

ELAA submission to Review of Child Safety Arrangements under the National Quality Framework

1. Preamble

About Early Learning Association Australia (ELAA)

Early Learning Association Australia (ELAA) is a national peak body championing excellence in early learning for children, supporting families and service providers.

For over 30 years ELAA has been working with families and early learning providers toward a shared vision of equity and excellence in early learning for every child. We represent over 1300 early childhood education and care providers including:

- Early years managers
- Independent kindergartens
- Long day care services
- Integrated services
- Local governments
- Government and independent schools
- Out of school hours care services.

The majority of our members operate as not-for-profit entities. Our not-for-profit members are committed to high quality outcomes for children and their families, and we are proud of the contribution not-for-profit centres make to the sector. We welcome the review and its initial findings and options for change. In consultation with our members, we believe the sector is ready to standardise regulations and policies across the states and territories and to focus on promoting a child safe culture.

Our submission is based on member consultation

ELAA strongly supports the recommendations of the review into child safety arrangements. In formulating the following submission, ELAA has held interviews, focus groups and conducted an online survey to seek the views of our members. Ninety-eight members were consulted through these means, including 83 members responding to our online survey. Our submission therefore highlights the areas of greatest concern to ELAA and members and comments on how the recommendations might be further strengthened.

ELAA believes that the first step for the review is to address the underlying sector fragmentation and confusion across the various jurisdictions. We note that a number of the recommendations are aimed at clarification and consolidation, and we applaud that focus. We support the non-regulatory options to facilitate standardisation by providing the same resources and training guides across the country. This is an important early step in reducing fragmentation across the sector.

In conducting our consultation, we have identified that the way the review's recommendations are currently framed may add to that confusion instead of resolving it. We trust that the final recommendations will incorporate shared values, definitions and practice guidelines.

Through our consultation with highly experienced leaders in the field (some with degrees including law), we identified that in many cases members found it difficult to interpret what was meant in some options: particularly relating to child safety and reporting of inappropriate behaviour. We ask the review to incorporate definitions and examples to clarify the intent of each option.

Our consultation included:

- EYM staff members
- Voluntary committee of management members,
- Stand-alone kindergarten staff
- Long day care services
- Privately operated facilities
- Services connected to a public school or independent school
- Integrated services
- Business partners to providers.

Our survey representatives were 78% metropolitan based.

ELAA congratulates the review on its comprehensive suite of recommendations

ELAA is a strong advocate for creating a culture of respecting children and ensuring their safety in all ways. We see the review has developed recommendations that together support this culture. We strongly support:

- Tightening regulations about the use of electronic devices where children are being educated and cared for and recognising that the ongoing nature of technological development means revisiting regulations regularly
- Consistent and clear national positions on mandatory reporting, child safe reporting and training and including inappropriate behaviour in mandatory reporting.
- Broadening child safe reporting and training to staff, volunteers, contractors and students who do not have child-facing responsibilities. Child safety is everyone's responsibility.
- Tightening the regulations on temporary waivers for child safe physical premises, to ensure they are timely and time-limited.
- Incorporating recruitment agencies into the system more fully, where contract staff should be required to demonstrate the same level of knowledge and skill and be subject to the same checks as paid staff and volunteers
- Creating more transparency about ownership of services across the sector.

In relation to the WWCC, ELAA believes a fundamental review of the purpose and efficacy of the current system is required. It is currently not fit for purpose and, in our view, the options presented by the review do not address the flaws in the current system.

In our view, there are four broad issues that need to be considered across all the themes:

1. Appropriate funding to guarantee effective implementation of the recommendations
2. Training and education
3. The central role of culture change in implementing the recommendations
4. Broader environmental factors.

Before detailing our responses to the six themes outlined in the review, ELAA would like to provide an overview of these key issues we believe require addressing.

Issue 1: Appropriate funding to guarantee effective implementation of the recommendations

ELAA is concerned about the ability of the recommendations to be fully implemented, given the necessity for substantial increased funding to both the regulators and the sector.

Regulators need increased funding

Funding is a significant concern in the ECEC context and funding and resources will need to be found for additional regulations, systems implementation and training requirements to implement the review. Regulators need additional budget to be able to conduct what is a major overhaul of the sector. They need more and better trained staff earning competitive salaries to ensure thorough and consistent implementation across the entire sector. This change will take several years to implement.

Providers need increased funding

The ECEC sector is undergoing increasing and important reforms which add workload onto an already stretched workforce. The review recommendations again ask for more from one of the lowest paid workforces. Without adequate funding to fully implement the recommendations, ELAA remains concerned about additional load at all levels in the sector and that the recommendations will not create the desired change.

The sector is already under significant strain

Added to this, the Federal and State Governments rightly see the further, and rapid, development of the early childhood sector as a high priority. It is imperative that this priority is matched with sufficient additional funding to achieve the required reforms.

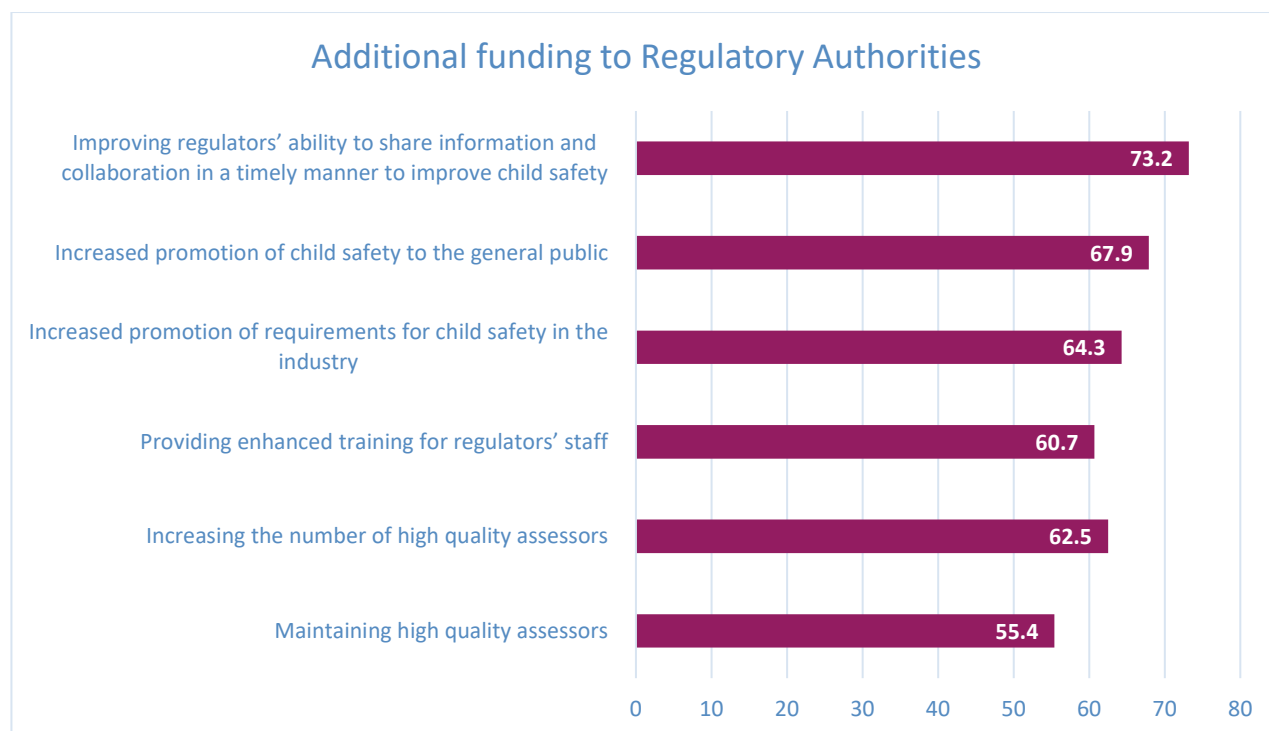
We note work is currently underway in Victoria to review the balance between staff on the floor and the increasing amount of work required away from direct child-facing activities. Managing workload is an ever-increasing issue, and the implementation of this review will exacerbate the problem of staff availability, burn out, attraction and retention. In our view, the burden will be borne disproportionately by smaller, independent not-for-profit providers, as their staffing numbers are tighter, there is less staffing flexibility and maintaining staff ratios is already a concern. When the requirements of the Best Start, Best Life program are added, the overall impact of change on the sector in Victoria is very significant indeed.

The importance of a strong national regulator

In our member survey, 91.2% saw the role of a strong national regulator as critical (57.9%) or very important (33.3%) for the sector. With this said, 84% of respondents do not believe the regulators have sufficient funding to fully implement the selected recommendations. They remain concerned about what this means for successful implementation.

As noted in Chart 1 below, respondents saw the following activities as requiring additional funding for Regulatory Authorities:

Chart 1: Additional funding to Regulatory Authorities



Issue 2: Training and education

Along with significant additional funding, ELAA believes training will be key to successful implementation of this reform. The options listed by the review together form a significant and welcome culture change. In all cases, additional training and information sharing will be required. This training will in many instances include new groups, such as volunteers and students. We welcome the focus on further standardising an understanding of the elements of delivering a professional, child-centred early learning experience for every child in Australia. But we note the magnitude of the task to replace the current fragmentation of education and training across the sector.

Issue 3: The central role of culture change in implementing the recommendations

ELAA draws the attention of the review to the need to focus on clarifying and enhancing what is meant by child safe culture within the sector. Currently, there is diversity across the sector as to the definitions of what constitutes child safety, with poor consistency across states and territories, depending on legislation or government protocol. Given the Government and sector want to embed this culture at the centre of early childhood education and care, this is a key change that must be a focus of the review. The review addresses this question in a number of ways, including enhanced regulation and training. ELAA seeks improved clarity about what is included in the term child safety versus the narrower definition of reportable offences, which focuses on child protection mandatory reporting of child physical or sexual abuse.

Child safety must be central in the sector

In our view, there is an overarching need to more firmly place all aspects of child safety – rather than the narrow definition of Child Protection – at the centre of 'the way we do things' across the sector. ELAA's philosophy is that every child deserves to be provided with an environment that is safe, supportive and conducive to the enjoyment of learning. While there is a deserved focus on ensuring every child has the opportunity to reach

their full potential, ELAA believes that every child also has the right to an enjoyable, exciting and safe learning experience during their formative years. We want all children to be respected, nurtured and listened to today. Our members' services, policies and procedures reflect this philosophy. It is pleasing to see the review taking steps to bring this vision to the heart of early childhood education and care.

Issue 4: Broader environmental factors

ELAA also wishes to draw the review's attention to broader environmental factors impacting on the sector which will materially influence the implementation of the recommendations. These include:

- The diversity and fragmentation of the sector within and across states and territories and nationally – implementation will require different degrees of change and will face varying levels of complexity in achieving a unified result across the nation.
- The highly feminised workforce in the sector – traditionally the work of women has been underpaid and undervalued. We have a long way to go to provide appropriately remunerated, professional educators across the sector. Yet this is a necessary prerequisite to ensuring all staff, volunteers and others involved in the sector fully understand and implement the regulations around child safety.
- The extensive reform of the sector taking place at state and federal levels to ensure all children receive sufficient high quality early childhood education and care – while ELAA strongly supports this reform, it is impacting significantly on the ability of the sector to manage growth while maintaining quality. Not only is there significant population increase in the pre-school population, but there is also a requirement in many states to deliver more hours of service over two years rather than one. This has major impacts on the sector's ability to fill positions with suitably qualified and skilled staff with the special attributes needed to perform the work, without careful planning and streamlining of complex systems. Requiring additional training and education will exacerbate this issue.
- The dearth of qualified staff and the impact on staffing models – allied to the above is the increasing difficulty many services are having attracting and retaining suitable staff. When this is combined with the need to significantly increase salaries and improve conditions for workers, the current staffing models are under great stress.
- The change in organisational models in the sector which results in a broad diversity of provider types is welcomed. In regard to this, we note there is considerable tension for smaller, independent organisations where staffing is extremely tight, it is difficult to find backfills for additional time off the floor and where committees need to be supported to thrive into the future. There is concern in the sector that as more and more regulation is added, more staff and volunteers may walk away from the sector:
- The increasing professionalisation of the sector is outstripping the ability of tertiary education providers to train new entrants sufficiently. Our members tell us they struggle to put new graduates onto the floor without more in-house training. Review of tertiary early childhood training is needed as part of the overall reform of the sector:



"So, I think training is huge at the moment. And (Victoria's) Best Start Best Life is going to make it even more complicated."

2. Detailed response to the six themes

ELAA has organised this submission according to the Consultation Regulation Impact Statement Summary, with responses to each of the six themes:

1. Management of digital devices
2. Child Safety Training
3. Responding to educator and staff member conduct
4. Working with Children Checks
5. Improving the safety of the physical service environment
6. Additional recommendations.

ELAA congratulates the review on the wide range of issues included and the thoughtful options presented. There are several areas in which ELAA believes the recommendations can be further strengthened. Our comments on each theme, and our suggestions for enhancement of individual recommendations, follow.

Theme 1: Management of digital devices

The swift pace of change in the digital space necessitates urgent regulatory reform in our sector. Currently, the National Law and National Regulations do not address the use of digital devices, including personal digital devices, in education and care services. This must change. We note that regulatory changes expected to come into effect from September 2025 will require early childhood education and care services to have policies and procedures about the safe use of digital technologies, and there is guidance available about child safe practices for the use of digital devices. We look forward to these new, stronger regulations as an integral part of strengthening the sector's response to this issue.

ELAA has long held the view that personal devices should not be available to staff on the floor. But this is not a simple issue where services are not funded to provide centre-owned devices. Where providers cannot fund sufficient centre-owned devices, strict criteria need to be set in place for managing the use of privately-owned devices.

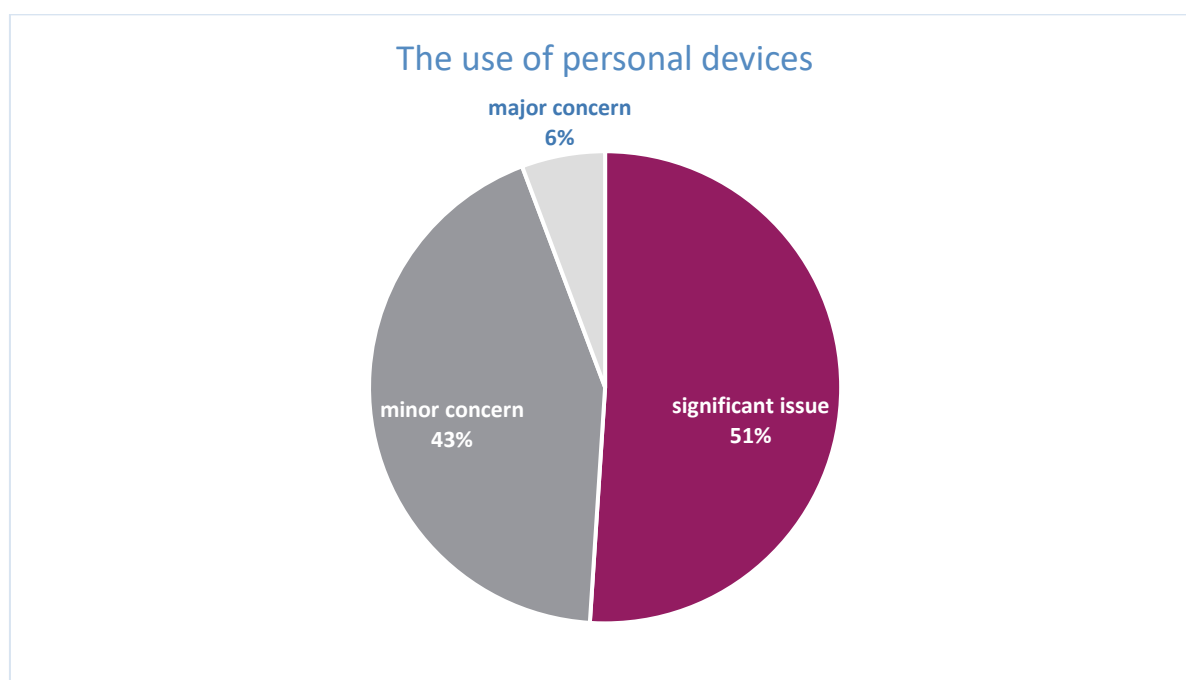
In principle, **ELAA supports both options 2 and 3** outlined by the review. As is the case with many of the options outlined, successful implementation will rest on the extent to which clear guidance can be provided and sufficient funding allocated to support purchases of equipment and time off the floor for training. For some providers, shifting to centre-owned devices will be a significant culture shift, requiring strict criteria for managers to use as the basis for culture change.



"I know when I walk into the room now, I see every staff member with their personal phones. I think it's one of the things with our staff here. They don't like change. So, it's one of those things that has to be dealt with very carefully. I think that's going to be the same in every centre. Everyone's going to have a problem with that."

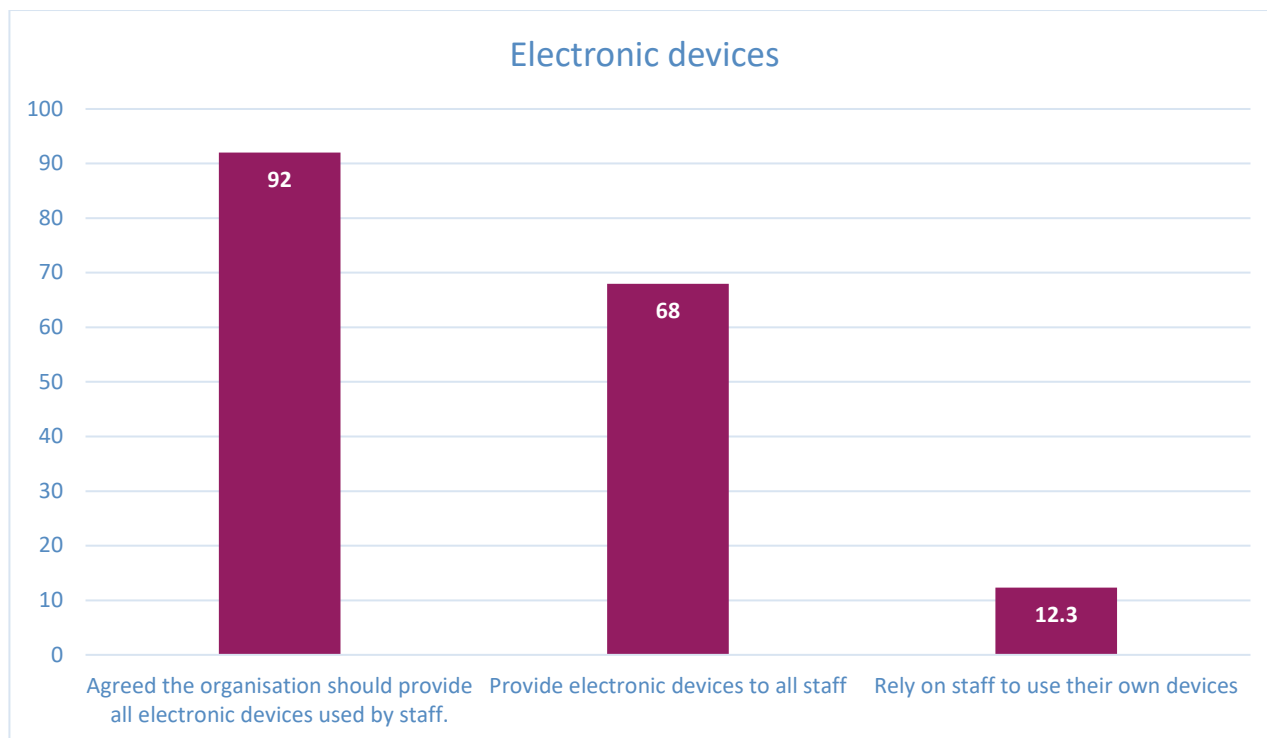
As shown in Chart 2 below, participants in our survey were split on the issue of the use of personal devices in services.

Chart 2: Concerns about use of personal devices



Further, as shown in Chart 3 below, there was a broad consensus that agreed organisations should provide electronic devices needed to be used by staff with a majority already providing these.

Chart 3: Provision of electronic devices



There are cultural barriers to be addressed

While generally agreeing with the two options above, members raised significant concerns about the practicalities of achieving compliance:

- Staff working on the floor consider that they need to always keep their personal phones with them, due to the need to be contactable in personal emergency situations (such as calls from their children's school). In many instances, it will be possible for emergency calls to go to the centre's main phone. However, where staff and casuals are rostered through several different centres, this was not considered feasible.
- Staff are very likely to simply download photos or videos from centre-owned phones or tablets onto their own devices to share them anyway.

Policing the use of private phones and shared content was considered very problematic. For example, instances were raised in our consultation of videos being included inappropriately in private Instagram group accounts using private phones.



"We purchased a laptop for every staff member, and they do their programming at home. So, therefore, images go from one place to another."



The advocacy of a child-centred, child safe culture across the sector, incorporating clear guidelines and sanctions, will enable providers to progressively move to option 3, which is the option that will increase child safety more. For some of our members, clearly articulating the values of respect for the child, their privacy and dignity, has enabled them to instil a culture where images are not shared, even by parents. However, this is not currently the case across all providers.



"Every room has a service mobile. But people put Spotify on their personal devices because they have an Apple account. So, they bring in their phone to use their Spotify app for music and other programs that they have. So, phones are being used for far more than just images. We are going to look at putting Spotify and other apps on the service mobile. But it's difficult to run an Apple account in a large organisation with multiple sites."

As always, training will be key. Ongoing training to enable staff to keep up with the rapid changes in technology is a necessary component in the implementation of these options.

Members' experiences of the current context

Examples were given of:

- Situations where staff were able to capture special learning moments because they had their personal phone immediately available. There were concerns these moments would be lost if the staff member had to go and find the centre's unit.
- Inappropriate sharing of videos on private Instagram accounts, where the staff member thought they were simply sharing a clever idea for an activity. This instance resulted in staff review and sanction.
- Where staff and parents are on excursions out of the facility, personal phones or cameras can be used in accordance with strict procedures for downloading to the facility's computer and deletion of all images.

Current policy in some providers is to use only centre-owned digital devices. One provider uses only iPads, where security includes specific staff member log ins. This small stand-alone provider has never allowed private devices on the floor. If a staff member has an emergency call, they are notified through the front office and take the call off the floor with backfill. They have already implemented option 3.

However, as one participant said:



"Digital control is largely out of our hands. In reality, nothing is private. In my home, we have a saying: WWW means the Whole World is Watching."

Specific questions about the possible costs of these options

50.7% of our survey respondents thought the cost to provide all staff with electronic devices would be very onerous; 11% thought it would be unaffordable.

Members said while services should pay for devices, the regulatory body should provide grants to facilitate purchases.



Good practice examples

Some members, from smaller services, have addressed these concerns by regulating that staff do not have phones in rooms with them, but they can use them for excursions offsite. In this case, there is a strict policy requiring staff to fill out forms identifying the phones that will be used for communication off site and for recording events. Policies are in place for the subsequent deletion of any images.

These providers ensure that staff can be contacted in case of emergency through the centre phone. They indicated that where staff may be rostered to different sites, it is the responsibility of the staff member to advise their emergency contacts (eg school, hospital) of their contact phone number for the day.

The provider's Code of Conduct incorporates the prohibition of dissemination of images of children by the provider, and by families.: "We operate by example. We don't publish images of children, and we encourage parents not to do that either."



Theme 2: Child Safety Training

2.1 Introducing mandatory child safety training

Mitigating the risk to the safety of children is ELAA's top priority. There is no question that the current situation, where there is little consistency across the states and territories on the type and extent of training and education as to what constitutes child safety, is a major risk to children, service providers and the government. Currently, child protection training – which focuses on responding to harm through mandatory reporting of abuse and neglect – is only mandated in NSW, Queensland and South Australia. Training in child safety is not mandated anywhere in Australia.

Child safety is everyone's responsibility

Recent publicity has shown the results of this fragmented and inadequate approach. In particular, the requirement to extend training in child safety to persons not directly in contact with children will, in our view, be key to creating the sector culture change required to further professionalise the sector and ensure the safety of children. Where the line is drawn as to which groups need to go through the training is a key question to be resolved. ELAA's position is that everyone – whether in a child-facing role or not – needs to undertake child safe training: **ELAA supports options 2 and 6**. This training must be refreshed regularly, and RTOs should be monitored for the quality and consistency of the materials they deliver.

It is only option 6 that enables the sector to fully create a culture of service delivery based on child safety and respect. Very clear regulations will be needed to capture the responsibilities for child safety in a way that everyone can understand and apply them. Our members strongly support the view that child safety is everyone's responsibility. Therefore, everyone needs training and refreshers. The disability sector model of training and education in safety was seen as a useful model.

As mentioned in the introduction, this set of options was difficult for our members to navigate. Only option 6 refers to the broader definition of child safety. The others, while important steps in bringing consistency across the nation, fail to address the 11 Child Safe Standards. An outcome of this review must be a clear understanding across all jurisdictions of mandatory reporting and what is the responsibility of all people involved in the sector to ensure child safety.



"If you want to do work in the centre, if you are a volunteer committee member or whatever, then you are not only signing up to turning up on the day, you are also signing up to having done particular types of training."

"I think a lot of committees of management don't understand that they are the Approved Providers. They are the employer of staff. They are the ones on the department's register to say they will be responsible. Many don't understand that. And it's what scares people away from being on committees of management."

What is mandatory reporting training and what is child safety training?

Further, in our consultation it became clear there is considerable confusion in the sector about whether providers are currently undertaking child safe training or mandatory reporting training. In our survey, 91.3% of respondents agreed that child safety training should be expanded from just mandatory reporting training. However, 94.2% say they are already undertaking training in child safety. It is very likely that the confusion in the system results in unclear expectations and understandings. This hypothesis was borne out in our focus groups and individual interviews.

In our survey, we asked respondents if they supported mandatory reporting for a range of matters not currently required. They strongly agreed. Chart 4 shows the strength of their views.

Chart 4: Additional child safety training requirements



"We interview a lot of people for positions, and we ask a question about child safe practices in every interview, as part of our child safe policy. And probably in the whole time I have been interviewing I've had two people who have provided me with a really good answer in terms of the child safe standards. Most people don't know anything about them or where they would go to get help."

Tertiary education needs to include Child Safe Standards

The implementation of the Child Safe Standards is likely to require review of tertiary education curricula. Our members found that the standards are not included in courses, so graduates require more training before they are able to work on the floor. It may also be a concern in attracting secondary students to the sector for work experience. Option 6 would require these students to undergo child safe training (they are already required to have their WWCC and review child safe materials online). That may be a deterrent and will need to be framed as a positive experience.

Once again, bringing everyone in the sector – including students, volunteers and people contracted to attend the centre to complete short-term contracts – under regulations that require time and effort to acquire the skills and knowledge necessary to keep children safe will be a significant culture change. But it is necessary.



"We had a photographer in for a session in the kinder. She was inside with a couple of staff members and some children. I walked in and she was cuddling one of our children. I nearly hit the floor. Afterwards, I thought, she should have known not to do that. But then I also thought, maybe I should have said to her right at the start, these are the rules we have in place in our service."

It is in the interpretation of regulation and guidelines that safety is created and maintained. In supporting this option, ELAA further states that sensitivity is required to ensure appropriate and respectful cultural practices, including for our First Nations communities, are supported and continued in ways that encourage culturally responsive and respectful ECEC.

Bringing the sector into line with other safety training

As with all the recommendations, the cost of implementation was raised as a potential barrier. Members raised the example of primary schools as being a useful model. When a visitor enters a school, they see a copy of the child safety standards when they sign in. Members supported replicating this process in early learning centres.

Useful examples from other sectors included:

- First Aid, where there is an annual refresher for basic CPR and every three years a more extensive retraining session is required
- The Scout and Guides movement – where extensive child safe training modules have been implemented over the past three or four years
- The disability sector, where safety training is a requirement for everyone.

Members wanted to see the Department of Education develop and administer online training for child safety. Of our survey respondents, 75% agreed the Regulatory Authority should be responsible. 16% thought a peak body could provide the training and only 8.7% thought it should be the responsibility of the provider.

Our member agencies will be required to undertake additional training and education materials for all staff, volunteers, committees of management and boards, families and guardians and occasional contractors. Our survey respondents felt this training would be somewhat onerous, but achievable (60.8%). 29% thought it would be very onerous or unaffordable.

Members' experiences of the current context

In Victoria, the Department of Education has commenced random child safe audits, based on current legislation. These are welcomed by our members. However, individual assessors are interpreting guidelines and regulations in different ways, resulting in different ratings being applied, and members report receiving different advice from different Department of Education employees. Audits also vary in their scope, complexity and intensity. Some staff have found these assessments unnecessarily gruelling.



"They have introduced these new systems where they're going out to check, but they're not looking at what needs to be done to improve people's understanding of child safe standards. And the EYP website is not user-friendly. It is hard to digest the information. This process has created fear in the sector".



Good practice examples

One larger member, with more than 150 staff, has developed their own detailed child safe training program for staff, based on the 11 child safe standards. Regular communication goes out to reinforce the training. Volunteers receive an overview of the child safe training and their responsibilities. This organisation has an active organisational action plan against each of the 11 standards and there is an expectation that every member of the organisation – from the finance team to the educational team, to maintenance – contributes to the implementation of a child safe organisation. Family volunteers are given an annual induction including child safe standards.

Other members undertake in-house training based on the child safe standards and questions about child safety form part of recruitment interviews. Family volunteers undergo annual briefings that include child safety, and there are regular communications that feature keeping children safe.

"As an organisation, we think child safety is everyone's responsibility. And that's your maintenance team that come in to fix a tap during program time – they're not exempt. We are looking at how we can make child safe embedded practice, and it can only be when everyone is held to the same account."



Theme 3: Responding to educator and staff member conduct

3.1 Making inappropriate conduct an offence

Legal definitions, regulation and training must focus on assisting providers to operate fairly with the best outcomes for the child at the centre. In this, in any definition used to make inappropriate conduct an offence, the concepts of natural justice and due process must also be adequately considered. They will need to strike a careful balance between being clear and unambiguous and yet not be overly prescriptive and punitive when appropriate and relevant:



"And you know, when you're that prescriptive, they're going well, it's not on there, so therefore it's not inappropriate. People just go to the line. They haven't crossed it, they just constantly go to the line. And that's really hard to manage."

Currently the limited legislative provisions available to the Regulatory Authority enables an environment where:

- Individuals who have displayed or allegedly displayed inappropriate conduct can remain in the sector without proportionate legal responses or consequences by the Regulatory Authority
- Approved Providers are responsible for addressing serious behaviour of their employees under the employment contract and code of conduct, without the support and intervention of the Regulatory Authority.

In our view, this situation is wholly at odds with the concept of always maintaining child safety, health and wellbeing.

ELAA supports options 2 and 3 and our members strongly support the idea of extending the definition of a notifiable offence to include inappropriate conduct. In our survey, 87.3% of respondents agreed that non-compliant behaviour should be included in suspension orders.

However, many members were unclear about the definition of inappropriate conduct. A first step must be clarifying and promulgating the agreed definition.

ELAA's Code of Conduct

ELAA has recently undertaken research to develop a policy position on the definition. Our Code of Conduct template¹ specifies:

Concerning behaviours includes, but is not limited to:

- Disciplining or correcting a child or young person in an unreasonable manner
- Making excessive and/or degrading demands of a child or young person
- Taking photos of a child or young person who is in the care of the organisation outside of official duties
- Creating situations to be alone with a child or young person

¹ ELAA PolicyWorks Catalogue Code of Conduct template **Attachment 5: Defining concerning behaviour, misconduct and criminal conduct in a Code of Conduct**

- Repeatedly visiting a child/young person and/or their family at their home for no professional reason
- Providing gifts or favours to a child/young person or their family
- Wearing inappropriate clothing around children or young people (for example, clothing with sexually explicit images or messages or clothes that expose or accentuate the genitals or breasts).

Misconduct includes, but is not limited to:

- Using sexual language or gestures
- Making written or verbal sexual advances
- Sharing sexual photos or videos or other photos of the child or young person
- Sharing details of one's own sexual experiences with a child or young person
- Taking a child or young person to one's house to be alone with them
- Sharing phone numbers with a child or young person except as allowed by the organisation's policies and procedures
- Engaging with a child or young person via social media except as provided by the organisation's policies and procedures
- Asking children or young people to keep a relationship secret
- Showering or dressing or undressing with the door open (for example, on excursions and in residential situations)
- Not respecting the privacy of children/young people when they are using the bathroom or changing (for example, on excursions and in residential situations).

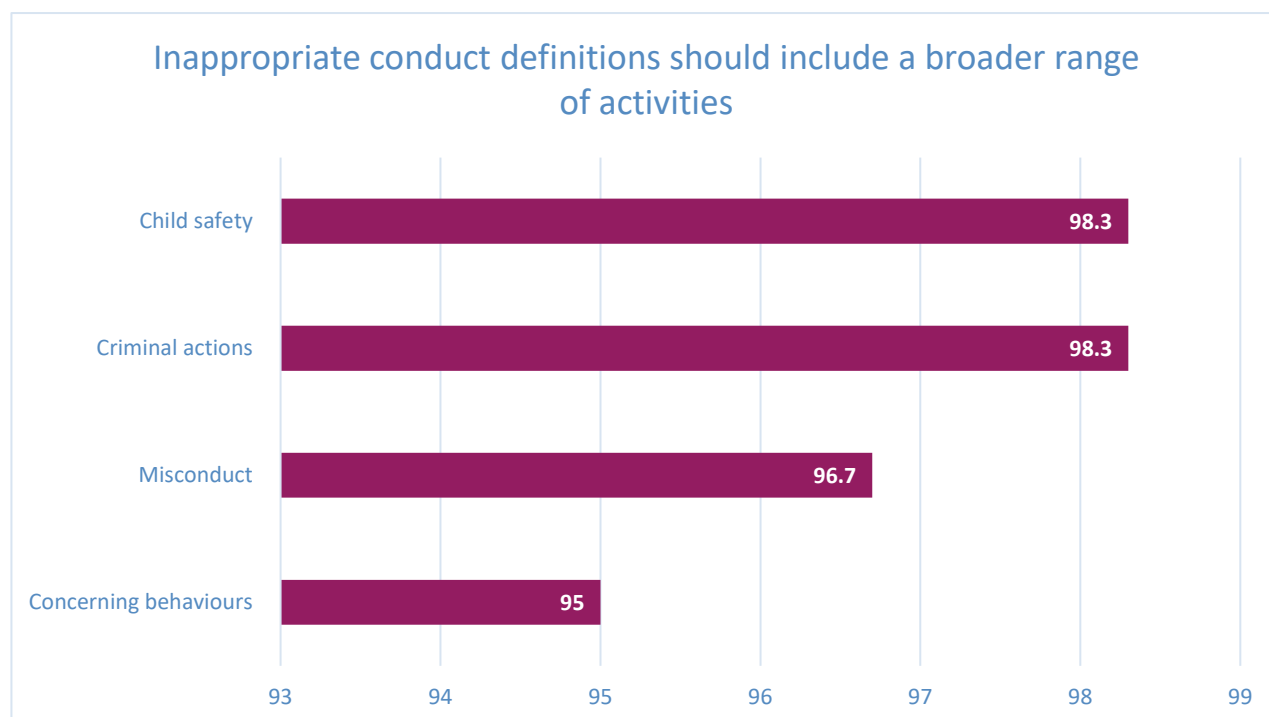
Criminal activity, if proven, includes:

- Intentionally or recklessly applying physical force against a child or young person
- Obscene exposure
- Having, attempting to have or facilitating any kind of sexual contact with a child or young person
- Possessing, creating or exposing children to pornography
- Giving goods, money, attention or affection in exchange for sexual activities or images
- Sexting
- Grooming offences (as defined by law in most jurisdictions)
- Trafficking, possession, supply, or use of a prohibited drug
- Manufacture or cultivation of a prohibited drug.

85.25% of survey respondents believe the definition of staff member misconduct should be strengthened to include more than a notifiable offence. The vast majority supported including activities listed in ELAA's Code of Conduct Policy in the definition. Chart 5 below illustrates survey respondents' views about the extent to which they support the definition of staff member misconduct including activities listed in ELAA's Code of Conduct policy.



Chart 5: Support for broadening the definition of staff member misconduct



Members were concerned about the difficulties of ensuring all staff and volunteers understood what was required of them. They were concerned that conduct can be judged out of context. Where volunteer committees of management are the Approved Provider, members said they are unable to physically monitor behaviour. They are not at the centre, nor can they be confident the behaviour of all staff always meets the standards. This structural issue will need to be considered as part of the final recommendations.

Once again, sector complexity and culture change are at the heart of the review recommendations.



"Clear information about all compliance in running an Early Childhood service is complicated, hard to find and open to interpretation by accessors. Please make sure this review doesn't complicate things further without actual child safety improving. Spending money to determine what labels need to be placed on staff behaviours does not improve child safety. Clear, step by step checklists of everything that needs to be done and how to do it will improve it for everyone."

Difficulties with reporting under the current system

Significant additions to training will be required, and this training should feature supports to providers to help them overcome perceived reasons for current underreporting. Members listed the following reasons for underreporting now:

- Fear of 'dobbing in' a colleague
- The confronting nature of the process
- Lack of understanding as to what constitutes a reportable behaviour
- Concern for the impact on families involved
- Not clear about who to report to – the leadership team or volunteer committee of management members are not on hand to see the behaviour.



One member spoke of how subjective the definition of inappropriate behaviour currently is. She expressed that it is open to personal interpretation that might be based on personality clashes or misunderstandings. She gave an example of where a parent might think they see something inappropriate, but the teachers onsite disagreed. She also highlighted the interpersonal impacts where a member of the committee of management's child is involved. She cited the difficulties of staying objective in these and other reporting situations.



"Is there under reporting? At the educator level, yes. At the leadership level, no. Sometimes we hear something has been going on for three months and we ask, 'Why didn't you do something?' There is a real fear of dobbing in a colleague. And getting involved in a process that is confronting."

"Inappropriate conduct could cover such a wide spectrum. Some things should be in the national law, where there's a harmful effect to children. But how can you cover everything? An example off the top of my head is somebody taking photos with the service phone, putting a cord into the service computer and downloading it to her personal phone to use photos of experiences she set up on her personal Instagram account. No children were involved in the photos, they were just experiences. So, should that be in the National Law or just handled internally? We went through a conduct investigation with that staff member and put in place performance management."

This member saw an enhanced role for the regulatory body by making the disciplinary process fully the responsibility of VIT and the Regulatory Authorities.



"Having a Child Safety Commissioner is great but what we need is a Minister for Children leading critical National policy around the protection of children Australia wide."

ELAA's view is that this is a strength of the EYM model, where the EYM has administrative responsibility for issues such as investigating possible breaches and undertaking reporting responsibilities.

Our member agencies will be required to report on a wider range of behaviours, and it is possible that additional staff members will be removed from child-facing work as a result of these recommendations. While this is an impost on services, especially small independent providers, our members strongly support the recommendations to strengthen sanctions for inappropriate behaviour.

Members' experiences of the current context

Of our survey respondents, only 9% thought non-compliant behaviour was either a significant or major issue in their organisations. This is important, as it illustrates that the current negative publicity relating to providers represents a tiny proportion of the sector; although ELAA's expectation is that no provider would ever be found in such serious breach of the law or child safe standards.

Some members expressed dismay as to the difficulties involved in making notifications now. They mentioned:

- The cost – one example was given of the total cost of a single case being approximately \$45,000, including consultants, staff time, backfilling, etc.
- The time – the same example involved a staff member being off work for 10 weeks. This was a significant impost to a small service provider.



- The emotional turmoil across the service
- The emotional toll on the staff member and family directly involved.

These providers could understand why some do not report. It is seen as too difficult, too costly and traumatic for all involved. Others raised the problem of identifying whether a behaviour fully met the current definition, and said they erred on the side of not reporting.



"I've got to admit, last year we went through the reportable conduct process for the first time. Even for me, working in the sector for so long, it was a very, very scary process and it was a very, very long process. And the trauma that was involved for a lot of people was quite significant."

"It was quite a shock to me in terms of all the steps and implications of going through that. It was extremely costly, but the trauma for the person, who was stood down for a whole term, the trauma for everyone was immense. You don't know what it all means till you go through it."

"If people are not reporting because it's going to cost so much money, that's our biggest challenge, isn't it?"

Of survey respondents, 66.6% said they are already conducting remedial training in child safety. However, it is likely this number is inflated due to confusion about mandatory reporting and the broader topic of child safety.

The possible costs of these options

Our survey respondents had a range of views about who should pay for required training where non-compliant behaviour had occurred:

- Where the provider had not exercised duty of care – 76% said the Approved Provider should pay; 9.5% said the individual should pay; 35% said the regulatory body should pay
- Where the individual was responsible for the behaviour – 24% said the Approved Provider should pay; 66% said the individual should pay; 30% said the regulatory body should pay.

76% of survey respondents said the regulatory body should conduct the training. 14% thought a peak body should do the training and 9% thought it was the responsibility of the provider.

If the provider were responsible, 58.7% thought this would be very onerous and 11% thought it would be unaffordable.



Good practice examples

One large EYM said they have a dedicated Child Safety Officer. They supported the idea that the Regulatory Authority should fund such positions as mandatory.

Other larger providers regarded the process of making a notification as part of their business model and included potential costs in their budget.

Another member said they require all staff and volunteers, including those not working on the floor, to undertake the free online training under the Protecting Children: Mandatory Reporting and Other Obligations Early Years program. This provider's staff undertook child safety training last year on reportable conduct and child safe standards. Child safe standards are incorporated into the annual performance review process.

This member said they use the child safe standards as their definition of inappropriate behaviour. Any deviation from the standards is cause for instant dismissal.

3.2 Enhancing Regulatory Authorities' ability to share information with Approved Providers

Currently, information sharing limitations may mean that an individual may retain or obtain a new role at an Approved Provider in instances where:

- A person is prohibited or suspended due to conduct at a previous service, after recruitment checks and screening processes are complete. Hence the prohibition or suspension notice goes undetected until the Approved Provider conducts another check.
- An Approved Provider is not informed about a current enforceable undertaking as it is not a condition of the enforceable undertaking, or the person has not provided consent to share this information.

As with the previous set of options, ELAA's position is that any changes must focus as the first priority on child safety. Operational arrangements should incorporate natural justice and due process in support of the safety of the child. We challenge the review to think about how the system can be made to operate more fairly and with an educative focus, rather than a punitive one. As such, **ELAA cautiously supports option 4**, on the understanding that the wording of laws, regulations and training and education materials are designed to bring about this culture shift.

We support the provision of additional communications on the existing process for accessing the NQA ITS, which is **part of option 2**. We would want to see these communications extended to fully support the implementation of option 4, so that communications include the sharing of information about enforceable undertakings by the Regulatory Authority.

The sector should shift to a primarily educative model to encourage behaviour change

ELAA's view is that a non-punitive response that respects the willingness of the individual to learn from their mistakes should be the preferred response, unless the behaviour meets the definition of egregious or criminal behaviour or statutory misconduct. People should not be scared of the regulator and should not fear information that is shared with their current employer will be used as a punishment (unless it is egregious behaviour). It will be necessary for any such recommended approach to be based on clear definitions of which behaviour types can be modified through education and which cannot.

Current practice is some distance from this, as was highlighted in section 3.1 above concerning reporting experiences. Given the concerns expressed about current reporting processes, our members held a range of views about the options under section 3.2. Those who supported options 2 and 3 believe that the safety of the child is more important than the potential privacy issues raised by sharing information on prohibitions and enforceable undertakings. Some were also concerned that someone who was under a six-month undertaking, and doing everything asked of them to turn their practice around, should not be prohibited from getting a new job by information being shared in a punitive manner.



"Equally ACECOA should not be some 'big scary body' - which is what they may become in response to the ABC investigations. For my whole career I have been saying regulatory bodies should be working alongside us to help us be the best we can be, not punishing us for a broken puzzle, or a trampoline where the edging has come slightly undone. I run an exceeding service, and I have been pulled up by the inspectors for the most ridiculous things over the years - and then you have centres where children are being abused - I think they need to completely change their approach and framework. It's awful. Please don't add to our workload - many people are doing the right thing and deserve to be treated as professionals. Make things practical and simple, otherwise people will switch off or walk away".

Those who supported option 4 felt that if the offence was serious enough to go to the Regulatory Authority, it should be shared with the Approved Provider.

In relation to option 4, questions were raised about privacy and confidentiality where information was to be shared.

Members' experiences of the current context

Members said they currently ask for police checks from prospective employees as part of their recruitment process, as they do not consider the current notifications process sufficiently robust. They also said they rely on the Victorian Institute of Teachers (VIT) register where applicable.

3.3 Expansion of regulatory responses to educator and staff member conduct

Currently in some scenarios, the limited legislative tools available to impose by the Regulatory Authority is not conducive to an environment that promotes the safety, health and wellbeing of children in education and care services. In particular:

- Educators and staff members who display non-compliant conduct are not required to undertake corrective training or professional development activities. This means repeated non-compliance is more likely, and the risk of prohibition increases for that educator.
- Approved Providers are left to manage non-compliant conduct without the support of Regulatory Authorities. This may impose additional burden on Approved Providers and pose a risk to the safety of children attending their services.



"The systems and current governance in relation to child safety is very difficult to navigate. The systems don't talk to each other; Approved Providers are having to double up notifications and it makes the process feel inconsistent and puts a lot of expectation of staff to be notifying lots of different agencies. The responsibilities of this are disproportionate to the support and guidance that is received by the service. This review and update should be operationally minded and put more accountability on the agencies to be managing and sharing data effectively because currently it is too manual and the expectations on staff reporting to know to contact 3 or 4 different agencies is unreasonable."

ELAA supports providing Regulatory Authorities the power to impose supervision orders, suspend and subsequently remove educators or other staff members found to have acted inappropriately around children. Considerable work will be needed to sufficiently articulate the circumstances under which these actions can be taken. **ELAA supports all options 2 – 5.**

This set of options is seen as being interrelated with theme 3.2 above.

82.5% of survey respondents agreed that regulatory bodies should be required to impose suspension orders where the national regulations have been contravened. They consider these options will significantly increase child safety – as long as the definitions of inappropriate behaviour are clear and there are solid guidelines that providers can follow to submit matters to the regulator.

The nature of the offence was seen as key to the success of the options. Where there is a willingness and ability to change behaviour, these options were seen as positive. For example, if a situation could be resolved through cultural or other training the options would succeed.

Members' experiences of the current context

Some providers raised concerns about the impact on organisations if the incident is a misunderstanding or unproven. The level of distress to all concerned needed to be carefully weighed when deciding about whether to report. These comments resulted from the experiences of some members. We note that this is an example of why the punitive culture must be replaced with an educative, constructive approach that can flex to appropriately respond to the most concerning and egregious actions of a minority.

Specific questions about the possible costs of these options

There are clear costs involved for providers where the Regulatory Authority makes a determination to remove a staff member from the floor. Mandatory training imposed by the Regulatory Authority should be paid for by that body.



Good practice examples

One small provider said they have undertaken considerable training over the past 3 – 4 years to ensure no staff find themselves in a position where their behaviour could be seen as inappropriate. They have worked hard to define the grey areas of reportable conduct and undertaken training in body safety. Their policies and codes of conduct are clear and the ethos of the importance of the child's voice is central to their culture.

They mentioned that they have accessed a number of free online resources, such as the Daniel Morcombe Foundation website.

Theme 4: Working with Children Checks

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

The Working with Children Check was an important step in ensuring people working with children were fit and proper to do so. However, over time, it has become evident that the current check process is not meeting the needs of the sector. Of our survey respondents, 82% do not believe the current WWCC is adequate to safeguard children.

A fundamental review of the WWCC is needed

It is time to undertake a complete review of the system to ensure it is fit for purpose and provides advice to providers in real time about any breaches or cancellations of the approval to work with children.

A necessary first step is to bring all states and territories under the same regulations in regard to ensuring the check has been approved prior to commencing work. 93.5% of our survey respondents believe that a person should not be able to undertake child facing work until the result of the WWCC has been notified. Only 15% of survey respondents said waiting until the check was approved would have a significant or major impact on their service.

ELAA strongly supports this standardisation and further supports the standardisation of the duration of WWCCs. All states and territories should have a five-year term for the WWCC. **ELAA therefore supports options 2 and 3**, although we see them as part of the necessary overhaul of the WWCC system.

4.2 Requiring Approved Providers and Regulatory Authorities to be notified about changes in WWCC status

Currently the lack of nationally consistent and comprehensive notification requirements increases the risk that unsuitable individuals remain in education and care settings. ELAA strongly supports the sharing of data between states to ensure individuals cannot reoffend in other jurisdictions. We further support the sharing of data to ensure unsuitable people cannot move between services, with the resultant risks.

ELAA supports options 2, 3A and 3B. However, as previously stated, a much more fundamental review of the entire WWCC system is needed urgently. Without this comprehensive review, change will not be effective.

As indicated above, the WWCC is not fit for purpose. Our members generally find they are looking for alternative ways to obtain the information they need about prospective employees or volunteers. The efficacy of the checking process was called into question by almost all members consulted. Almost all of our members consulted understand that the checking process does no more than identify if the individual's period of registration is still current. They understand that no link is made to the WWCC if there is an offence alleged or proven. Further, the WWCC relates only to offences relating to children, not to other relevant aspects of employment. Of the two members that thought they would receive a notification, neither had ever received one. This is another instance of unclear procedures and resulting confusion.

The system relies on self-reporting of any potential notifications. Even if this happens, there is no link to ensure a new employer is aware of the situation.

In all, the WWCC provides a false sense of security to providers.



An integrated national teacher and educator registration system reporting in real time

ELAA supports the model used by Victorian Institute of Teaching (VIT). This system is proactive and checks annually for breaches and notifies providers. Members noted that the VIT portal provides notification if a staff member is under investigation, in real time. We would be very disappointed to see any recommendations implemented nationally that took us backwards from an efficient system like VIT's.



"So, with VIT, if a teacher was noted as being under investigation, when you apply for your card, it comes up with a question that leads to a notification. As soon as you hit that, it doesn't allow you to proceed.

With the WWCC, I had someone who has been notified. There was no question. They were allowed to just go right through and get their WWCC. We're not notified at all."

We note that many members also ask for a Police Check as part of the recruitment process. This check is based on a wider investigation of any allegations or proven offences of the potential employee/volunteer. Prospective employees pay for their own police checks. Volunteers' police checks are paid for by the provider.



"We still ask for police checks for new employees who are educators because you get different information [from the WWCC]. People think police checks last forever. But no, they are normally valid for six months. But we only ask for it on commencement."

ELAA strongly supports the establishment of a national teacher and educator registration system. Our preferred system would be for a joined-up system, like Victoria's VIT and WWCC being able to connect, along with police checks – a joint endeavour between police, a national teacher and educator registration body (or joined up state and territory bodies) and providers to ensure only appropriate people can work with children.



"VIT needs to be notifying Approved Providers if there are changes in WWCC status. The mechanism for us to be notified is not there. And that makes a mockery of the whole system. I could get my WWCC cleared, offend the very next day and hold on to that for five years."

"Police don't notify the WWCC if someone has been convicted of an offence [relating to children] because they don't know the person has a WWCC. The loop is not closed."

"The Regulatory Authority must notify the Approved Provider of offences. As in previous sections, where someone has a charge of inappropriate conduct, the safety of children should come above concerns of privacy.

If someone worked in finance, and they were accused of fraud, they would not be allowed to work with money until the outcome of the case was known. This should be the same."

Checks would become automatic

In relation to the frequency with which WWCC should be checked, assuming they become proactive and responsive to real time events, the need for frequent checks alters. Checks then become only necessary to ensure the approval to work with children is still current.

In an effective system, the provider would be notified of any breach when the police or national teacher and educator registration system were advised, and the provider would have an automated alert when the period of registration was coming up for renewal. This is current practice in the VIT system. Thus, no regular check by an Approved Provider would be needed.

Reviewing the WWCC can be incorporated into the performance appraisal process, if it is not automatic. For parents and committee members, an annual check is considered sufficient.



Best practice examples

Some providers ask for police check, mandatory reporting certification and first aid certification during the hiring process.

Theme 5: Improving the safety of the physical service environment

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

Temporary waivers have a place in the management of services where upgrades, retrofits and responses to unforeseen events mean that services would need to be suspended. Such temporary waivers should mitigate against occurrences of inadequate supervision, which may increase instances in which children experience harm. **ELAA supports options 2 and 3**, the continued use of temporary waivers where there is no option to ensure safe service provision, and on the basis that they are approved in a timely manner, are time-limited and monitored.

Mitigating circumstances mean temporary waivers will always be needed

We do not support option 4, as there is a range of mitigating circumstances that could arise. For example, there are regions in Australia where weather events may disrupt services significantly and for a long period. ELAA's view is that maintaining as normal a service as possible in these circumstances will assist in reducing trauma for children and more broadly support communities to come together and recover. It may also be a situation where the community simply needs their children to be in a safe place.

Of our members responding to the survey, safety of the physical environment is of minor or no concern to 56%. Only 15% saw this issue to be of major concern. Only 6.7% are subject to waivers in relation to physical environmental issues, including both permanent and temporary waivers. Of those with waivers, 60% said their buildings could not be made compliant and they require permanent waivers.

Members' experiences of the current context

Some members related their experiences with retrofitting and upgrading, which necessitated temporary, and time-limited waivers. These included outdoor areas as well as internal spaces. All were supportive of the flexibility these waivers provided.

One member said her service had been flooded and the service had shut down for a week till the premises were fit for purpose.

Members said:



"We had to get a waiver for a playground issue. We asked for it before the last holidays. It came through a week ago. So, it's about a timely response, and that it is checked on when it should be finished."

Theme 6: Additional recommendations

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

ELAA supports enhanced transparency of ownership and management arrangements for all services across the sector. **ELAA supports options 2, 3A and 3B.**

This set of options will enable staff, volunteers and families to make more informed choices about their employment options and their children's early learning experience.

Members commented on the recent Australian Broadcasting Commission reports, even though they pertain to a very small cohort of services, as clear and comprehensive examples of why these regulations are needed.

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

Extending the opportunity for Regulatory Authorities to prosecute offences will reduce the risk of harm by ensuring more cases can be prosecuted and providing a greater deterrent to unacceptable behaviour. ELAA is very aware that in many cases it is some years between the when the offence is committed and when it is disclosed by the survivor. To promote natural justice and due process, **ELAA supports option 2** to strengthen the ability of Regulatory Authorities to prosecute offences against children.

Once again, further information is needed about what offences are included in this option.

We note that the date of notification needs to be retained so that action is taken within two years of notification.

There may be more costs associated with prosecuting more cases. This is unlikely to be a significant impost on ELAA members.

6.3 Information sharing provisions for recruitment agencies

Improving information provided to recruitment agencies used by providers would be of benefit in keeping children safe. **ELAA supports options 2 through 5** as a package.

We note that who employs the staff can be an issue here. In some instances, contract staff are employed directly by the agency (pay-checks paid by them) whereas in other cases the Authorised Provider is the employer. However, our position is that in all circumstances there is a joint responsibility between the agency and the provider to ensure all contract staff are fully trained and are fit and proper people to be supervising children, and that records are kept on their employment in the same way as on staff positions.

The Regulatory Authority should have the same responsibilities to ensure contract staff are appropriate fits for the sector as they do for ongoing employees and volunteers. The overhaul of the WWCC will assist in this.

Members' experiences of the current context

Some member said they are using recruitment agencies less often because they are no longer releasing information about police checks. One member commented that she has less confidence in agency staff's knowledge of child safe standards. Another member said agencies should have information about any actions against individuals, so they do not offer unsuitable people for work.