



## Family Day Care Australia

Submission to the Senate Select Committee on Red Tape  
Inquiry into the effect of red tape on child care

## 1. Introduction

### 1.1 About Family Day Care Australia

Family Day Care Australia (FDCA) is the national peak body for family day care. Our role is to promote, support and advocate for family day care services and educators. Our aim is to ensure the strength and continued growth of the sector in Australia and to support high quality learning and developmental outcomes for children. FDCA represents a national membership of over 18,000 educators and 688 approved services.<sup>1</sup> FDCA takes a rights-based approach to all research, policy development and advocacy work it undertakes, underpinned by a strong commitment to the UN Convention on the Rights of the Child.

### 1.2 About family day care

Family day care is a form of regulated early childhood education and care (ECEC) that takes place in the educator's home and is regulated under the Education and Care Services National Law and Regulations, thereby meeting the requirements defined in the National Quality Standard (NQS).

Family day care is a significant element of ECEC in Australia that responds to parents' desire for a 'home-based' and 'family-like' environment for their children.<sup>2</sup> Educators work from their own homes with small groups of no more than four children under school age, with the option to care for an additional three school aged children outside of school hours. The family day care sector provides flexible ECEC across both standard and non-standard hours, and family day care is provided across Australia, including in rural and remote communities where, in some instances, family day care is the only approved form of ECEC available to families.

According to the latest Early Childhood and Child Care in Summary report published by the Department of Education and Training, of the 1,281,260 children who attended approved child care services, 16.1% (206,520) attend family day care.<sup>3</sup> This compares to 54.6% for long day care and 33.8 % for outside school hours care.<sup>4</sup> The family day care sector supports more than 117,650 families across Australia.<sup>5</sup>

By their very nature, family day care services reflect the socioeconomics of their communities and the sector has the potential to adapt to address unmet demand. Although service and educator numbers have suffered declines over the past two years, family day care continues to retain strong representation in regional and remote areas, with 21.9 % of educators and 21.4% of family day care services operating in regional and remote Australia.<sup>6</sup>

The family day care sector continues to provide much needed ECEC for Australian families in areas of high disadvantage; 16.2% of educators provide family day care in the highest decile on the SEIFA index (representing areas of highest socio-economic disadvantage) and over half of educators (55.8%) are located in areas ranked in the first five deciles of the SEIFA index.

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<sup>1</sup> Family Day Care Australia (2018) *Family Day Care Sector Profile: December 2017*

<sup>2</sup> [Report of the Review to Achieve Educational Excellence in Australian Schools through Early Childhood Interventions](#), S. Pascoe and D. Brennan (2017)

<sup>3</sup> Department of Education and Training (2018) *Early Childhood and Care Summary: March quarter 2017*

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Family Day Care Australia (2018) *Family Day Care Sector Profile: December 2017*

### 1.3 Overview

As the Committee is aware, a range of changes to the legislative and administrative frameworks underpinning the early childhood education and care sector will occur post 2 July 2018. Broadly, these changes are intended to reduce unnecessary red tape in the implementation of the National Quality Framework, strengthen compliance and improve the quality of delivery of ECEC.

FDCA has participated actively in all recent consultations on the proposed changes to the legislative and regulatory frameworks for ECEC and child care assistance fees. Our submissions may be accessed at [www.familydaycare.com.au/representing-you/submissions](http://www.familydaycare.com.au/representing-you/submissions).

As per recent email correspondence between FDCA and the Committee Secretariat, we believe scrutiny of the Government's New Child Care package, once implemented, should be in scope of the Inquiry's terms of reference in order to accurately gauge the effect of red tape on child care in Australia.

This brief submission will provide relevant background information on the family day care sector and highlight relevant operational issues, arising from recent reforms, which have increased red tape and are impacting on the sector's viability, namely:

- i) Reduction in operational funding and lack of recognition of the co-regulatory model
- ii) The imposition of a cap on the number of educators per service
- iii) The imposition of family day care coordinator / educator ratios

Finally, recommendations are made to the Committee in section 4.

It should be noted that the family day care sector is an integral component of a regulated ECEC system that supports the needs of Australian families through not only flexible service delivery (particularly non-standard hours, overnight and weekend care), but also through the provision of significant levels of care in areas of socio-economic disadvantage and/or regional and remote areas.

FDCA remains entirely supportive of well-considered and proportionate policies or regulatory proposals that support a high quality, vibrant and responsive family day care sector. However, it is equally important that measures taken to ensure a high quality ECEC sector do not constrain legitimate business growth so that family day care services are able to continue to meet the needs of families for whom high quality, flexible and affordable child care in a profession home learning environment is their preferred or only choice.

## 2. A co-regulatory model

There are a number of significant differences between family day care services and other mainstream ECEC service types and family day care can be fundamentally characterised as a 'co-regulatory' service delivery model.

Family day care educators are ECEC professionals who are registered with a family day care 'approved service' that is responsible for registering, supporting, training, monitoring and advising its educators. Services provide this support through a 'coordination unit' which employs administrative staff as well as coordinators who are field staff, working to actively support and monitor educators in their work. Coordinators also facilitate a link between families requiring family day care and educators within the service. The family day care model is therefore, essentially, a two-tiered system.

It is also important to note that, while educators receive administrative support from coordination units, the majority of family day care educators are classified as self-employed, working as sole traders, with only a small percentage engaged as 'employees' of the approved service. This means that educators must undertake a range of business related activities themselves, such as managing cash flow and other financial matters, promoting their business, meeting relevant standards and regulatory requirements.

While FDCA acknowledges that the management and administration level of other ECEC services also play a pivotal role in monitoring regulation and compliance, they are largely situated in the same centralised environment, as opposed to a family day care service which requires operators to strive for the same standards of quality in a 'satellite' service delivery model. Key co-regulatory functions of the coordination unit include (but are not limited to):

- The administration of public funds through child care fee assistance mechanisms;
- Ensuring both the central coordination unit and each individual educator's environment maintains compliance with the National Quality Standard, the Early Years Learning Framework (EYLF), the National Law Act and Regulations, Family Assistance Law, and service policies, procedures and guidelines;
- Supporting, resourcing and monitoring all educators through:
  - o Maintenance of necessary qualifications, including First Aid, Emergency Asthma Management and First Aid Management of Anaphylaxis certificates;
  - o Provision of ongoing professional development opportunities;
  - o Monitoring of children's care and developmental needs through scheduled and unannounced support visits;
- Providing opportunities for children with additional needs to be included into the service, where it is considered to be in the best interests of the child;
- Ensuring each individual care environment for children maintains high standards of safety, health and hygiene;
- Primary responsibility for adequate provision of necessary support and information to registered families;
- Development and review of policies and procedures through consultation with educators and families;
- Administration of the Child Care Management System (CCMS) in conjunction with educators; and
- Educator recruitment, induction and training.

The family day care sector has, over recent years, faced a myriad of legislative amendments due to compliance issues within the sector (see Appendix A). FDCA has continuously and actively worked with the Australian Government and State and Territory Governments to support the implementation of the majority of these measures, when they represented fair

and proportionate regulatory responses that do not excessively or bluntly impact on legitimate service delivery. However, some regulatory instruments and program changes have impacted significantly on legitimate service delivery which has resulted in excessive administrative burden, service closures and a decrease in high level quality ratings. Specifically, the legislative changes enacted over 2015 – 2017 have resulted in a range of outcomes including:

- The imposition of mandatory coordinator to educator ratios;
- Capping the maximum number of educator per service;
- A range of additional circumstances whereby child care fee assistance is not payable;
- Additional suitability criteria for all family day care educators and key personnel;
- Changes to eligibility criteria for Community Support Program funding and associated reduction in operational funding for many services
- Changes to the conditions for continued approval including that the provider ensures that less than 50% of the children to whom any family day care educator is providing care within any CCS fortnight at the service are related to the family day care educator as:
  - o (a) a niece or nephew; or
  - o (b) a cousin; or
  - o (c) a grandchild (including a great-grandchild);
- New minimum requirements for family day care educators;
- Additional requirements for record keeping and the register of educators, co-ordinators and assistants;
- Increased powers of entry for investigation for regulatory authorities; and
- Tightened circumstances for the approval of family day care venues.

This increase in regulatory burden has been coupled with a significant reduction in operational funding for family day care services which has compounded negative impacts on services, which is evident in the decline in quality ratings under the National Quality Framework. While this effect may be predominantly attributed to the unprecedented growth in new services and the likely associated increase in proportion of non-compliant activities within the sector over recent years, anecdotal evidence from well-established FDCA approved service members indicates that the increased administrative burden, coupled with funding decreases, has affected the ability of services to consistently implement high quality, affordable and flexible family day care service delivery.

FDCA has been unwaveringly supportive of tighter compliance mechanisms to eradicate fraudulent behaviour from the family day care sector, including supporting numerous Determinations that have been made under Family Assistance Law over recent years targeted at improving compliance. FDCA supports reasonable, proportionate and appropriate compliance mechanisms, but maintains concerns that the cumulative impact of these ongoing regulatory reforms, coupled with funding cuts, continue to impact upon many legitimate existing forms of care, and hence the wellbeing of thousands of children and families.



### **3. Issues of relevance to the Inquiry into the effect of red tape on child care**

The aforementioned large number of legislative changes to the child care system enacted over 2015 – 2017 have resulted in a wide range of impacts on the family day care sector, including additional administrative and regulatory burden and restrictions to business practice (see Appendix A).

FDCA acknowledges that, following a period of rapid expansion where some unscrupulous operators exploited loopholes in the law and regulations governing ECEC, many of these changes are warranted to help strengthen compliance and preserve the integrity of the family day care sector. However, three issues in particular, arising from the recent reforms, have significant potential to restrict legitimate growth in the sector and are, in fact, already impacting on the businesses of existing services and educators, ultimately affecting the long-term viability of the sector and limiting the extent to which it can respond with agility to the changing needs of Australian families.

These issues are:

#### **3.1 Reduction in operational funding support and lack of recognition of the co-regulatory model**

The Australian Government established the Community Support Program (CSP) during 2004 to improve access to child care, especially in areas where the market would otherwise fail to provide services. The CSP also recognised the unique nature of family day care services and their ability to provide flexible, outside standard hours, overnight and weekend care through the provision of universally accessible operational support funding.

In March 2014, the then Assistant Minister for Education, the Hon Sussan Ley MP, announced changes to the CSP which took effect from 1 April 2014. The changes introduced reformed eligibility criteria for new family day care service providers applying for funding under the CSP. From 1 July 2015, all existing family day care services seeking to access CSP funding were assessed under the revised guidelines, which include the eligibility criteria and an annual cap of \$250,000 on CSP Operational Support payments. The new criteria meant that an applicant for CSP funding is eligible only if they were the sole provider of family day care in an area, and if they could demonstrate there is unmet demand for child care.

The amendments to the CSP came primarily as a result of the Australian National Audit Office (ANAO) review of the program in 2012 (which highlighted a disproportionate allocation of the funding pool to the family day care sector) and the rise in non-compliant activities in the family day care sector. However, despite the program amendments, it is evident that there is a longstanding precedent for the legitimacy of operational funding for the family day care sector. While the Commonwealth traditionally funds the states and territories to undertake the primary role of regulators in the ECEC sector, under the CSP, there was clear recognition of the 'co-regulatory' role of family day care approved services inherent in the model.

The Australian Government has introduced the Community Child Care Fund (CCCCF) to replace the CSP, however there is no universal recognition of the family day care co-regulatory model under the CCCCf. The overarching objectives of the CCCCf open competitive grant opportunity are to:

- Support eligible child care services to transition to and operate viably under the new child care system; and
- Support the longer term sustainability of eligible child care services.

However, FDCA contends that these objectives may not be achieved if there is no recognition of the family day care co-regulatory model and this has negatively impacted FDC service provision in rural and remote areas and areas of high socioeconomic disadvantage and has resulted in service closures.

Given that an exceptionally strong compliance framework is now in place, FDCA contends that it is an opportune time for the Australian Government to reassess approaches to supporting the family day care sector, focussing on incentivising higher quality, more flexible and sustainable service delivery, rather than simply maintaining a continuation of onerous and restrictive compliance oriented measures that restrict growth and limit the capacity of legitimate service delivery to meet the demands of Australian children and families.

As such, FDCA is requesting that the Committee consider recommending a revised approach to the provision of some form of operational funding to the family day care sector in recognition of the 'co-regulatory' model inherent within family day care services, which will be essential in assisting to reverse the downward trend in quality ratings for the family day care sector.

### **3.2 The imposition of a cap on the number of educators per service**

As of October 2017, amendments to the [Education and Care Services National Law](#) and [Education and Care services National Regulations](#) allow state and territory regulatory authorities, at their discretion, to impose a limit on the maximum number of educators that may be engaged or employed by a service as a condition on a family day care service approval.

This is an example of excessive regulatory restriction of market competition which ultimately will universally limit the number of educators within family day care services across Australia and affect the choices available to Australian families. Moreover, the imposition of a universally applied cap of this nature is outside the scope of the recommendations made in the [2017 Decision Regulation Impact Statement for changes to the National Quality Framework](#) on the child assistance package and will have a range of significant negative consequences for family day care services, children and families.

FDCA is aware that the NSW Early Childhood Education Directorate, or the NSW Regulatory Authority ('the NSW RA'), is taking an extreme approach to setting cap numbers and is applying stringent educator caps retrospectively to the service approvals of already established family day care services as well as imposing caps on new services.

FDCA maintains that educator caps unfairly limit family day care educators' ability to choose a service to register with and has the potential to severely limit the viability of the family day care sector. Family day care services are businesses like any others and legitimate expansion needs to be an option to remain viable in a competitive, demand driven and dynamic market. Additionally, the draconian approach to implementation undertaken by the NSW RA and the inadequate timeframe allocated for both services' responses and subsequent review by the Directorate will result in significant impacts on services' viability, workforce participation, and care arrangements for thousands of Australian children and families.

### **3.3 The imposition of mandatory family day care coordinator - educator ratios**

The recent amendments to the [Education and Care Services National Law](#) and [Education and Care services National Regulations](#) also included a new mandatory ratio of coordinators to educators of 1:15 for the first 12 months and 1:25 thereafter. These requirements are designed to improve oversight of and support within FDC services.

However, there is no evidence that indicating a specific ratio of coordinators to educators will promote the best outcomes for children. Indeed there are many factors that services currently take into account when determining the most appropriate coordinator to educator ratio for individual services and educators. For example:

- The geographical areas coordinators have responsibility for and associated travel time (particularly salient in rural and remote areas);
- The work hours of a coordinator (e.g. full-time or part-time); and
- The specific support needs of the educator, such as level of educator qualification and experience in family day care, whether the educator is from a non-English speaking background, whether they are caring for high needs child/children, the number and age range of children the educator is looking after, and the hours they operate (part-time/full-time, for example).

FDCA is aware of many services with higher coordinator to educator ratios which have achieved high NQS ratings. Moreover, for some services, especially those covering wide areas in rural or remote Australia, these increased requirements are affecting their capacity to continue operating.

Again, FDCA is aware that the NSW RA is taking a draconian and broad brushed approach to setting coordinator to educator rations. The RA has applied a 1:15 coordinator ratio to all NSW services in spite of the guidance within the National Quality Framework. Due to service viability issues as a result of this approach, it will have significant adverse impacts on quality services, educators, families and children.

#### **4. Conclusion and Recommendations**

FDCA reiterates that we support reasonable, proportionate and appropriate efforts to reduce red tape and strengthen compliance mechanisms to ensure quality provision of early education and care in family day care settings. However, we maintain concerns that the cumulative impact of the above mentioned additional regulatory requirements, coupled with funding cuts, continue to impact upon many legitimate existing forms of family day care, and hence the wellbeing of thousands of children and families' choice of child care. FDCA recommends that the Committee:

- a. Considers avenues to support family day care services (through operational funding in recognition of the co-regulatory model), with particular consideration given to services in remote areas and areas of high socio-economic disadvantage, so as to incentivise high quality, more flexible and sustainable service delivery in these areas.
- b. Examines areas of excessive regulatory restriction of market competition in family day care, for example the requirements for caps on educator numbers per service and mandated coordinator/educator ratios and recommend clear strategies to ensure transparent and consistent approaches to implementation of such mechanisms across jurisdictions.
- a. Includes scrutiny of the Government's New Child Care Package, due to be implemented from 2 July 2018, in this Inquiry in order to accurately gauge the effect of red tape on child care in Australia and make informed findings.



## **APPENDIX A – Summary of recent legislative and program changes**

Key legislative<sup>7</sup> and program changes over recent years that have simultaneously strengthened compliance frameworks and negatively impacted on some aspects of legitimate service delivery include (but are not limited to):

- *Child Care Benefit (Children in respect of whom no-one is eligible) Determination 2015*
- *Child Care Benefit (Children in respect of whom no-one is eligible) Amendment Determination 2016*
- *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2015 (No. 2)*
- *Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2016*
- *A New Tax System (Family Assistance) (Administration) (Child Care Benefit – Record Keeping) Amendment Rules 2015 (No. 1)*
- *Child Care Benefit (Session of Care) Determination 2016*
- *The Education and Care Services National Law Act 2010 and the Education and Care Services National Amendment Regulations 2017*
- *Tightening of the Community Support Program*
- *Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017*
- *Child Care Subsidy Minister's Rules 2017*
- *Child Care Subsidy Secretary's Rules 2017*
- *A New Tax System (Family Assistance) Act 1999*
- *A New Tax System (Family Assistance) (Administration) Act 1999*

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<sup>7</sup> It should be noted that many of the legislative changes outlined below are be consolidated under the Child Care Subsidy Minister's Rules 2017 and the Child Care Subsidy Secretary's Rules 2017 under the Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017.