

Written Submission for the NQF Review Consultation Regulation Impact Statement (CRIS)

Name and/or organisation

Early Learning Association Australia

In which state(s) are you based?

Victoria

What is your role in the Children's Education and Care Sector?

Peak body

About ELAA

Early Learning Association Australia (ELAA) is a peak body for early childhood education and care service providers. Our vision is excellence and equity in early childhood education and care. Our diverse membership base of over 625 service providers managing services at over 1,300 locations includes early years management organisations, independent kindergartens, local governments, long day care services, government and independent schools and out of school hours care programs. More information about ELAA can be found at <https://elaa.org.au/>.

General Feedback

The National Quality Framework (NQF) Review Consultation Regulation Impact Statement is wide-ranging covering diverse aspects of the framework ranging from safety of children and safe transport; implementation of National Child Safe Principles; workforce; family day care; quality ratings, governance and fees.

ELAA has consulted with our members in the formulation of this submission through meetings, a workshop and promoting the opportunity to provide written feedback directly. Services are still very much recovering from an extremely challenging year and the demands of navigating 'COVID-normal' as well as a backlog in consultations and implementation of policy and regulatory change have created a larger than normal load. In our view, had the NQF consultation been spread out over 2021 examining themes, services would have been in a better position to engage and provide the depth of feedback which is being asked.

3.1 Safety of children during transitions between services (including school)

Impacts of the proposed options

[ELAA's Road Safety Education program](#) has provided road safety education in Victorian early childhood education and care services, including family day care for over eleven years.

The scenarios presented in section 3.1 *Safety of children during transitions between services (including school)* relate most directly to the transition between school and outside hours school care. Our concerns also relate to other transitions such as between preschool and long day care, and long day care and school and between family day care and other education and care services. ELAA members strongly support that schools, services and educators hold a duty of care for children until such time as they are safely with their parents, an education and care service or other agreed arrangements.

In our experience, option C, clear policies and procedures for the transition period between education and care services, including a risk assessment process supported by option D, the requirement to develop policies and procedures is likely to deliver the best outcome in terms of supervision and safety of children. The additional supervision requirements will then be informed by the policies and procedures developed and which reflect the local circumstances and transition arrangements. Legislative change and the imposition of supervision requirements has the potential of having unintended consequences given the diverse range of transitions between services. However, we believe that when children are being transported on a bus that the driver's sole responsibility should be to concentrate on the road environment and not to have an active role in the supervision of children. This should also be the case for vehicles that transport more than 7 passengers.

Option E, additional informed guidance to support policies and procedures would support the implementation of option D and the change management process, including supporting the responsibility of parents to notify services of the absence of a child or other changed arrangements. This guidance should be developed in collaboration with the appropriate state road authorities and other road safety programs such as Victoria's Starting Out Safely Program. This guidance should require best practice obligations such as those in ELAA's [Road Safety Education and Safe Transportation Policies](#). These policies recommend that services do not transport children under 12 years of age in the front seat of cars, that children under 145 cm in height must remain in a car seat and that parents provide "informed consent" if they choose to allow their children not to be transport according to these best practices. Our policies also require services to only uses buses that have seatbelts.

Other feedback

Risks in transitions (managed by parents ie arrival, as opposed to those managed by educators ie departure) can be reduced by educating and supporting parents and children. Services should have safe transportation of children policy which applies to parents, carers and staff and engage with road safety strategies. Educators can play a role educating children about transitions and how to call for assistance where they are not feeling safe.

Educators have a duty of care for a child's safety as they transition to the care of their parents. An educator would not, for example, allow a child to go with a parent who had been drinking alcohol. Equally it is a duty incumbent on educators to respond when they see a child not being safely transported by a parent ie unrestrained in a car or if children are left unsupervised in a car whilst siblings are being dropped off or picked up from a service. Further, family day care educators should not refuel their cars while they have children in their cars. Firstly, children should not be left unsupervised while educators are paying for the

fuel. Secondly, if they did choose to take the children out of the cars to escort them to pay, they are doing so in a hazardous situation where they are required to walk in front and behind moving and stationary cars.

ELAA would recommend that each service have an initial discussion on enrolment on the need to transport children safely and to discuss the unique issues of concern for their service's pickup and drop off scenarios.

3.2 Sleep and rest requirements

ELAA members universally supported the implementation of the full suite of options B, C, D, E and F as mechanisms to ensure and support compliance with safe sleep and rest. The evidence to date of the high level of breaches illustrates the needs for higher degree of accountability. It is accepted that there will be cost implications for some services, however the safety of children during sleep and rest is dependent on adequate supervision.

A greater focus on safe sleeping in early childhood courses would also support approved providers in communicating with staff their obligations.

3.3 Improving children's safety during regular transportation

Impacts of the proposed options

As identified earlier, [ELAA's Road Safety Education program](#) has provided road safety education in Victorian early childhood education and care services, including family day care for over eleven years.

ELAA supports option B, the introduction of specific transport ratio requirements.

The proposal of a maximum limit of seven children without extra staff, reflecting the maximum number of children in a family day care service is a useful benchmark. However, members retain concerns it is not possible to devote all your attention to driving whilst actively supervising 7 children. Members were supportive of having the bus driver's role in addition to existing supervision ratios. As one member said, 'It is not possible to have 90% of attention on the road and 10% attention to children.'

ELAA also supports option D, requiring the presence of a staff member of the service (other than the driver) when children are embarking and disembarking. There are minimal cost implications for this option and a reduction in risks to children.

In addition, ELAA supports option E, requiring the driver to have a working with children check, approved first aid qualification and has undertaken anaphylaxis and emergency asthma management training.

ELAA also supports option F, with the provision of further guidance around adequate supervision and risk assessment as it relates to transport.

Other general feedback

Other options which could reduce the risk to children during transportation by a service or arranged by a service include:

- Excursions or morning or afternoon pick-up or transfer from outside hours school care should be included in the scope of the issues raised here.
- Filling a car with petrol whilst caring for children creates risks, particularly trying to manage up to seven children with one adult in a service station with multiple cars.
- Buses with up to 12 seats, including the driver are considered 'ordinary vehicles'. Ordinary vehicles are required to be fitted with appropriate (tethered) child restraints. Lack of compliance with restraint requirements is an issue.
- In 2020 the National Education and Care regulations were amended to require specific transportation procedures and undertake risk assessments, however there was no reference to ratios.
- As part of the Starting Out Safely Program ELAA advocates for children learning from real life experiences. The imposition of strict ratios, such as in New South Wales which requires one adult for every two children on excursions, does not recognise the fact that educators undertake comprehensive risk assessments, know the children and their abilities and behaviours, the familiarity of the particular environment and the pre-travel education that has occurred. If there was an imposition of strict ratios when transporting children and these were then used for excursions, we believe it would be an impediment on services being able to undertake excursions. Therefore, children would have a reduced opportunity to engage with their community, be able to have a voice regarding their community, be seen out and about and learn from real life situations.

3.4 Improving safety in evacuation from multi-story buildings

Impacts of the proposed options

ELAA supports options B, C, D and E. Specific feedback on each of the options is provided below.

Option B: The involvement of emergency safety experts in the development of procedures and/or plans, including feedback from observations about trials will give services the best chance of responding in an actual emergency incident.

The definition of expert needs clarification for regulators and providers and should also include (but not require) formal tertiary qualifications in emergency management.

Option C: Including clear and specific requirements around emergency and evacuation planning and processes as part of the service approval process is necessary to avoid excessive costs associated with retro-fitting facilities and ensure that the best practice is established immediately. For new builds, this needs to be included as part of the building planning and permit process. There is little advice currently about how to evacuate children in large numbers. Guidance about how to set up facilities to achieve the best outcomes, for example, having very young and non-ambulatory children on the ground (or lowest level) floor, will raise awareness, improve planning, ensure evacuations are efficiently expedited and lower the overall risk to children and staff. Experience from overseas eg Europe and Asia should be examined. Consideration must extend to other types of centre-based care such as outside school hours care. In most instances, schools have a prepared emergency management plan prepared by an external consultant. Direction should be provided that in these situations where the service adopts the same plans, no further action is required by the provider.

Option D: A pre-approval application process to the Victorian and ACT regulatory authority for service premises in multi-story buildings would be welcomed. In addition to regulatory requirements such as the safety of children in emergency evacuations, a comprehensive design guide should be available for developers including all minimum and best practice requirements, such as available play space, storage requirements, plans for safe drop-off and collection of children as well as access to assembly point location(s) among many other factors. Pre-approval of development and building plans for proposed premises prior to development and construction, informed by a design guide is a sensible approach, saving later costly alterations to ensure compliance.

Option E: National Guidance in relation to emergencies and evacuations would be welcomed. Guidance for developers and providers around the needs of education and care services to inform planning for new builds, upgrading existing facilities and retrofitting buildings is also a welcome move. Infrastructure investments by their nature are expensive and such resources will ensure buildings are maximally fit for purpose and reduce the financial risks.

It is our opinion that this section requires more than one action on its own to improve the safety of children during emergency situations.

Other general feedback

This section refers to emergency evacuations but misses another key element of emergency management – lockdowns. Lockdowns may be required due to an external threat such as armed offender, chemical attack or accidental chemical release, smoke or civil disobedience. In the experience of ELAA's occupational health and safety specialist, emergency management planning by services is often focussed on evacuation and they have rarely planned or trained for lockdowns. Lockdowns form a key part in an emergency response and are likely to be more complex in a multi-story facility. Awareness raising, including obligations to trial lockdowns, alongside evacuations will strengthen service readiness and child safety should a disaster or incident require it.

Whilst the focus of this section is on multi-story buildings, the issues with multiple tenants, including in a single-story building are also relevant. For example, in early childhood hubs with maternal and child health services, kindergartens and playgroups, there is often no means of communication between services occupying the same site. Emergency communication solutions such as button alarms or similar strategically placed across a building with multiple tenants should be considered a requirement, alongside co-development of emergency plans. Concerns by members were also expressed that smoke alarms may not be required in a facility unless sleep arrangements are in place.

Concern exists over the knowledge emergency services have regarding the location, size and individual needs of ECEC. This varies not only state to state, but region to region. For example, many regional Victorian fire brigades have pre-incident plans in to support the response to an ECEC facility in an emergency. In metropolitan Melbourne, this is not a requirement. This lack of knowledge will affect the development of the emergency plans, but many are not aware of this issue.

4.1 Embedding the National Child Safe Principles

ELAA members fully support the alignment of the National Quality Framework with the National Child Safe Principles. The commitment to the National Principles sits at the core of early childhood education and care. Consistency in the implementation of the standards is critical and, on that basis, ELAA supports both option B with updated guidance and alignment of the assessment process and option C, the requirements of policies and procedures to address the principles. Whilst there are associated costs with the changes, they are considered to be minor relative to the benefits of increased safety and wellbeing of children.

4.2 Updating record keeping requirements

ELAA members would like to see the recommendation of the Royal Commission into Institutional Responses to Child Sexual Abuse adopted in full. ELAA members support the extension to the time approved providers are required to keep records to when the child turns 45 years of age.

Centralised records will ensure that they are not lost as providers change hands or close down. In Victoria, the Commission for Children and Young Adults (CCYP) could hold these records. CCYP is responsible for administering the Victorian Child Safe Standards and the Reportable Conduct Scheme and regulates organisational compliance. They also conduct systemic inquiries into services for children and hold inquiries into services provided to a child or young person who has died within a year of their involvement with Child Protection.

7.1 Restrictions on short term relief for early childhood educators

The quality of children's experiences of early learning has lifelong implications. Quality is directly linked to the qualifications of educators. The current workforce challenges are all too well understood in Victoria where two years of preschool is being implemented. The options proposed to address the need for increased flexibility for short-term relief for early childhood educators raised significant debate among members.

ELAA members expressed concern that extending short-term absences and broadening the acceptable qualifications will lead to poorer education outcomes for children and a decline in hard-won professionalisation of the sector. It was acknowledged that there are examples of certificate III qualified and experienced educators who may be able to fill the role of the diploma-qualified educator, however there is also a risk that cost-savings become the drivers behind this assessment.

Legislative change was not seen as the best vehicle for addressing short-term relief. Waivers are considered a suitable mechanism for dealing with exceptions, however the current length of time it takes to approve a waiver significantly reduces their flexibility. Waivers need to be able to respond to emergency situations with a 24 hour response time frame. Case by case waivers mean that services are held to account by the regulator. Waivers could be used to approve a certificate III educator who has a number of years of experience to replace a diploma qualified position for example or they could require service providers to demonstrate how they are actively seeking to source appropriately qualified staff. Waivers could be extended based on the local challenges experienced by services in recruiting staff.

7.2 Educators who are ‘actively working towards’ a qualification

Services would welcome some guidance in the definition of satisfactory progress of staff towards a qualification. ELAA members consider that training providers should provide evidence of progress, such as completion of a minimum of one unit per term/semester. Whilst service providers are keen to secure a qualified workforce, the pressures across various parts of the sector make unilateral requirements a challenge. For example, the capacity to staff outside school hours care services, particularly in rural areas could be detrimentally affected if the threshold for satisfactory progress become too high.

8. Understanding of quality ratings by families

ELAA supports activities which promote families’ ability to choose a quality service. Family choices are made based on a number of factors, including availability, which in rural areas can be limited; convenience for the family; reputation of the service; and how welcoming the service is. Quality ratings, if understood, are likely to be only one factor. A major issue for services is the delay between assessment and ratings visits which may leave them waiting in excess of four years for a review, so the rating is often not reflective of current quality, which can render it meaningless to families who engage with a service for only one-to-two years. Promoting quality ratings without giving services to opportunity for a more frequent review will mean that those which have made significant improvements will be disadvantaged.

9. Fees

Increases in regulatory fees need to have the lowest possible impact on families so as not to increase any barriers to participation. ELAA recommends that any fee increases be only on the basis of services size and number of services so as to spread the costs.