and enhances accountability represents the most effective path forward for protecting children while sustaining a vital and increasingly in-demand mode of early education and care.

Quotes from FDCA member survey:

"The option of the service purchasing devices and having them available for educators is enormous expense and would be costly for educators. I don't feel that this would actually solve the issue. The safe handling of images, videos or any recordings of children done by educators must be guided by service policies and procedures, and essentially (like with other regulations) relies on trust of our educators." (PMC, WA)

"Educators are sole traders. As a service we cannot buy 60 phones for educators to use. Say the average decent phone is $1000, that $60,000. Plus maintenance or replacement should an educator damage or lose it. The phone would need to remain at the educators' premises (like it would remain at a centre) as logistically coordinators cannot pick up and drop off the phone daily. Even in centres, although a service issue device may be issued there is still the possibility of a staff member 'airdropping' a photo to their personal phone. There would be no trace of this happening as it is not an SMS. I feel strong policies and procedures need to be in place for FDC educators to prevent data being shared. I cannot see a way for this to work in FDC." (PMC, NSW)

"The Provider is a NFP so supplying devices would be a huge hit to our budget when we are already stretched to provide the best service for our Educators and families. Also, as Educators in WA already have to have a fixed communication device as well as another communication device the proposed changes wouldn't work. There needs to be an option not focused on LDC." (PMC, WA)

"Implementing Options 2 and 3 would require substantial initial investments and incur ongoing expenses. These include costs for purchasing devices, managing accounts (e.g., iCloud), software subscriptions, training, mobile plans, security measures, and continuous monitoring. Relying on service-issued devices may lead to issues such as handling personal emergencies, receiving important communications through various channels, and varying levels of device proficiency among educators, including in bushfire evacuation procedures." (PMC, NSW)

"Infrastructure is already in place, each educator has a dedicated device for signing in children, planning, child observations, timesheets etc. Plus, a phone for communications which are required under regulations when on and off premises. Monitoring of approved provider devices will be a logistical problem, and technology is not ready for this to be done remotely… Whilst child safety is paramount implementing such a measure without the ability for consistent monitoring would not eliminate the risk." (PMC, VIC)

"Family day educators who work alone NEED constant access to mobile phones throughout their working day. This is a safety issue! Guidelines for safe use/storage of digital images would be good - but not with added cost and potential failures in communication that may come with having to have a personal phone and work phone." (Educator, VIC)

4. CHILD SAFETY TRAINING

Options for consideration (Table 4.1: Child safety training):

Option number	Description
4.1: 1	Status quo (no change).
4.1: 2	Improved, nationally consistent resource and training guidance materials that can be provided to Registered Training Organisations and Higher Education institutions to insert into courses.
4.1: 3	Amend section 162A of the National Law to require nominated supervisors, persons in day-to-day charge and FDC coordinators to complete child protection training, removing the dependency on other jurisdictional law or government protocol. This would be supported by publication of an approved list of child protection training for the purposes of compliance with this section, as for first aid training (made up of national or state accredited units of competency or short courses) through amendment to regulation 137.
4.1: 4	Amend section 162A of the National Law to require staff who work with children, including FDC educators, volunteers and students, in addition to nominated supervisors, persons in day-to-day charge and FDC coordinators, to complete child protection training, removing the dependency on other jurisdictional law or government protocol. This would be supported by publication of an approved list of child protection training for the purposes of compliance with this section, as for first aid training (made up of national or state accredited units of competency or short courses) through amendment to regulation 137.
4.1: 5	Amend regulation 84 so that all staff and volunteers, whether or not they work with children, must be made aware of: • Existence and application of the current child protection law; and • Any obligations that the person may have under that law (i.e. remove the limitation to staff who work with children)
4.1: 6	Legislative change to require: a) Mandatory child safety training. Which is nationally consistent, of a high quality, and tailored for all people involved in the provision of education and care services (including people who do not directly work with children), with a requirement to complete refresher training every two years. This change should be subject to governments undertaking further research, costing and impact analysis of any proposed training and the implementation approach. Mandatory child safety training may feature matters including, but not limited to: • Creating a child safe culture in education and care services; • Identifying, reporting, and responding to child maltreatment through trauma informed practice; • Differences in behaviour and responding appropriately, along with identifying grooming behaviour in children and adults around them; • Understanding the difference between developmentally expected sexual behaviour and concerning or harmful behaviour by children or between children; and • Effective supervision and behaviour guidance, including the offence of using inappropriate discipline, and potentially inappropriate conduct

FDCA Position

Option number	Description
4.1.2	Improved, nationally consistent resource and training guidance materials that can be provided to Registered Training Organisations and Higher Education institutions to insert into courses.
4.1: 4	Improved, nationally consistent resource and training guidance materials that can be provided to Registered Training Organisations and Higher Education institutions to insert into courses. Amend section 162A of the National Law to require staff who work with children, including FDC educators, volunteers and students, in addition to nominated supervisors, persons in day-to-day charge and FDC coordinators, to complete child protection training, removing the dependency on other jurisdictional law or government protocol. This would be supported by publication of an approved list of child protection training for the purposes of compliance with this section, as for first aid training (made up of national or state accredited units of competency or short courses) through amendment to regulation 137.

FDCA supports Options 2 and 4 to:

- Develop and distribute improved, nationally consistent resource and training guidance materials that can be provided to Registered Training Organisations and Higher Education institutions to insert into courses.
- Amend section 162A of the National Law to require all staff who work with children, including family day care educators, volunteers, and students, to undertake mandatory child protection training, expanding the current requirement beyond nominated supervisors, persons in day-to-day charge, and FDC coordinators.
- Publish an approved list of child protection training options (through amendment to Regulation 137), modelled on the existing approach to first aid training.

This is reflected in survey results, which indicate the following:

- 85.71% of approved service respondents support Option 2
- 81.25% of approved service respondents support Option 4
- 76.7% of educator respondents support Option 2
- 80.37% of educator respondents support Option 4

Requiring all individuals working with children in ECEC to complete training in child protection through a universal child protection training standard aligns with national child safety frameworks and addresses Recommendation 12 from the National Child Safety Review (2023), which emphasised the importance of foundational child protection knowledge for all staff, regardless of role.

In the family day care context, educators often operate in isolated settings without co-workers or direct oversight. Ensuring they are equipped with robust and current child protection knowledge is essential to early identification and appropriate response to potential harm.

It should be noted that while mandatory training should be essential, generic courses may fail to address the realities of family day care settings. As such, FDCA would support the development of dedicated FDC-specific modules, co-designed with ACECQA and state regulatory bodies, to ensure relevance and application to real-world educator experiences.

Remove Jurisdictional Inconsistencies

Currently, section 162A depends on the child protection laws of each state or territory. This causes variation in the

scope, depth, and quality of training across jurisdictions. Amending the National Law to make training a standalone requirement will:

- Clarify provider and educator responsibilities,
- Enhance national consistency,
- Support mobility across jurisdictions.

Ensure Subsidised Access to Prevent Disadvantage

Access to high-quality training should not be a barrier to compliance. FDCA recommends that governments subsidise or fully fund approved training options, particularly for educators (as independent micro business owners) and service staff operating in regional/remote areas or in areas of high socio-economic disadvantage. Without financial support, compliance can become inequitable, with the above cohorts at risk of being disproportionately burdened.

Summary

FDCA recommends that governments:

- Amend Section 162A to extend child protection training requirements to all educators, students and volunteers who work with children.
- Amend Regulation 137 to provide a nationally approved list of recognised training options.
- Collaborate with ACECQA and state/territory authorities to co-design FDC-specific training modules.
- Mandate regular renewal (e.g. every 3 years) of child protection training for ongoing staff.
- Subsidise approved training programs to ensure access for all services and educators.

These changes would create a clear, consistent and sector-appropriate foundation for child safety training, and better equip educators across diverse settings — particularly FDC — to prevent, identify and respond to child harm.

Quotes from FDCA member survey:

"As a service we already have all staff both contact and non-contact undertake child protection training. Educators are required to complete the refresher relevant to their state every two years." (PMC, VIC and SA)

"Child safety already is and should continue to be updated annually as required. But I think it's time every state in Australia has the same consistent rules / regs and policies instead of changes in each state. This is confusing. And annoying for those who have to retrain or acquire more documentation meeting said states policies if wanting to move states / travel for work. Keep it all the same!" (Educator, QLD)

"We are strongly encouraging all of our educators to update their child protection training to the 025 course; I believe that the NSW Department should develop a course that is required to be updated annually (like Vic) which once completed the first time is automatically send out for renewal - this would ensure all educators are updating and refreshing their knowledge yearly (after having completed a statement of attainment, which will be received through their Certificate). I think for volunteers and students a basic course which is available for providers to have them complete free of charge would be best practice." (Nominated Supervisor, NSW and VIC)

"Our service already does this (mandatory child protection training). All coordinators and staff complete a child protection formal qualification prior to commencing followed by refreshers every 2 years. This would be no change for us." (PMC, NSW)

"Our service strongly supports national consistency in mandatory child protection AND child safe training for all individuals working directly with children. We believe that the Department of Education (DoE) and the NSW Government should provide FREE child protection training, similar to the provisions available for schools, to ensure that compliance-related training does not impose an additional financial burden on services. Implementing Option 6 would have significant implications for our volunteer management committee. It would necessitate additional costs and administrative efforts for individuals who do not work directly with children, thereby diverting resources from core service delivery." (PMC, NSW)

5. REGULATORY AUTHORITY POWERS, INAPPROPRIATE CONDUCT AND INFORMATION SHARING

Options for consideration (Table 5.1: Making inappropriate conduct an offence):

Option number	Description
5.1: 1	Status quo (no change).
5.1: 2	Develop more communications and resources on encouraging approved providers to address appropriate and inappropriate conduct within their contracts of employment, Code of Conduct and policies and procedures required under regulation 168(2) of the National Regulations.
5.1: 3	Amend the National Law to introduce 'inappropriate conduct' as an offence applicable to approved providers, nominated supervisors, educators, other staff members, volunteers and FDC educators as follows: The approved provider and a nominated supervisor must ensure that no child being educated and cared for by the service is subjected to any form of inappropriate conduct: and A staff member of, or volunteer at an education and care service, or FDC educator must not subject any child being educated and cared for by the service to any form of inappropriate conduct. [Please see Table 5.1 in the CRIS for examples of inappropriate conduct listed.]

FDCA Position

Option number	Description
5.1: 2 5.1: 3	FDCA supports a potential mix of Options 2 and 3, with strong caveats, noted below.

FDCA supports the intent of strengthening regulatory responses to inappropriate conduct in early childhood education and care settings, particularly where it relates to the safety and wellbeing of children. However, in assessing the options presented in Table 5.1 of the CRIS, it is critical to ensure that proposed changes are proportionate, clearly defined, and do not create unintended consequences in the context of family day care.

FDCA does not support Option 1, which proposes maintaining the status quo. Low levels of support among both educators and approved services reflect a shared view that the current regulatory framework does not go far enough in addressing certain forms of inappropriate conduct that may not rise to the threshold of a formal offence or immediate revocation but nonetheless pose a risk to children.

FDCA acknowledges the rationale for Option 2, which proposes creating a new offence for inappropriate conduct that falls short of serious misconduct. This option has moderate support from both educators (61.05%) and approved services (76.67%), suggesting there is sector willingness to strengthen regulatory tools when used appropriately and fairly. FDCA supports Option 2

on the condition that the offence is clearly defined and accompanied by robust procedural safeguards. The definition of "inappropriate conduct" must be consistent across jurisdictions, well understood by the sector, and focused specifically on behaviours that demonstrate a risk to child safety.

Option 3, which proposes enabling regulatory authorities to take action in response to inappropriate conduct even when it does not meet existing thresholds for suspension, cancellation, or prohibition, has more divided support (72.63% among educators and only 60.00% among approved services). FDCA recognises the value of creating regulatory flexibility, but also cautions that without clear guidelines, this option could introduce subjectivity, undermine due process, and create confusion for educators and providers.

From a family day care perspective, inappropriate conduct can include a wide range of behaviours that may occur in a home environment - such as poor judgment in communication, lapses in supervision, or failure to follow policy. However, in a single-educator model with limited on-site oversight, accusations or reports of inappropriate conduct can have severe reputational and professional consequences. Therefore, it is essential that any new enforcement mechanisms be:

- grounded in transparent, nationally consistent definitions and examples;
- applied in accordance with natural justice and procedural fairness;
- supported by a right to respond and appeal; and
- clearly distinguished from conduct that requires mandatory reporting or immediate action.

FDCA recommends that any introduction of new offences or enforcement powers be paired with:

- National training for educators and providers on expectations, rights, and consequences;
- Guidance materials with practical examples tailored to family day care;
- A regulatory framework that promotes improvement and education, not just punishment.

Summary

In summary, FDCA supports strengthened oversight of inappropriate conduct through a well-defined and procedurally fair offence framework (Option 2), while approaching Option 3 with caution unless further detail, safeguards, and sector guidance are developed. Ensuring regulatory consistency, maintaining trust in oversight processes, and supporting educator wellbeing are essential to achieving child safety objectives without creating undue fear or confusion within the workforce.

Options for consideration (Table 5.2: – Enhancing Regulatory Authorities' ability to share information with approved providers):

Option number	Description
5.2: 1	Status quo (no change).
5.2: 2	Develop more communications on the current process for accessing the NQA ITS solution that provides an approved provider with the ability to perform an initial check and subsequent prohibition checks.
5.2: 3	Amend section 272 of the National Law to allow the Regulatory Authority to share information about a prohibited person or suspended FDC educator with that person's current approved provider, without a request from the approved provider.
5.2: 4	Amend the National Law to allow a Regulatory Authority to share information about a person's current enforceable undertaking with that person's current approved provider, without a request.

FDCA Position

Option number	Description
5.2: 2 5.2: 3 5.2: 4	FDCA supports Options 2 through 4, with caveats.

FDCA supports improvements to the transparency and effectiveness of regulatory oversight, particularly where information sharing can strengthen risk management and child safety outcomes across the family day care sector. The options presented in Table 5.2 aim to improve the capacity of Regulatory Authorities (RAs) to share relevant compliance, suitability, and conduct-related information with approved providers. Given the decentralised and home-based nature of family day care, access to timely and relevant information is essential for services to fulfil their oversight responsibilities.

It should be noted that as educators themselves do not access or use NQAITS, this Option 2 is only applicable to approved services. FDCA notes that only 56% of approved service respondents support Option 2, with 32% unsure and 12% opposed. This reflects a moderate level of support tempered perhaps by uncertainty around implementation and scope.

Feedback from services suggests that while greater access to compliance data through NQAITS is welcomed in principle, key concerns include:

- Data accuracy and timeliness: Delayed or inconsistent data uploads could lead to inappropriate decisions or misinformed risk management.
- Privacy management obligations: Services will need to carefully manage any personal information obtained via NQAITS, raising questions around legal responsibilities.

- Clarity of data presentation: Information must be easily interpretable to be useful at the provider level.

As such, FDCA supports the intent of Option 2 but recommends that implementation be co-designed with the sector to ensure clear guidance, appropriate privacy safeguards, and consistency in application.

Both Options 3 and 4 received stronger support from educators and services, though levels differed:

- Option 3 (broaden existing power for RAs to share information with approved providers about staff/ educators' conduct):
  - 62.07% of educators support, 25.29% unsure
  - 79.31% of approved services support, 13.79% unsure
- Option 4 (allow RAs to share information about educators who previously worked with a provider but no longer do):
  - 64.44% of educators support, 21.11% unsure
  - 73.33% of approved services support, 16.67% unsure

This disparity in support levels reflects the different stakes and perspectives of educators and services. Approved services are directly responsible for monitoring and supporting educators, managing compliance risks, and engaging with regulators. As such, they see expanded information access as a vital tool to uphold child safety, particularly in distributed service models like family day care. Educators, by contrast, may view expanded information sharing with greater caution, due to concerns about:

- reputational impact of historical issues being shared across providers;
- lack of control over how information is interpreted or acted upon; and/or
- potential for unfair bias or misuse without due process.

Despite these concerns, FDCA believes that Options 3 and 4 are necessary reforms that support sector-wide integrity and accountability. However, strong procedural safeguards must be in place to:

- ensure that shared information is factual, up-to-date, and contextualised;
- provide educators with access to the information shared and mechanisms to respond or appeal; and
- avoid overreach or sharing of irrelevant personal history.

These options are particularly important in family day care, where educators may change providers or move between services in different jurisdictions. Approved providers must be able to make informed decisions when engaging new educators to ensure children's safety and organisational integrity. At the same time, educators have raised valid concerns about the potential for information to be misinterpreted, shared without context, or used unfairly. There is a risk of reputational harm or bias if historical information is disclosed without adequate safeguards, especially if educators are not provided the opportunity to respond or correct the record. Therefore, any expansion of information-sharing powers must be balanced with strong procedural fairness, transparency, and educator rights protections.

Options for consideration (Table 5.3: Expansion of regulatory responses to educator and staff member conduct):

Option number	Description
5.3: 1	Status quo (no change).
5.3: 2	Develop more communications and guidance to encourage approved providers to address appropriate and inappropriate conduct within their contracts of employment and their required Code of Conduct and policies and procedures under regulation 168(2) of the National Regulations.
5.3: 3	Amend the National Law to enable the Regulatory Authority to impose: a suspension notice/order from providing education and care to children for a specified period of time, applicable to educators, other staff members and volunteers, where a certain threshold of risk has been met to address an alleged contravention or contravention of the National Law, where the person does not pose an unacceptable risk of harm to children. A show cause process would apply and the action would be internally and externally reviewable.
5.3: 4	Amend the National Law to enable the Regulatory Authority to impose: a supervision order on approved providers, applicable where a staff member or volunteer has contravened the National Law and where that contravention also sits with the approved provider (for example, section 166 – Offence to use inappropriate discipline and any new offence provision under Chapter 5.1). This is to keep approved providers accountable in addressing conduct that contravenes the National Law but the person does not pose an unacceptable risk of harm to children. A show cause process would apply and the action would be internally and externally reviewable.
5.3: 5	Amend the National Law to enable the Regulatory Authority to impose: mandatory training/re-training for staff members (with the staff member paying for the cost of any training/re-training) to address staff member conduct that contravenes the National Law but the staff member does not pose an unacceptable risk of harm to children. A show cause process would apply and the action would be internally and externally reviewable.

FDCA Position

Option number	Description
5.3: 2 5.3: 3 5.3: 5	FDCA provisionally supports Options 2, 3, and 5. FDCA does not support Option 4 and recommends significant caution in pursuing regulatory amendments in this area, as outlined in detail below.

FDCA supports regulatory reform that enhances child safety and accountability, provided it is balanced, proportionate, and designed with an appreciation of the operational realities of family day care. The options presented in Table 5.3 of the CRIS propose new and expanded regulatory powers to strengthen enforcement actions relating to educator and staff conduct. These include cancellation or suspension of educator approvals, barring former educators from reapplying, and applying regulatory actions to providers based on educator conduct.

FDCA does not support Option 1 (maintaining the status quo), which has received low support from both educators (23.68%) and approved services (22.73%). This reflects a shared recognition that the current framework may not always provide sufficient tools for timely and proportionate responses to misconduct.

FDCA provisionally supports Options 2, 3, and 5, which have consistent support among over 70% of educator respondents and similar levels among approved services (with the exception of Option 3, which had 64.29% support from services and 17.86% "unsure"). These proposals focus on enhancing existing mechanisms to prevent individuals who have engaged in serious or repeated non-compliance from continuing to work in the sector.

These options are seen as positive and necessary steps to:

- close known loopholes that allow educators to re-enter the workforce despite past conduct concerns;
- provide regulatory authorities with targeted tools to address misconduct proportionately; and
- strengthen public confidence in oversight systems without unnecessarily burdening compliant educators or providers.

These changes are particularly relevant in family day care where educators often work autonomously. Ensuring that only suitable, professional educators remain in the sector is essential to both child safety and the broader professional reputation of family day care.

Rationale for Opposition to Option 4

FDCA has significant concerns about Option 4 - the proposal to allow regulatory authorities to impose a supervision order on an approved provider in cases where an educator has contravened the National Law and that contravention is linked to a failing by the provider.

While accountability for provider governance is essential, less than half of approved services indicated support this option, with 36% unsure, a notably cautious response that indicates discomfort and uncertainty about the scope and application of such a power. FDCA believes this concern stems from several interrelated factors:

- Blurring of responsibility boundaries: In family day care, educators are often sole operators working from their own homes. While services provide oversight, they do not directly supervise educators in real time. Holding services accountable for all educator conduct risks unfairly shifting responsibility for behaviours that may be beyond a provider's knowledge or control.
- Lack of clarity about what constitutes a "failing": Without clearly defined thresholds, there is concern that any error or misjudgement by an educator could expose a provider to supervision orders. This introduces legal and reputational risks that may deter providers from continuing or expanding operations.
- Impact on smaller providers: Family day care services, particularly those in rural or remote areas, often have small teams and limited resources. The imposition

of a supervision order could create unmanageable compliance obligations and threaten service viability.

- Potential chilling effect on sector leadership: If providers are to be held directly liable for educator misconduct in unclear or borderline cases, there may be fewer organisations willing to assume the approved provider role — exacerbating workforce shortages and reducing service diversity.
- Risk of discouraging transparency: If providers fear punitive consequences tied to educator behaviour, they may be less willing to self-report or proactively work with regulators, undermining the shared objective of continuous improvement.

Legal Considerations: Vicarious Liability and Regulatory Overreach

However, more significantly, FDCA strongly urges policy makers to consider relevant legal precedent, particularly the High Court's reaffirmation of the principles of vicarious liability and fair attribution of responsibility. FDCA notes the High Court's decision in Bird v The Commonwealth [2023] HCA 41, which clarified the limits of vicarious liability in Australian law.

The Court held that responsibility cannot be automatically attributed to a principal for the actions of an individual unless there is a close and direct connection between the wrongful conduct and the responsibilities delegated. Applying this reasoning, the imposition of supervision orders on family day care approved providers under Option 4, where they may not have had knowledge of or direct involvement in an educator's conduct, risks breaching long-standing principles of fairness and proportional accountability. Regulators must not adopt a standard of liability more expansive than that endorsed by the High Court.

This ruling affirmed the principle that liability must be closely linked to the responsibilities and control exercised by the party being held accountable and rejected the suggestion that vicarious liability can necessarily attach for the acts of those who are not in an employment relationship (i.e. the acts of independent contractors or those in a relationship "akin to employment"). The decision places emphasis on fairness, proximity, and causal connection -principles that must equally apply to regulatory action under the National Law.

In the context of family day care:

- educators operate as independent professionals in private residences;
- approved providers exercise oversight, not real-time supervision; and
- actions by educators may fall outside the reasonable control or foreseeability of the provider.

Option 4, which would allow regulatory authorities to impose a supervision order on an approved provider based on an educator's contravention of the law, risks introducing a form of reverse vicarious liability where a principal is penalised without proof of direct failure or control.

These decisions underscore the importance of avoiding regulatory mechanisms that penalise providers for acts committed by individuals unless there is:

- a clear duty breached by the provider;
- direct control or negligence involved; and
- procedural fairness ensuring that findings are evidence-based.

If implemented without such safeguards, Option 4 may:

- expose providers to sanctions for conduct beyond their operational reach;
- create a chilling effect on sector leadership and service provision;
- undermine the foundational principles of administrative law and natural justice.

FDCA therefore recommends that if Option 4 is pursued, its application must be strictly limited to circumstances where a provider has demonstrably failed in its obligations under the National Law or Regulations - such as failing to vet educators, ignoring reports of misconduct, or breaching policy requirements. Broad discretionary powers must not be granted without transparent guidelines, due process rights, and clarity on evidentiary thresholds. Furthermore, any consideration in this area must be accompanied by the following safeguards:

- clear and nationally consistent criteria for what constitutes a provider-level "failing";
- procedural fairness mechanisms allowing providers to respond to and contest allegations before orders are imposed;
- guidance materials and regulatory training to help providers understand their obligations and risk exposures; and
- a graduated response framework that prioritises support, remediation, and improvement before punitive action is taken.

Summary

In summary, FDCA supports targeted expansion of regulatory powers to manage educator conduct where it improves child safety, closes known gaps, and upholds procedural fairness. Options 2, 3, and 5 are broadly supported and align with this goal. Any pursuit of regulatory powers referenced in Option 4, however, require significant refinement and clarity to avoid unjustified impacts on family day care providers and contravention of foundational principles of administrative law and natural justice.

Quotes from FDCA member survey:

"Approved providers should not be subject to sanctions under a blanket rule in all scenarios where an educator's misconduct has occurred and there is no direct connection with the conduct or actions of the approved provider and the service has all appropriate policies and procedures in place." (PMC, QLD)

"We engage in regular contact via home visits and phone calls to have a greater understanding of how educators may be coping with children's behaviour and their own mental health and day to day issues and offer guidance and support with this. We have not had to deal with any inappropriate conduct and have a code of conduct and non-compliance policy that deals with breaches and actions taken with any breaches." (Service manager, NSW)

"All too often services are sharing this information amongst one another but we can only reach so many services. Sharing this information is a great way to protect children in care." (PMC, NSW).

"Suspending someone who poses a risk, holding services accountable, and requiring retraining are all important tools. These options protect children and help maintain high standards across the sector. The only thing I would ask is that decisions are made fairly, with clear evidence, especially in family day care where we often work alone and can be vulnerable to false claims." (Educator, TAS)

6. WORKING WITH CHILDREN CHECKS

Options for consideration (Table 6.3: Requiring an approved WWCC prior to commencing paid or volunteer work at an education and care service):

Option number	Description
6.3: 1	Status quo (no change).
6.3: 2	Additional guidance about WWCC and teacher registration/accreditation requirements and the importance of WWCCs in conjunction with the implementation of child safety training. The guidance should include recommended 'best practice' approaches. Guidance to include the following recommended best practice approaches: • Confirmation of a WWCC record in staff file prior to working in a service (all staff and volunteers). • Check WWCC status every 6 months (in jurisdictions where approved providers are not already notified by the relevant WWCC agency).
6.3: 3	Jurisdiction specific National Regulation amendment in WA, the ACT and the NT to require that an approved provider of an education and care service must ensure that staff, students, and volunteers of that service hold a valid WWCC before they can be engaged/commence their roles. In addition, a jurisdiction specific National Regulation amendment in NSW will clarify this same requirement beyond doubt.

FDCA Position

Option number	Description
6.3: 2 6.3: 3	FDCA strongly supports Options 2 and 3.

FDCA strongly supports the proposed reforms outlined in Table 6.3 of the CRIS relating to Working with Children Checks (WWCC). These reforms address a critical gap in national consistency and align closely with FDCA's unwavering commitment to child safety.

FDCA thus supports Options 2 and 3, which is reflected clearly in survey results, which indicate the following:

- 84.62% of educators and 78.57% of approved services support Option 2.
- 88.89% of educators and 89.29% of approved services support Option 3.

These exceptionally high levels of support across both educators and approved services reflect a shared understanding of the paramount importance of child safety and risk prevention in early childhood education, particularly in family day care environments, where:

- educators operate independently, often without immediate on-site oversight;
- children are cared for in small, home-based settings, increasing the need for upfront screening;
- community trust is essential for service viability and enrolment; and

- educators may also have volunteers, visitors, or household members present during operating hours.

The current ambiguity in some jurisdictions around when a WWCC must be in place has created regulatory inconsistencies and points of confusion. This is especially concerning for family day care, where individuals may begin work while awaiting WWCC clearance in some states. Such a loophole presents a serious risk to children and exposes services and providers to unacceptable liability.

FDCA strongly endorses:

- a uniform national standard that requires all individuals to obtain a WWCC prior to any form of engagement at an education and care service (paid or unpaid);
- clear regulatory language to prevent misinterpretation or variation across jurisdictions; and
- immediate ineligibility to begin work or have access to children until WWCC approval is confirmed.

Importantly, this approach also simplifies compliance for services and aligns with community expectations. Parents rightly expect that every adult who may be in contact with their child has been thoroughly screened before engaging in any capacity at an education and care service.

Summary

FDCA fully supports Options 2 and 3. To support smooth adoption of this reform, FDCA recommends:

- close collaboration between Regulatory Authorities and state-based WWCC screening authorities to align implementation timelines and update guidance materials;
- clear transition arrangements for services operating in jurisdictions that currently allow conditional work pending WWCC outcomes; and
- proactive communication campaigns to ensure educators, services, and families are fully informed of the new requirements.

These reforms represent a critical and widely supported step toward a more consistent, safe, and trusted early childhood education system.

Options for consideration (Table 6.5: Requiring approved providers and Regulatory Authorities to be notified about changes in WWCC status):

Option number	Description
6.5: 1	Status quo (no change).
6.5: 2	Additional guidance about current WWCC and teacher registration/accreditation notification requirements and the importance of WWCCs in conjunction with the implementation of child safety training. Guidance to include the following recommended 'best practice' approaches: • Confirmation of a WWCC record in staff files prior to working in a service (all staff and volunteers). • Check WWCC status every six months (in jurisdictions where approved providers are not already notified by the relevant WWCC agency).
6.5: 3	Amend the National Regulations and National Law A) New requirement for all centre-based staff and FDC educators to notify their approved provider of a change in WWCC or teacher registration/accreditation status (in NSW, TAS, ACT and NT only). and B) New requirement for approved providers to notify the Regulatory Authority of a change in WWCC or teacher registration/accreditation status for all staff with penalties/offences for non-compliance, (in all jurisdictions except QLD and WA. 56 Also, an exemption in SA in instances where changes to WWCC status is directly communicated to the Regulatory Authority).

FDCA Position

Option number	Description
6.5: 2 6.5: 3	FDCA would provisionally support Options 2 and 3, if adequate system, obligation and legislative alignment were implemented across the NQF and FAL.

FDCA agrees with the general principle expressed in the CRIS that "the absence of nationally consistent and comprehensive notification requirements increases the risk of unsuitable individuals remaining in education and care settings." However, in addressing this risk, practicality, system limitations, administrative requirements and the evident duplication of compliance obligations across NQF legislation and FAL legislation (and hence systems) must be acknowledged and addressed.

Regarding Option 2:

- 72.22% of educators support, with 16.67% unsure.
- 76.00% of approved services support, with 24.00% unsure.

Regarding Option 3:

- 79.22% of educators support, with 14.29% unsure.
- 66.67% of approved services support, with 22.22% unsure.

However, while survey results indicate broad (moderate) support for these proposals, the levels of uncertainty, particularly among approved services, indicates some key implementation concerns that must be addressed. Under Family Assistance Law (FAL), services are already required to report changes in an educator's WWCC status through the Child Care Subsidy System (CCSS). If there is a change in the status of a WWCC, for example, if it is amended, suspended, or revoked, the approved provider must notify the Department of Education within 24 hours of becoming aware of the change. This requirement is outlined in section 204F(1) of the A New Tax System (Family Assistance) (Administration) Act 1999 and section 55(17) of the Child Care Subsidy Minister's Rules 2017. Dual reporting would result in administrative duplication, with services forced to manage the same compliance obligation across two systems.

This would have a range of perverse consequences including, but not limited to the following:

- Increased risk of non-compliance due to complexity: The introduction of parallel obligations under different laws and IT systems increases the risk that services may inadvertently fail to comply with one or both obligations. This is especially problematic when the timeframes are tight (e.g. 24-hour notice) and the reporting processes are not harmonised or automated. A simple oversight, such as logging a WWCC change in the CCS system but omitting it from NQAITS, could trigger a compliance breach, civil penalty, or enforcement action, even where there is no risk to children.
- Diversion of resources from frontline support and quality improvement: Every additional layer of regulatory reporting draws limited time and resources away from core child safety and quality assurance activities. In family day care, where quality relies heavily on strong educator–coordinator relationships, unnecessarily duplicative tasks diminish a service's capacity to provide meaningful mentoring, site visits, or real-time support to educators.
- Fragmentation of data integrity and record-keeping: Having to update two distinct systems creates the potential for conflicting records and data inconsistencies. Discrepancies in reporting dates, WWCC numbers, or educator status between CCSS and NQAITS can undermine the integrity of regulatory information, and in some cases trigger audit flags or enforcement inquiries. This fragmentation places further strain on services to reconcile and verify records across platforms.
- Disproportionate compliance burden on small services: Family day care services are often small, leanly staffed organisations with limited administrative capacity. Many services operate with only one or two full-time administrative staff to support dozens, or even hundreds, of geographically dispersed educators. Requiring these services to monitor and report the same WWCC changes twice, using different systems and regulatory portals, compounds administrative workload without delivering any clear additional safety benefit.
- No corresponding safety benefit: Importantly, the proposed duplication does not appear to add any additional protective mechanism for children. Since both systems ultimately report to either the Commonwealth regulator or relevant state/territory RA, duplicative reporting offers no material benefit in terms of timeliness or response. Instead, it represents a bureaucratic burden that may actually slow down critical risk-mitigation responses.
- Legal ambiguity and jurisdictional confusion: Without clearer harmonisation between FAL and NQF legislative instruments, providers may be left uncertain about which system takes precedence or what constitutes a "sufficient" report. In cases of conflicting advice from different regulators (e.g. the Commonwealth Department of Education vs state-based RA), services may be forced to seek legal

clarification, incurring further cost and administrative overhead.

- Compounding impact on sector viability: Taken in isolation, one reporting requirement may seem manageable. However, within the broader context of sustained regulatory layering, it contributes to the cumulative compliance burden that has driven many family day care services to closure in recent years. As highlighted in FDCA's sector research, regulatory fatigue and administrative overload are key contributors to workforce attrition and declining service viability, outcomes that ultimately reduce access to flexible, regulated and high quality home-based care for families across Australia.

Summary

FDCA supports Options 2 and 3 in principle, as, if executed appropriately through legislative and system integration, they would potentially strengthen child safety through timely risk detection. However, implementation must be carefully managed to prevent regulatory duplication, ensure system interoperability, and minimise administrative burden.

FDCA strongly urges that if expanded notification requirements are adopted, they must be implemented through system integration, not duplication, specifically through:

- a single, interoperable reporting interface that satisfies both FAL and NQF obligations should be developed;
- alignment of language, definitions, and timelines across the NQF and FAL to simplify provider compliance;
- joint guidance from the Department of Education and ACECQA must clarify how services can meet both requirements through one report;
- establishment of clear protocols and national consistency in how WWCC screening units notify services and RAs;
- automation and system alignment, minimising manual input duplication.

Further, FDCA recommends that prior to implementation, a full technical review and consultation process be undertaken with services and software providers to streamline processes and reduce red tape. By ensuring a streamlined, coherent approach, regulators can maintain high standards for child safety while respecting the operational realities of the family day care sector.

Quote from FDCA member survey:

"Overall, I support this. There needs to be a consistent national requirement to notify providers and authorities if someone's WWCC is suspended, cancelled, or flagged. This would help prevent unsafe people from continuing to work with children. In family day care, where we work alone, it's especially important that all risks are identified immediately. This change increases trust and protects everyone involved. However, the systems must support us to do this effectively and educators and services can't be expected to report twice across different laws and systems." (Educator, TAS)

7. PROPERTY RISK ASSESSMENTS, ENVIRONMENT AND AUTHORISED OFFICERS' INSPECTION POWERS

Options for consideration (Table 7.3: – Requiring approved providers to assess not just the FDC residence, but areas near the residence):

Option number	Description
7.3: 1	Status quo (no change).
7.3: 2	Provide more explicit national guidance to FDC approved providers on their obligations under the current regulation 116, including the areas to be assessed and risk assessment/ mitigations to prevent children from accessing areas beyond the FDC service premises, and consideration of risks near the residence other than water hazards.
7.3: 3	Amend the National Regulations (regulation 116) to explicitly require assessment of not just the FDC residence but areas near the residence that may be accessible to children. Changes to apply to new assessments and each annual reassessment (not retrospectively), both of which are undertaken by approved providers.
7.3: 4	Amend the National Regulations (e.g. regulation 116) to formalise an approval process for the FDC service premises, as part of the FDC residence i.e. explicit requirement for approval from the approved provider to confirm areas that are used as the FDC service premises. This approval would apply to new FDC service premises. For existing premises, the approval should be confirmed or amended at each annual assessment undertaken by approved providers.

FDCA Position

Option number	Description
7.3: 2	FDCA supports Option 2.

FDCA acknowledges the objective of strengthening child safety in family day care environments through improved environmental risk management. However, the proposals in Table 7.3, particularly Options 3 and 4, seek to expand regulatory responsibilities to areas of the educator's property that fall outside of current legal definitions in the Education and Care Services National Law and Regulations, and are not designated education and care premises.

Under the National Law, "education and care premises" refers to the specific indoor and/or outdoor areas of a family day care residence or venue that are approved for the provision of education and care. The "residence" encompasses the habitable areas of the educator's home, including approved indoor and outdoor spaces, but does not extend to the property in its entirety, such as sheds, or non-approved structures. These areas, while physically located on the educator's private land, are not part of the regulated or approved spaces within which children may lawfully be cared for.

Survey responses from both educators and approved providers reflect high levels of uncertainty and a clear lack of support for significant regulatory expansion in this area, as indicated below:

Educators:

- 54.79% support Option 1 (status quo), with 31.51% unsure.
- 48.57% support Option 2, with 22.86% unsure.
- Only 25.35% support Option 3.
- 33.33% support Option 4.

Approved Services:

- 40.91% support Option 1, with 27.27% unsure.
- 55.56% support Option 2, but 25.93% do not support it.
- A significant proportion (45.83%) do not support Option 3, with 20.83% unsure.
- Only 48.00% support Option 4, with 20% unsure.

These findings indicate a strong preference for maintaining the current legislative focus on approved premises, while acknowledging the value of clear policy and guidance where appropriate. The low support for Options 3 and 4 suggests broad sector concerns regarding the practicality, fairness, and regulatory coherence of expanding responsibilities to non-approved areas of educators' homes.

Key Concerns and Impacts

- Overreach into private property not used for ECEC: Requiring services to assess or enforce modifications to areas that are not approved premises or used for education and care constitutes an overreach into personal property and may be seen as an intrusion into educators' rights to use their property as private individuals. Such requirements could extend to areas never accessed by children, including garages, unused gardens, or locked storage rooms.

This regulatory overreach may deter new educators from entering the profession and drive existing educators, particularly those renting or living in shared households, out of the sector.

- No legislative basis for mandating modifications to non-premises areas: There is currently no legal requirement under the National Law or Regulations to inspect, assess or make structural modifications to areas of a residence or property that fall outside the approved premises. Expanding regulatory expectations to such areas creates ambiguity, undermines legal certainty, and exposes services to compliance risks that cannot be readily managed or enforced.

Mandating physical modifications (e.g. fencing-off side yards or removing tools from garages) to areas that are not part of the operational ECEC environment would, in effect, create a new legal category of regulated space—one that is not defined or contemplated in the existing legislative framework.

- Disproportionate operational and cost burdens: Services already undertake comprehensive risk assessments of the premises used for education and care. Requiring additional assessments and modifications of non-operational areas would significantly increase the compliance burden, particularly where providers have large, geographically dispersed educator networks.

For example, assessing a detached garage or side yard that is always locked, never accessed by children, and poses no operational risk to the service's function imposes a cost with little or no safety return. It also creates a grey area in which services may be held accountable for matters that are outside of their knowledge or control.

- Sector recruitment, retention and equity impacts: For many educators, their home is also their workplace. Expanding regulatory oversight into non-operational areas may deter educators—especially those in rental housing or with limited control over structural modifications—from remaining in or joining the sector.

  This is particularly relevant for:

  - renters who cannot legally make modifications to external structures;
  - CALD or multi-generational households with shared property use; and/or
  - educators in rural or low-income areas, where housing conditions are more variable.

Such regulatory creep risks exacerbating educator attrition and compounding accessibility issues in an already contracting sector.

- Alternative and proportionate approaches: Rather than mandating structural changes to unapproved areas, a more balanced and risk-based approach would include:
  - requiring educators and providers to identify and document any foreseeable risks relating to property areas adjacent to approved premises;
  - ensuring that policies and procedures restrict unsupervised child access to these areas;
  - encouraging (but not mandating) reasonable risk mitigation strategies (e.g. locked gates, supervision policies).

This approach aligns with the core principle of the National Quality Framework, that regulation should be proportionate to risk and adaptable to context.

Summary

FDCA does not support Options 3 and 4 as they propose unreasonable and legally unsupported extensions of provider responsibilities into areas of private educator property that are not defined under the National Law. These options risk undermining the viability of family day care services without delivering measurable safety benefits.

FDCA supports Option 2 as a more balanced approach, one that enhances clarity and promotes good practice through policy and guidance, without creating new compliance liabilities for spaces not used for education and care.

Any policy response must respect the legal definitions of "premises" and "residence" as they stand in the current legislation and avoid expanding regulatory powers through ambiguous or implied obligations. Regulation must be grounded in risk mitigation and management, not potentially arbitrary considerations that undermine legal certainty, blur the line between public and private spaces that cannot be undertaken or enforced in a coherent manner and which may adversely affect service viability.

Quotes from FDCA member survey:

> *"Family day care educators and household members are entitled to privacy within their residence. Service policies are in place to ensure that children attending the family day care are restricted to approved areas, maintaining safety and compliance with current regulations." (PMC, NSW)*

> *"It makes complete sense to inspect all areas of the home, making note of what the hazard is and how it is mitigated - we already do that. It makes absolutely no sense to have to inspect sheds, etc, that are far away from the approved premises and for which risk assessments have been undertaken and mitigation strategies implemented regarding access." (PMC, VIC and SA)*

> *"Regulation 116 requires approved providers of family day care services to conduct initial and annual assessments of each proposed FDC residence to ensure the health, safety, and wellbeing of children in their care are protected. These assessments focus on the registered areas where education and care are provided, and where children have access. Other areas, such as sheds, garages, and outdoor spaces, are already subject to risk assessments, with relevant documentation reviewed and signed by parents." (Educator, WA)*

Options for consideration (Table 7.4: Enabling authorised officers to access areas of a FDC residence or property, beyond the service premises, in specific instances or for specific purposes):

Option number	Description
7.4: 1	Status quo (no change).
7.4: 2	Short guidance or information sheet aimed at authorised officers, FDC approved providers and FDC educators to explain powers of entry in relation to FDC and nationally agreed practices for authorised officers' access to areas of an FDC residence or property that are not part of the service premises.
7.4: 3	Amend the National Law to enable authorised officers' access to areas of a FDC residence or property, beyond the service premises, in specific instances or for specific purposes. These instances or purposes may include: • a serious incident has occurred, or the authorised officer reasonably suspects that a serious incident has occurred; • to assess or monitor compliance with regulation 116; • to assess or monitor compliance with regulation 97.

FDCA Position

Option number	Description
7.4: 2	FDCA supports Option 2 with additional considerations.

In response to the proposals outlined in Table 7.4 of the CRIS, FDCA acknowledges the intent to enhance child safety within family day care settings. However, the proposed expansion of authorised officers' powers to access areas of a family day care residence or property beyond the approved service premises raises significant concerns.

Under the Education and Care Services National Law, authorised officers have the power to enter and inspect education and care service premises without consent if they reasonably suspect that an offence may have been or may be being committed against the Law.

However, the Law explicitly limits this power concerning private residences. Section 199(4) of the National Law states that an authorised officer may not enter a residence unless:

- The authorised officer reasonably believes that an approved education and care service is operating at the residence at the time of entry; or
- The register of family day care educators records that the approved education and care service operates at the residence at the time of entry; or
- The occupier of the residence has consented in writing to the entry and the inspection.

This provision ensures a balance between the need for regulatory oversight and the privacy rights of individuals operating FDC services from their homes.

Survey responses from both educators and approved providers reflect significant concern and lack of support for the proposed expansion of authorised officers' access:

Educators:

- A majority level of support (57.89%) for Option 1 (status quo).
- Limited support (33.78%) for Option 2, with a majority (51.35%) explicitly opposing the proposal.
- Similar levels of opposition to Option 3 (52.78%), indicating strong resistance to granting authorised officers unrestricted access to private areas of their homes.

Approved Services:

- Similar patterns of support for Option 1 (status quo) at 52.17% (21.74% unsure).
- Moderate support (50%) for Option 2, noting however that 38.46% also oppose this proposal.
- Considerable opposition or uncertainty to Option 3, with 46.15% opposing (15.38% unsure) highlighting concerns about the implications of such regulatory overreach.

These findings underscore the sector's apprehension regarding the potential infringement on personal privacy and the sanctity of the home environment.

Key Concerns and Impacts

- Infringement on privacy rights: Expanding authorised officers' access to areas of an educator's residence beyond the approved service premises encroaches upon the private domain of individuals. Educators have the right to privacy within their homes, and any extension of regulatory powers into personal living spaces must be carefully justified and balanced against individual rights.
- Legal and ethical Implications: Granting authorised officers the authority to access private areas of a residence without clear legal parameters raises concerns about potential abuses of power and ethical considerations. Without stringent guidelines and oversight, there is a risk of infringing upon the rights of educators and their families.
- Potential for regulatory overreach: The proposed expansion could set a precedent for increased regulatory intrusion into private homes, leading to a slippery slope of overregulation. Such overreach may deter individuals from becoming or remaining FDC educators, thereby impacting the availability of flexible childcare options for families.
- Impact on educator recruitment and retention: The prospect of authorised officers accessing private areas of their homes may discourage potential educators from entering the family day care sector. Existing educators may also reconsider their participation, leading to a decline in the workforce and affecting service delivery.
- Training and competency of authorised officers: Authorised officers may not possess the necessary training or experience to assess private living spaces appropriately. Without adequate training, there is a risk of misinterpretation and inconsistent application of regulations, leading to potential conflicts and dissatisfaction among educators.

As such, FDCA must recommend current access provisions be maintained. Governments should retain the existing limitations on authorised officers' access to private residences, ensuring that entry beyond approved service premises occurs only with appropriate justification and consent.

However, FDCA concedes that clearer guidelines should be developed whether or not any expansion of access is considered. Establishment of clear, legally sound guidelines outlining the circumstances under which authorised officers may enter private areas, ensuring respect for educators' privacy rights. This should be developed through thorough consultations with educators, approved providers, and other stakeholders to understand the potential impacts of proposed changes and to develop policies that balance regulatory oversight with individual rights.

Additionally, enhanced and comprehensive training to authorised officers should also be considered to ensure they understand the unique context of family day care services and can conduct inspections respectfully and effectively.

Summary

While ensuring child safety is paramount, it is essential to balance regulatory oversight with respect for the privacy and rights of FDC educators. The proposed expansion of authorised officers' access to private areas of educators' homes raises significant legal, ethical, and practical concerns. FDCA urges a cautious approach, emphasizing the need for clear guidelines, appropriate training, and stakeholder engagement to ensure that any regulatory changes support both child safety and the rights of educators.

Quotes from FDCA member survey:

"Regulatory staff should not have access to unregistered areas of the family day care service, particularly when access is restricted through measures such as locked doors unless a reasonable concern is obvious. Unauthorised entry into these areas undermines the privacy of the educator and compromises the integrity of the privacy protocols in place… An educator is already required to submit a house plan upon registering their day care service. This is displayed at fire entry/exit points of the home environment. This makes supervisors and regulatory staff aware of the layout of the home environment and where the educational areas are of the home…" (Educator, WA)

"As an approved provider we already check all areas of the home and approve a specific area where care is to take place. I do not agree that the RA should be able to access the home due to the privacy of other family members. If it is serious enough then the police should be present." (PMC, NSW)

"Currently, the law allows the Authorised Officers to enter non-premises areas of the residence if they have permission of the resident or if they have REASONABLE BELIEF that there are children in care or that a crime is being committed. There is too much flexibility in the proposed wording that AOs will utilise - they already have been going into areas without authorisation, then getting nasty when being told to stay within the premises areas or to say what their reasonable belief is for going into those private and locked off areas." (PMC, VIC)

"Authorised officers are not police, and if there is a serious concern or suspicion of harm, it should be dealt with by police or child protection services, not regulatory officers who are not trained investigators. Allowing officers to access private areas of my home or surrounding land is a major invasion of privacy. I rent my property and do not have access to the landlord's sheds, paddocks, or storage and I am certain they would not approve of government officers entering those areas. This is a family home, not a centre, and FDC already undergoes regular and strict assessments. This proposal completely disrespects the boundaries of home-based care and risks causing more harm than good." (Educator, TAS)

8. RECOMMENDATIONS

To ensure that any changes to the National Quality Framework (NQF) improve child safety outcomes without unintentionally undermining the sustainability or distinctiveness of family day care, FDCA (in summarising the above) recommends the following:

1. **Ensure All Regulatory Reform Is Proportional and Context-Specific**
   - Regulatory proposals must explicitly account for the unique operating model of family day care, that being home-based, autonomous, culturally diverse, and geographically dispersed.
   - Avoid a one-size-fits-all approach that reflects the logic and structure of centre-based care.

2. **Reject Disproportionate Measures Such as Options 2 and 3 Under Digital Device Reforms**
   - Support Option 1, supplemented with robust, enforceable device use policies and professional training.
   - Acknowledge the severe unintended consequences—including reduced emergency access, educator attrition, and financial burden—of mandating service-issued devices in private homes.

3. **Support a Targeted, Evidence-Based Expansion of Regulatory Powers (Table 5.3)**
   - Endorse Options 2, 3, and 5, which provide proportionate oversight tools without undermining procedural fairness or the autonomy of approved providers.
   - Option 4 must be revised or withdrawn. Expanding vicarious liability in a way that contradicts High Court precedent creates legal ambiguity and unjust exposure for providers.

4. **Strengthen Information-Sharing Mechanisms with Safeguards (Table 5.2)**
   - Support Options 2, 3 and 4 to enable providers to make informed engagement decisions.
   - Include clear safeguards to mitigate educator concerns about privacy, due process, and reputational harm.

5. **Mandate Consistent and Context-Specific Child Protection Training**
   - Support Option 4 in Table 4.1, requiring all personnel, including educators, students, and volunteers, to complete accredited, nationally approved and subsidised child protection training.
   - Ensure modules reflect the FDC context and are delivered with subsidised access in collaboration with ACECQA and state regulators.

6. **Strengthen WWCC-Related Notifications with Harmonised Reporting Obligations**
   - Support Options 2 and 3 under Tables 6.3 and 6.5, but caution against dual reporting requirements under the NQF and Family Assistance Law.
   - Recommend a unified digital interface to prevent administrative duplication and reduce compliance errors.

7. **Reject Overreach into Private Property Without Clear Legal Grounds (Tables 7.3 & 7.4)**
   - Oppose Options 3 and 4 in Table 7.3 and Option 3 in Table 7.4, which seek to expand access beyond approved service premises without lawful justification.
   - Any regulatory changes must respect the legal boundaries between approved premises, the broader property, and private living areas.
   - Reinforce authorised officers' existing powers under National Law while maintaining strong protections for educator privacy and legal certainty.

8. **Address Cumulative Impact and Sector Viability**
   - Conduct an integrated impact assessment of all proposed reforms, with particular attention to how changes compound existing cost and compliance burdens.
   - Introduce transition periods and implementation support tools to avoid service closures or educator attrition.
   - Actively engage family day care stakeholders in any ongoing regulatory co-design process.

9. CONCLUSION

This submission reinforces that while child safety must remain paramount, any regulatory reform must be carefully calibrated to the context in which early education and care is delivered. For family day care, that context is distinct: educators provide care from their own homes, operate independently within a nationally regulated framework, and serve diverse communities, including those in rural, remote, and culturally and linguistically diverse settings.

Reforms that fail to acknowledge this context risk imposing unintended consequences, creating compliance burdens that are misaligned with risk, disrupting professional autonomy, and undermining sector sustainability. Regulatory overreach, particularly where it encroaches on the private home and personal life of educators, must be avoided. Policy must not only be effective, it must be just, proportionate, and grounded in legal and ethical principles.

Family Day Care Australia is particularly concerned by proposals that seek to expand access to educators' personal property without sufficient legal safeguards, and that disregard the foundational privacy protections that apply within private dwellings. The Australian High Court has consistently affirmed limits to vicarious liability and the importance of maintaining clearly defined responsibilities. Ignoring such precedent risks creating an unworkable regulatory framework that discourages participation in the sector.

Most critically, any reform must recognise the vital role that family day care plays in Australia's early childhood education landscape. It offers flexible, home-based care that is often the only viable option for shift-working families, those in rural and remote areas, and families seeking culturally safe care. The model supports deep, consistent educator–child relationships and delivers high-quality learning environments for tens of thousands of children every day.

Regulation must protect children, though not at the expense of educator dignity, professional viability, or the trust and privacy of their homes. FDCA calls for a reform process that builds child-safe cultures through partnership, proportionate enforcement, and policy solutions that reflect the strengths and realities of the family day care model. With the right balance, we can deliver both safety and sustainability for the future of early education in Australia.

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