



Government of **Western Australia**  
Department of **Communities**



# **Family day care residences with swimming pools, spas and water features in Western Australia**

**Consultation Regulatory Impact Statement (Consultation  
Statement)**

**March 2019**

## **NOTICE TO PERSONS MAKING A SUBMISSION**

Although every care has been taken to ensure accuracy in the preparation of this paper, the information has been produced as background information and general guidance for persons wishing to make submissions in response to the review of the regulation of family day care residences with swimming pools, spas and water features in Western Australia.

This publication is available in other formats that can be requested at any time.

## Minister's Message

### Proposals to regulate swimming pools, spas and water features in family day care residences in Western Australia.

I am pleased to release this Consultation Statement (Consultation Regulatory Impact Statement) to consider the most appropriate way to regulate family day care residences in Western Australia with swimming pools, spas and water features, to keep children safe. This is an issue of significant importance and requires careful consideration. This paper addresses the recommendations made by the Coroner following the investigation into the death of Lachlan Mitchell.

As at June 2018, there were approximately 271 family day care residences across Western Australia with a pool, spa and/or water feature. These proposals affect the family day care sector, and the families whose children attend these residences. Most importantly, the safety of the children who attend these services while in the care of others is paramount.

The proposals in this paper include changes to current regulations to improve:

- the safety of children attending family day care in Western Australia and to prevent serious injury and death; and
- oversight through upskilling the sector in relation to safety of the physical environment, particularly water hazards.

Consideration is also given to balancing the regulatory burden for family day care providers and the cost to sector.

The proposals and options in this Consultation Statement have been developed based on consideration of the Coroner's recommendations as well as the responses received to my request for feedback from the family day care sector and interested parties regarding the Coroner's recommendations.

I would like to thank those who have provided input to date and I trust that you will continue to participate in this consultation process. I strongly encourage everyone with an interest in family day care and child safety to take the time to consider this paper and provide feedback. This is your opportunity to have your say in guiding future decisions about supporting safety in family day care residences.

Kind Regards  
Hon Simone McGurk MLA  
Minister for Community Services



## **LIST OF ABBREVIATIONS AND ACRONYMS**

ACECQA	Australian Children’s Education and Care Quality Authority
COAG	Council of Australian Governments
DMIRS	Department of Mines, Industry Regulation and Safety
ECRU	Education and Care Regulatory Unit
FDC	Family Day Care
LDC	Long Day Care
NQA	National Quality Agenda
NQA ITS	National Quality Agenda, Information Technology System
NQF	National Quality Framework
NQS	National Quality Standard
NSW	New South Wales
QIP	Quality Improvement Plan
USO	Universal Service Obligation
WA	Western Australia
WF	Water Feature

## **DEFINITIONS**

Approved provider	A person who has been assessed as fit and proper and granted a provider approval, to be involved in the provision of an education and care service.
Education and Care Service	A centre-based, or family day care, service that provides education and care to children under 13 years of age and is subject to the requirements of the National Law and National Regulations.
Educator	A person who is qualified to provide education and care to children.
Family Day Care service	A network of educators and residences, that are affiliated with an approved provider who holds a service approval.
FDC Co-ordinator	A person employed, or engaged, by an approved provider to monitor and support the educators of the family day care service.
FDC residence	A place, usually the educator's home but may be an approved venue, at which an educator provides education and care to children.
National Law	<i>Education and Care Services National Law (WA) 2012</i>
National Quality Standard	The benchmark, prescribed by the National Regulations, against which education and care services are assessed and rated.
National Regulations	Education and Care Services National Regulations 2012
Nominated supervisor	A person, nominated by the approved provider, who is responsible for the day-to-day management of an approved education and care service.
Toddlers	Children aged between 0–4 years of age.

# Table of contents

<b>Introduction</b> .....	<b>1</b>
Where to send submissions .....	2
Submissions close.....	2
Review updates.....	2
Information provided may become public.....	3
<b>Context</b> .....	<b>4</b>
<b>Overview of education and care services</b> .....	<b>4</b>
The regulation of education and care services .....	4
Approved providers .....	5
Centre-based services .....	5
Family Day Care services .....	5
<b>The incident</b> .....	<b>7</b>
<b>What happened following the incident</b> .....	<b>9</b>
<b>Water hazards and young children</b> .....	<b>10</b>
Family Day Care premises with pools, spas and water features .....	11
<b>Regulation of ‘water hazards’</b> .....	<b>12</b>
Building laws .....	12
The National Law, family day care residences and ‘water hazards’ .....	14
<b>Drowning deaths in Australia and WA</b> .....	<b>19</b>
Drowning deaths in FDC services in Australia .....	20
Key risk factors - toddler drowning deaths in WA.....	20
<b>The WA Coroner’s Recommendations</b> .....	<b>24</b>
Responses from the family day care sector .....	24
Response from Melanie Mitchell, Lachlan’s mother .....	27
<b>Policy Options</b> .....	<b>29</b>
Recommendation 1 .....	29
Recommendation 2 .....	33
Recommendation 3 .....	38

Recommendation 4 .....	43
<b>Implementation and Engagement Strategy.....</b>	<b>46</b>
<b>Submissions Template.....</b>	<b>i</b>

# Introduction

On 9 November 2015, Lachlan James Mitchell drowned at a family day care (FDC) residence in Carramar, Western Australia (WA).

Following the incident, a Coronial inquest was held, a report was prepared and recommendations made.

Following release of the Coroner's findings in June 2018, the Minister for Community Services, the Hon Simone McGurk MLA, asked the Department of Communities to consider how best to enact the Coroner's recommendations and ensure the safety of children who attend FDC services, including consultation with the sector.

On 30 July 2018, the Minister wrote to approved providers of FDC services and peak bodies to:

- provide a link to the full Coroner's report<sup>1</sup>;
- outline the Coroner's recommendations; and
- request feedback to be provided to the Regulatory Authority, about the impact of the recommendations on the FDC sector, particularly families in regional and remote locations.

The purpose of this paper is to present options to enact the Coroner's recommendations and to obtain feedback about the options from the child care sector and the community more broadly.

The first part of this paper provides contextual information about:

- regulation of the education and care services, including the FDC sector
- the drowning incident, and subsequent actions that occurred;
- drowning research, including the risk factors for drowning and suggested actions to minimise risk;
- the responses received from the FDC sector, including parents, about the WA Coroner's recommendations.

The second part of the paper outlines options that have been developed following analysis of the feedback obtained from the FDC sector.

---

<sup>1</sup> A copy of the full Coroner's report can be found online at:  
[http://www.coronerscourt.wa.gov.au/files/Mitchell%20\(Lachlan\)%20amended%20finding.pdf](http://www.coronerscourt.wa.gov.au/files/Mitchell%20(Lachlan)%20amended%20finding.pdf)



## HOW TO MAKE A SUBMISSION

Your feedback to this Consultation Regulatory Impact Statement (Consultation Statement) is sought in relation to the proposed policy options.

Any interested persons, including those in the FDC sector, are encouraged to consider this report and provide feedback on the options presented. While form letter submissions will still be considered, the most effective feedback is not necessarily obtained by sending the same information repeatedly.

This Consultation Statement contains a range of specific proposals. You do not have to comment on all proposals and can focus only on those proposals that are important and relevant to you. The questions after each proposal are aimed at making it easier for you to present your views. The policy team is requesting information about your ideas and perspectives about the options presented. You are welcome to raise additional issues and to suggest options for resolving issues of concern. Please explain the reasons behind your suggestions as this will help the Department of Communities to better understand your viewpoint and will assist in identifying the most suitable policy options.

If possible, please also provide:

- evidence to support your views, for example by including relevant statistics, examples or case studies; and
- estimates of any costs you believe might arise in complying with proposals.

This information will greatly assist the Department of Communities to assess the issues and possible cost implications of the proposed options.

## Where to send submissions

Please provide your submissions:

- by email, to [eclir@communities.wa.gov.au](mailto:eclir@communities.wa.gov.au)
- by mail to:  
ECLIR  
Locked Bag 22  
EAST PERTH WA 6892

You may complete this [survey](#) as a stand-alone submission or you may also send a written submission to provide additional information.

## Submissions close

The closing date for submissions is **13 May 2019 at 5.00pm WST**

## Review updates

You can keep up to date at [www.communities.wa.gov.au/FDCswimmingpoolconsultations](http://www.communities.wa.gov.au/FDCswimmingpoolconsultations)

## Information provided may become public

After the consultation period concludes, all submissions received may be made publicly available on the Department of Communities website. Please note that, because your feedback forms part of a public consultation process, the Government may quote from your comments in future publications. If you prefer your name to remain confidential, please indicate that in your submission. As submissions made in response to this paper will be subject to freedom of information requests, please do not include any personal or confidential information that you do not wish to become available to the public.

**Submissions will be published on the Communities and Treasury websites, unless clearly marked ‘confidential – not for publication.’**

## Next Steps

Stakeholder feedback in response to this Consultation Statement will assist the Government in deciding the scope, and shape, of reforms needed. Following analysis of submissions to the Consultation Statement a Decision Regulatory Impact Statement (Decision Statement) will be prepared. The Decision Statement will analyse the impacts of the various options and will be used by Government to guide its decisions. The Decision Statement will be published via the Department’s website once the Government’s decision is made public.

# Context

## Overview of education and care services

In Australia, the demand for the care of children outside the family home has increased as broad population and household changes have occurred over time. Since the 1980s, trends indicate women are remaining longer in the education system and paid workforce, and are returning to paid work after having children<sup>2</sup>. The participation of both parents, and lone parents, in the workforce is the main reason for children to attend formal care, however such care also promotes children's social and overall development<sup>3</sup>.

There are different types of formal child care available for families, including care during business hours, outside school hours and during school holidays. The Australian Government may provide funding, in the form of subsidies, to assist families with the cost of accessing approved child care.

## The regulation of education and care services

Formal child care services in Australia, known as education and care services, are subject to the Council of Australian Governments endorsed National Quality Framework (NQF). The NQF is a national approach to the regulation and quality assessment of education and care services, which includes:

- A National Regulator, the Australian Children's Education and Care Quality Authority (ACECQA) that is responsible for establishing procedures that are efficient and as nationally consistent as possible;
- the National Quality Standard (NQS), which comprises seven quality areas or benchmarks against which services are assessed and rated;  
Western Australian education and care services are assessed and rated by the regulatory authority, the Education and Care Regulatory Unit (ECRU) within the Department of Communities.
- the *Education and Care Services National Law (WA) 2012* (National Law) and the *Education and Care Services National Regulations 2012* (National Regulations).  
In Western Australia, these laws are administered by the Education and Care Regulatory Unit (ECRU).

Government regulation of education and care services is necessary to screen potential entrants to the industry, and to establish (and monitor) a level playing field for all operators. Such regulation is designed to ensure the safety, health and wellbeing of children and to ensure services can meet children's educational and development needs<sup>4</sup>.

---

<sup>2</sup> Hayes, Weston, Qu and Gray (2010, October), 'Families Then and Now: 1980-2010', Australian Institute of Family Studies retrieved from [aifs.gov.au](http://aifs.gov.au) on 31 October 2018.

<sup>3</sup> Baxter (2015, May), 'Child Care and Early Childhood Education in Australia', Australian Institute of Family Studies retrieved from [aifs.gov.au](http://aifs.gov.au) on 30 October 2018.

<sup>4</sup> The establishment of government regulation recognises that parents may be subject to information asymmetry (that is, they have much less information and therefore, market power, relative to the approved provider and educators) in assessing education and care services, both at the outset and on an ongoing basis.

## Approved providers

The approved provider manages the education and care service/s and may be an individual or an organisational management structure, such as a board or a management committee.

Before establishing an education and care service, a prospective provider must apply to the regulatory authority for:

- a provider approval, to ensure the provider is fit and proper to run an education and care service; and
- a service approval, to ensure the service has effective systems, policies, staff and procedures in place to comply with the NQF.

A service approval relates to a centre-based service or a family day care service, as the National Law contains provisions relating to both types of services and specific provisions applying to either a centre-based or a family day care service.

## Centre-based services

Centre-based services, such as long-day care, provide education and care to babies and children up to 13 years of age. Long day care is usually provided at a commercial address with rooms and play areas that are specifically designed to cater for large numbers of children. Accordingly, in centre-based services, children may be grouped together according to their age and developmental stage. Long day care centres usually operate weekdays during business hours and may offer kindergarten programs, after school hours care and vacation care.

Centre-based services must observe specific educator to children ratios, and there are requirements relating to qualified staff, including access to an early childhood teacher.

As at May 2018, there were 1 149 centre-based services in WA.<sup>5</sup>

## Family Day Care services

FDC is also an education and care option for babies and children to 13 years of age, and is usually delivered in an educator's own home. The hours of delivery of FDC services can be more flexible than centre-based services to accommodate the needs of families whose children are in attendance.

In WA, FDC services do not offer kindergarten programs, while preschool is predominantly undertaken within the school system that is run through the Department of Education. FDC services may offer outside school hours care and vacation programs.

Generally, at each FDC residence or venue, there must be no more than seven children attending at any one time (including the educator's own children to 13 years of age, if there is no other adult present), and no more than 4 children are preschool age or under.

---

<sup>5</sup> NQA ITS, op cit, page 29

## FDC educators

Due to the maximum number of children that can be educated and cared for in a FDC residence, the child to educator ratio is usually lower in FDC residences than in centre-based services. It is suggested that children attending FDC can receive more individualised attention and develop very strong bonds with FDC educators.

A FDC educator must be registered with an approved FDC service. For the educator, FDC is a small business, with many educator respondents noting in submissions the investment, both in time and money, they have made to establish and run their own business from home.

As FDC educators usually provide education and care within the home (rather than in a team at a centre), they are supported by a co-ordination unit. The functions of a co-ordinating unit may include:

- recruiting educators and assessing the suitability of each educator's home to operate a service;
- conducting visits to FDC residences to ensure continued compliance with regulatory requirements;
- providing information about, and access to, professional development opportunities and ensuring educators are updated about regulatory requirements;
- consulting and engaging with educators in reviews and implementation of policies;
- organising paperwork, and forwarding payments associated with the family assistance law.

As at May 2018<sup>6</sup>, there were 37 FDC services in WA and according to information supplied by approved providers (as at June 2018<sup>7</sup>), there were 1613 FDC educators registered in WA.

## FDC co-regulatory model

As explained earlier, the Regulatory Authority undertakes a number of checks, outlined in the National Law, before approving entrants (approved providers) into the education and care sector. Meanwhile, approved providers of FDC services have primary responsibility for ensuring day-to-day compliance by educators with the requirements of the National Law.

Notwithstanding, approved providers of FDC services work with the Regulatory Authority to ensure children at each residence within the service are being adequately educated and in safe care.

---

<sup>6</sup> National Quality Agenda IT System (NQA ITS), Business Intelligence Summary, created 23 May 2018, page 29

<sup>7</sup> FDC Register, Approved Providers, June 2018

# The incident

## A summary of events<sup>8</sup>:

1. Lachlan Mitchell had attended a long day care centre from about 18 months of age, however his parents decided a family day care environment would better meet Lachlan's needs.
2. Lachlan's parents gave evidence to the Coroner that at an induction with the family day care educator at the Carramar residence, they raised concerns about the pool, which were discussed. The educator assured the Mitchells that "if she was inside, the kids were inside. If she was outside, the kids were outside." The educator was made aware that Lachlan was hypermobile, very curious and liked to explore and climb.
3. It was reported in the media that the educator had 17 years' experience in the childcare industry<sup>9</sup>.
4. In the Coroner's report, it is noted an inspection of the pool barrier occurred in February 2015 on behalf of the City of Wanneroo and a fault in the performance of one of the pool gate's self-closing mechanism was identified and found to have been fixed following a return visit during March 2015.
5. A FDC co-ordinator undertook monthly visits of the residence, which were a combination of announced and unannounced visits, and sometimes the visits were conducted outside the house.
6. The educator gave evidence that she completed a safety checklist each morning, both inside and outside the house, to identify and address potential hazards. The checklist included a check box relating to the pool gate in the outdoor area.
7. On 9 November 2015, there were three children in the educator's care: an 11-month-old; a 2-year-old and Lachlan, almost 3 years old. Initially all the children were inside the house. The educator put the 11-month-old in a cot, however the baby did not settle.
8. The educator took Lachlan outside to play in a garden area that was accessed via the laundry, while the 2-year-old played with a toy at the laundry door. The educator heard the baby in the cot becoming increasingly distressed and decided to go inside to try to settle him. The 2-year-old followed the educator, but the evidence suggests Lachlan remained outside.
9. Once the educator realised Lachlan was not inside, estimated to be about 5-7 minutes in total, she went outside and noticed the pool cover had been disturbed and found Lachlan in the water.

---

<sup>8</sup> Linton, Sarah H (2018), 'Amended Record of Investigation into Death' (*Ref:45/17*), retrieved from coronerscourt.wa.gov.au on 17 September 2018, page 2-15

<sup>9</sup> Butterly, N and Farcic E (2016), 'Tragedy of son's death spurs day care battle', *The West Australian*, 5 November, retrieved from thewest.com.au on 24 September 2018.

10. The educator pulled Lachlan from the water, commenced CPR and intermittently put him on his side before carrying him to the lounge room and continuing with CPR.

11. As the educator couldn't find her mobile phone, she stopped CPR and ran to a neighbour's house to get help. A neighbour called for an ambulance while the neighbour's partner commenced CPR until an ambulance arrived. Lachlan was unable to be revived and following a post mortem examination, was found to have drowned by way of accident.

12. In the Coroner's report, it was concluded that Lachlan found a way to enter the swimming pool area while unsupervised. While the matter is inconclusive, Lachlan may have gained access to the pool area by standing on a pot plant to open the gate or by the gate not being properly secured.

# What happened following the incident

## Condition on service approvals - FDC

Following Lachlan Mitchell's death in 2015, a condition was placed on all WA FDC service approvals stating:

'The approved provider must ensure that, where there is a swimming pool, spa or other water feature at the residence of an educator who is registered with the service, the educator must be directly supervising and physically in proximity to any child in their care who is near the swimming pool, spa or other water feature.'

While all FDC service approvals are subject to the requirement that the service providers ensure the safety, health and well-being of children, the additional condition was included to emphasise the necessity for educators to actively supervise children around water. A breach of this condition is subject to a maximum penalty of \$50 000.

A workshop was held in January 2016 with officers from ECRU, peak bodies, FDC educators and other interested stakeholders to discuss actions that might be taken in relation to water hazards, including:

- improving policies, practices and checklists regarding water hazards in FDC services;
- visits by co-ordinating units;
- training of educators and co-ordinators regarding pool compliance and water safety;
- improving communication between and among educators, parents and the service about the National Law.

In submissions received from the FDC sector during the August 2018 consultation period, respondents outlined actions taken at FDC residences and/or by the service following the incident. These actions, which were taken to minimise the risk of any further drowning incidents, included:

- discussing supervision at the residence with families;
- revising their policies regarding supervision, water play and water hazards and the checking of premises (at the educator and co-ordinator levels);
- moving the pool to an unlicensed area of the premises;
- hiring swim instructors, installing pool heating and offering one-on-one basic swimming lessons to children at the FDC and their siblings;
- installing equipment, such as pool alarms and improved/secondary pool barriers.

One respondent stated that a fishpond on the premises had been fenced prior to the incident and there was no access to the pond area except under strict supervision.

In the Coroner's report<sup>10</sup>, it was noted ACECQA updated guidance material about swimming pools and other water hazards aimed at the FDC sector, to inform them about their responsibilities under the National Law.

---

<sup>10</sup> Linton, Sarah H (2018), op cit, pages 18-19



## WA Ombudsman's investigation

In November 2017, the WA Ombudsman released a report of an investigation to develop an understanding of the deaths of children who died by drowning and non-fatal drowning incidents in WA from 1 July 2009 to 30 June 2015. During this period, 34 children died by drowning and 258 children were admitted to a hospital following a non-fatal drowning incident.<sup>11</sup>

Of the children who died by drowning, the average age was four years and four months. Seventy-four per cent of children hospitalised were under five years of age.

## **Water hazards and young children**

A water hazard might be defined as any water body that poses a potential drowning risk to children and could include:

- large bodies of water, such as rivers, creeks, dams, ponds, swimming pools, jetted bathtubs (or Jacuzzis), in-ground spas, above ground portable spas (or hot tubs) or any container with poor drainage that allow water to pool; and
- smaller bodies of water, such as baths, nappy buckets and pet water containers.

Queensland Health<sup>12</sup> notes the broad and seemingly innocuous sources of some of the above water hazards for toddlers (aged 0-4 years) because:

- young children are naturally curious and are attracted to water but do not understand the dangers;
- physically, a toddler's head is heavier than the rest of their body, so they can easily topple into a container (and lack the strength to pull themselves out)
- they are less likely than older children to cry out to attract attention and assistance.

In addition, with large bodies of water, the Royal Life Saving Society WA<sup>13</sup> states "toddlers usually lack the physical coordination and cognitive ability to apply their swimming skills in an emergency situation. (...) Children can swallow water, sink and lose consciousness in less than a minute."

For the purposes of this report, 'water hazards' are those identified by approved providers for inclusion on the FDC register, namely:

- swimming pools,
- spas — both in-ground or above ground portable outdoor spas (or hot tubs) and jetted bathtubs
- fishponds
- water features, such as a wishing well.

Accordingly, this paper will not consider water hazards that are external (or temporary) to the FDC premises, such as neighbours' pools, dams and wading pools.

---

<sup>11</sup> Ombudsman WA (2017), 'Investigation into ways to prevent or reduce deaths of children by drowning', retrieved from [www.ombudsman.wa.gov.au](http://www.ombudsman.wa.gov.au) on 17 September 2018, page 14<sup>11</sup>

<sup>12</sup> Queensland Health (2017, November 23), 'Three unexpected drowning hazards found around the house', retrieved from [www.health.qld.gov.au](http://www.health.qld.gov.au) on 11 October 2018.

<sup>13</sup> Royal Life Saving Society WA (undated), 'About toddler drowning,' retrieved from [royallifesavingwa.com.au](http://royallifesavingwa.com.au) on 11 October 2018.

## Family Day Care premises with pools, spas and water features

In relation to FDC residences in WA, as at June 2018, 233 premises had a pool or spa; 29 had a water feature on the premises and 4 premises had multiple water features. Of the FDC premises with a pool or spa, 50 (or approximately 21 per cent) were located in the non-metropolitan area.

**Table 1: Breakdown of family day care residences/venues with a pool/spa or water feature by local government area<sup>14</sup>, as at June 2018**

LOCATION (A)		FDC RESIDENCE / VENUES (B)	EDUCATORS (C)	POOL/SPA (D)		WATER FEATURE (WF) (E)		MULTIPLE WATER FEATURES (F)
METRO LGA	NON-METRO LGA			POOL ONLY	SPA ONLY	POND ONLY	UNSPECIFIED WATER FEATURE	
	Albany	3	3		3			
	Augusta-Marg R	1	1				1	
	Broome	4	4	4				
	Bunbury	2	2				2	
	Busselton	4	4	2			1	1 (Pool, WF)
	Capel	3	3	1	2			
	Chittering	2	3	2				
	Collie	1	1	1				
	Dardanup	1	1	1				
	Esperance	2	2			2		
	Geraldton	4	4	4				
	Harvey	1	1	1				
	Kalgoorlie-Boulder	6	6	5		1		
	Karratha	1	1	1				
	Kojonup	1	1	1				
	Mandurah	13	13	8	4			1 (Pool, WF)
	Moora	1	1	1				
	Murray	1	1	1				
	Narrogin	1	1	1				
	Northam	2	2	2				
	Toodyay	3	3	3				
<b>TOTAL NON-METRO</b>		<b>57</b>	<b>58</b>	<b>39</b>	<b>9</b>	<b>3</b>	<b>4</b>	<b>2</b>
<b>AGGREGATED TOTAL (NON-METRO)</b>				<b>50</b> (including column F)		<b>9</b> (including column F)		
Armadale		13	13	8	3	2		
Belmont		5	5	2	1		2	
Canning/Gosnells		22	22	16	2	2	2	
Cockburn		12	12	12				

<sup>14</sup> The blue shading denotes the pool/spa fencing laws apply to the whole local government area specified, unlike the orange shaded areas. Information about pool/spa fencing laws is outlined in the next section, under the title Regulation of water hazards - Building Laws.

Joondalup/ Wanneroo		74	74	59	9	1	3	1 (Pool, Pond & WF) 1 (Pool, WF)
Kalamunda		5	5	4			1	
Kwinana		4	4	4				
Melville		6	6	6				
Rock- ingham		34	34	27	3	1	3	
Stirling/ Cambridge/ Bayswater		9	9	9				
Swan/ Mundaring		23	26	15	3	3	2	
Bass- endean		2	2	1	1			
<b>TOTAL METRO</b>		<b>209</b>	<b>212</b>	<b>163</b>	<b>22</b>	<b>9</b>	<b>13</b>	<b>2</b>
<b>AGGREGATED TOTAL (METRO)</b>				<b>187</b> (including column F)		<b>25</b> (including column F)		
<b>TOTAL METRO AND NON-METRO</b>		<b>266</b>	<b>270</b>	<b>202</b>	<b>31</b>	<b>12</b>	<b>17</b>	<b>4</b>
<b>AGGREGATED TOTALS</b>				<b>237</b> (including column F)		<b>34</b> (including column F)		

Source: Family day care registers provided by 34 approved providers, June 2018

## Regulation of 'water hazards'

### Building laws

In WA, there are laws requiring that each owner and occupier of residential premises with a private swimming pool<sup>15</sup> (including a fixed or portable spa) containing water that is more than 300mm deep ensures a compliant barrier is installed and maintained<sup>16</sup>, to restrict young children's access to these water hazards.

<sup>15</sup> Pools that are not private swimming pools or spas are regulated under the *Health (Aquatic Facilities) Regulations 2007*.

<sup>16</sup> Part 8 Division 2 of the Building Regulations 2012 does not apply in some areas of Ashburton; Boddington; Boyup Brook; Broome; Broomehill-Tambellup; Bruce Rock; Carnamah; Chittering; Christmas Island; Cocos Island; Coolgardie; Corrigin; Cranbrook; Cuballing; Cue; Cunderdin; Dalwallinu; Dandaragan; Denmark; Dowerin; Dundas; East Pilbara; Esperance; Exmouth; Gnowangerup; Goomalling; Greater Geraldton; Halls Creek; Harvey; Irwin; Jerramungup; Karratha; Kellerberrin; Kent; Kojonup; Kondinin; Kulin; Lake Grace; Laverton; Leonora; Meekatharra; Menzies; Merredin; Moora; Morawa; Mt Magnet; Mt Marshall; Mukinbudin; Nannup; Narembeen; Narrogin; Ngaanyatjarraku; Nungarin; Perenjori; Port Hedland; Ravensthorpe; Sandstone; Shark Bay; Tammin; Trayning; Three Springs; Toodyay; Upper Gascoyne; Victoria Plains; Westonia; Wickiepin; Wiluna; Wongan-Ballidu, Yalgoo; Yilgarn and all of the Murchison

These laws, administered by the Building Commission, a division of the Department of Mines, Industry Regulation and Safety (DMIRS) are contained in:

- *The Building Act 2011*
- *The Building Regulations 2012*

Regarding the above laws relating to swimming pool and spa safety barriers, local government:

- issues building permits
- undertakes registration and periodic inspections

Local governments must arrange for an authorised person to inspect the swimming pool barrier at intervals of no more than four years.

Different rules about barriers apply, depending on when the private swimming pool and/or spa was installed or approved, however each of the rules address matters such as barrier heights, barrier materials and ensuring no climbable objects are near a barrier.

#### [Pre-May 2016 barriers<sup>17</sup>](#)

The requirements:

- apply to swimming pools or spas:
  - installed before 1 May 2016
  - for which plans, drawings and specifications were submitted to local government before 1 May 2016;
- provide for barriers that must comply with a specified Australian Standard, and may allow for a wall that includes a door to be used in specified circumstances.

#### [Post-May 2016 barriers](#)

All other swimming pools or spas must comply with the relevant Building Code of Australia, which requires an isolation barrier (to a specified Australian Standard) between the pool and the residence.

The WA Ombudsman noted there may be circumstances when swimming pools or spas may not be inspected by local governments. These gaps in the inspection system may include pools/spas that have been emptied or are in the process of being installed; portable spas and pools that do not require a building permit; and pools and spas in local government areas to which the requirements for pool/spa barriers do not apply<sup>18</sup>.

---

<sup>17</sup> Further detail about the barrier requirements for swimming pools and spas can be found in the following publication:  
Building Commission (May 2016), Rules for Pools and Spas, Government of WA, retrieved at [commerce.wa.gov.au](http://commerce.wa.gov.au) on 19 September 2018.

<sup>18</sup> Ombudsman WA (2017), op. cit., page 26

## Compliance with building laws

### Local government

In identifying potential gaps in the inspection regime for swimming pools and spas, the WA Ombudsman also noted some local government authorities may be overdue in inspecting the swimming pools and spas within their district every four years. Accordingly, the WA Ombudsman recommended that the Building Commissioner monitor the compliance of local governments in meeting their four-yearly inspection obligations and reporting this to Parliament annually. The first DMIRS report<sup>19</sup> was released by the Building Commissioner in October 2018.

The Building Commissioner found out of a total number of 159 183 registered pools that were required to be inspected, 3 632 were overdue for inspection in 2017/2018. While some local governments did not provide the information by the time requested<sup>20</sup>, some local governments reported they had not completed all inspections due for 2017/18, including areas in which a number of FDC services operate with a pool or spa on the premises.

### FDC services

The research identifying factors that can assist in keeping children safe around water hazards highlights the importance of active supervision in the first instance and barriers around water. ECRU has recently become aware of a FDC educator with an unfenced swimming pool that is located outside of, but in proximity to, the nominated operational area of the service.

In 2015, the approved provider approved the residence for FDC due to the age and rural location of the property and because the pool was not required to be fenced by the local government authority. The pool is now empty, but remains unfenced.

## The National Law, family day care residences and ‘water hazards’

Although the National Regulations make reference to ‘water hazards’, the term is not expressly defined. As previously stated, for the purposes of this report, ‘water hazards’ are those identified by approved providers for inclusion on the FDC register, namely:

- swimming pools,
- spas — both in-ground or above ground portable outdoor spas (or hot tubs) and jetted bathtubs
- fishponds
- water feature, such as a wishing well.

---

<sup>19</sup> Building Commissioner (September 2018), Progress Report: Local Government’s Four Yearly Inspections of Private Swimming Pool Safety Barriers 2017/18, Government of WA, retrieved at [commerce.wa.gov.au](http://commerce.wa.gov.au) on 19 September 2018.

<sup>20</sup> Brookton, Christmas Island, Cocos Island, Coorow, Cuballing, Dalwallinu, Denmark, Donnybrook-Balingup, Gingin, Halls Creek, Kent, Kojonup, Lake Grace, Narrogin, Perenjori, Three Springs, Toodyay, Westonia, Wickepin, Woodanilling.

This section provides a brief overview of the existing rules applicable to the FDC sector about dealing with ‘water hazards.’ However as only those hazards at the FDC residence or venue will be considered, the regulations around excursions are not included in the discussion.

It is understood that services providing occasional care, mobile services and those previously funded under the Commonwealth Government’s Budget Based Funded Program, who are covered by the *Child Care Services Act 2007 (WA)*, do not have swimming pools on the premises<sup>21</sup>.

### Proposed family day care services

#### **Application for a service approval**

When applying for a service approval for a FDC service, the approved provider must submit prescribed information to ECRU. This information includes a copy of the FDC service’s proposed water safety policy if a swimming pool or other water hazard is permitted and situated on the proposed premises.

ECRU, at the time of granting the service approval, or amendment of a service approval, for a FDC service, may approve a FDC venue that is not a residence where exceptional circumstances exist.

#### **Conducting a risk assessment**

Before education and care is provided to children, the approved provider must also conduct an assessment, including a risk assessment, of each proposed FDC residence and venue<sup>22</sup> (unless already undertaken as part of the service approval or amendment to a service approval), to ensure the health, safety and wellbeing of children.

The risk assessment includes:

- the existence of any water hazards, water features or swimming pool at or near the residence or venue
- any equipment used as part of the service;
- fencing, unless all the children being educated and cared for at the service are over preschool age
- any proposed or actual changes to the above matters.

### Operational family day care services

#### **Conditions on service approval**

A service approval for a FDC service is granted subject to a condition (amongst others) that:

- the service is operated in a way that ensures the safety, health and wellbeing of the children being educated and cared for by the service;
- the approved provider ensures each FDC educator engaged by or registered with the service is adequately monitored and supported by a FDC Co-ordinator.

---

<sup>21</sup> Regulation 36 of the *Child Care Service (Child Care) Regulations 2006 (WA)* prohibits a licensee from having a swimming pool at the place where the service is authorised to be provided. These Regulations were made under the *Children and Community Services Act 2004 (WA)* but continue to operate under the *Child Care Services Act 2007 (WA)* from 10 August 2007.

<sup>22</sup> Department of Mines, Industry Regulation and Safety, Progress Report Local government’s four yearly inspections of private swimming pool safety barriers, Government of Western Australia, pages 3-8.

As previously outlined, following the drowning incident, ECRU placed a condition on all WA FDC service approvals stating:

‘The approved provider must ensure that, where there is a swimming pool, spa or other water feature at the residence of an educator who is registered with the service, the educator must be directly supervising and physically in proximity to any child in their care who is near the swimming pool, spa or other water feature.’

### **Conducting a risk assessment**

The approved provider must conduct an assessment at least annually, including a risk assessment, of each FDC residence and venue, to ensure the health, safety and wellbeing of children, including the matters outlined in relation to a proposed FDC service.

### **Quality Improvement Plan**

A QIP is a document the approved provider prepares to self-assess the performance of the service against the NQS and the National Regulations. The QIP must be prepared within 3 months of the grant of the service approval, and includes:

- an assessment by the provider of the quality of the practices of the service against the NQS, which includes quality standards relating to children’s health and safety; the physical environment and staffing;
- identifying any areas the provider considers might require improvement.

The approved provider must review and revise the QIP for the service at least annually and at any time as directed by ECRU. A current QIP must be submitted to ECRU upon request.

### **Staffing and supervision**

The approved provider, nominated supervisor and educator must ensure all children at the service are being adequately supervised and to protect children from harm and any hazard likely to cause injury.

The approved provider must ensure:

- the co-ordinators and educators are appropriately qualified, and each educator and educator assistant holds a current approved first aid qualification. ACECQA notes the industry standard is that first aid qualification should be renewed every three years and refresher training in CPR should be undertaken annually.
- (since 1 October 2018) at least one full-time equivalent FDC co-ordinator is employed/engaged for every 15 FDC educators with the service, for the first 12 months after the service commences providing education and care to children; and thereafter
  - at least 1 full-time equivalent FDC co-ordinator is employed/engaged for every 25 FDC educators with the service

The approved provider must also ensure a nominated supervisor or staff member is not affected by alcohol or drugs while educating and caring for children. Nominated supervisors and educators must not consume alcohol or be impaired by drugs or alcohol in providing supervision or education and care for children.



## Policies and procedures

The approved provider must ensure the FDC service has policies and procedures in place, that are followed by nominated supervisors and staff, that deal with:

- health and safety matters, including:
  - water safety, including safety during any water-based activities;
  - the administration of first aid;
  - dealing with an incident, injury or trauma, which includes recordkeeping and the availability of first aid kits
- emergency and evacuation, which includes ensuring nominated supervisors and staff have access to an operating telephone or other similar means of communication, such as a fixed-line telephone, mobile phone, satellite phone, 2-way radio, videoconferencing equipment, to enable immediate communication with emergency services and parents
- providing a child safe environment  
Accordingly, educators work through a daily checklist of safety matters before the service commences, including ensuring the swimming pool gate is closed and the pool area is free from climbable objects.
- staffing, including engagement, monitoring and support of FDC educators  
Periodic visits to residences by FDC co-ordinators are part of the monitoring and support function.

## Notifications – family day care registers

Approved providers are required to accurately keep a register of each co-ordinator, educator and educator assistant and provide this information within 24 hours of the Regulatory Authority's request.

ECRU currently requests that approved providers forward a copy of the FDC register every quarter, highlighting those FDC educators with a pool, spa or other water hazard.

## Notifications – serious incidents

While the above systems are designed to minimise the risk of harm and keep children safe, serious incidents may occur at education and care services. Serious incidents are prescribed in the National Regulations and include:

- the death of a child:
  - while attending the service or
  - following an incident that occurred while attending the service
- any incident involving serious injury or trauma to a child while attending the service:
  - for which the child attended, or ought reasonably to have attended, a hospital
  - which a reasonable person would consider required urgent medical attention from a registered medical practitioner
- any emergency for which emergency services attended.

A FDC educator must notify the approved provider of any serious incident at the service and the approved provider must notify ECRU of any serious incident at the service.



## Notifications – non-fatal drowning incidents

It is understood there have been no notifications of any non-fatal drowning incidents at FDC services in WA.

Similarly, available<sup>23</sup> data indicates only one non-fatal drowning incident has been reported to a Regulatory Authority in Australia.

## Compliance – Regulatory Authority

The approved provider is responsible to ensure that FDC services comply with the National Law on a day-to-day basis, and FDC systems are modified in line with any changes that are made to the Law.

ECRU encourages compliance, through initiatives such as providing ongoing information and advice to the FDC sector, and supporting FDC services to comply as laws are changed.

## Investigations

Failure to supervise children is a serious matter, and may foreseeably result in harm to children. As indicated in the literature, there is the potential for direct, fatal consequences of any, even brief, lapses in supervising children where water hazards exist. Given that supervision is generally important to the wellbeing and safety of children, and a section of the FDC sector carries an increased risk of harm by having water hazards directly on the premises, it is useful to consider evidence of any instances in the FDC sector that might highlight an issue regarding supervision.

In monitoring the FDC sector, ECRU has regard to a compliance and enforcement framework, to ensure its processes are fair yet flexible and matters of high risk are prioritised for investigation, to protect children from harm. Depending on the evidence, actions available to ECRU range from placing conditions on the provider or service approval through to taking the matter to a court or Tribunal.

Since 2016, ECRU has taken the following actions involving or highlighting an issue relating to adequate supervision against FDC services. ECRU:

- wrote to a service following an investigation involving the service being over children numbers and leaving children in the care of an unauthorised person;
- investigated a service, which is now not operating, involving allegations relating to the educator's lack of care of children;
- placed conditions on seven FDC service approvals, to prevent these services from engaging new educators and enrolling more children and/or imposing a 15:1 educator to co-ordinator ratio;
- took the following matters to the State Administrative Tribunal, which resulted in an agreed outcome for a fine and a contribution towards the Department's legal costs to be paid.
  - A toddler left a residence via the front door and a member of the public took the child to the nearest Police Station.
  - A toddler left a residence unnoticed and remained missing for approximately 45 minutes. At the time of the incident, there were two visiting educators and a total of twelve children at the residence.

According to the FDC register, there is a pool on the FDC premises.

---

<sup>23</sup> The relevant data fields from the National Quality Agenda Information Technology System (NQA ITS) for the retrieval of this information has only become available since mid-2016.

- An FDC educator left a toddler locked in the residence while attending a medical appointment.
- An FDC educator failed to adequately supervise the children in her care while she visited another educator.

### **Inadequate supervision around water - 2015**

Following Lachlan's drowning death, ECRU issued an immediate prohibition notice to the FDC educator involved to prohibit the educator from providing education and care to children. Under the National Law, ECRU may issue such a notice if it considers there may be an unacceptable risk of harm to a child or children if the person were allowed to continue to provide education and care to children.

ECRU also commenced an investigation of Lachlan's drowning death under the National Law. In November 2016, the educator was charged and subsequently convicted at the Joondalup Magistrate's Court and fined in relation to inadequately supervising children.

## **Drowning deaths in Australia and WA**

It is stated in the relevant Royal Life Saving Society drowning report that there were:

- twenty-one drowning deaths in toddlers aged 0-4 years and eleven drowning deaths in children aged 5-14 years in Australian waterways between 1 July 2015 and 30 June 2016<sup>24</sup>
- three drowning deaths in toddlers aged 0-4 years occurred in WA in 2015-16, and 57 children in this age group were admitted to hospital in WA in 2015-16 following a non-fatal drowning<sup>25</sup>
- eighteen drowning deaths in toddlers aged 0-4 years and nine children aged 5-14 years in Australia in 2017/18<sup>26</sup>.
- forty drowning deaths in toddlers aged 0-4 years and a further 326 toddlers were hospitalised following a non-fatal drowning incident in WA between 1 July 2003 and 30 June 2013<sup>27</sup>.

In WA, while the rate of toddler drowning decreased by 22 per cent during the ten-year study period, the rate of hospitalisations following a non-fatal drowning increased by 40 per cent. Despite the reduction in the rate of fatal toddler drowning over the study period, WA has the second highest rate of toddler drowning of any other State or Territory behind Queensland.<sup>28</sup>

Between 1 July 2003 and 30 June 2013, drowning rates amongst toddlers were similar in the Perth metropolitan area and regional and remote areas of WA. However, toddlers aged 0-4 years in regional and remote areas of WA were at slightly higher risk of hospitalisation following a non-fatal drowning incident than toddlers in the Perth metropolitan area<sup>29</sup>.

---

<sup>24</sup> Royal Life Saving Society Australia (2018), Royal Life Saving National Drowning Report 2018, retrieved from <https://www.royallifesaving.com.au/> on 19 September 2018, page 18

<sup>25</sup> Royal Life Saving Society WA (2016), Western Australian Drowning Report 2015-16, retrieved from <https://royallifesavingwa.com.au/your-community/facts-and-figures/drowning-reports> on 19 September 2018, page 16

<sup>26</sup> Royal Life Saving Society WA, Western Australian Drowning Report 2015-16, retrieved from <https://royallifesavingwa.com.au/your-community/facts-and-figures/drowning-reports> on 19 September 2018, page 24, 26

<sup>27</sup> Royal Life Saving Society WA (undated), A 10 Year Analysis of Drowning in Toddlers Aged 0-4 Years in Western Australia, retrieved from <https://royallifesavingwa.com.au/your-community/facts-and-figures/drowning-reports>, page 3

<sup>28</sup> Ibid, page 10

<sup>29</sup> Ibid, page 6

## Drowning deaths in FDC services in Australia

### New South Wales

In 2009, a toddler drowned in a pond during an excursion from a FDC residence in New South Wales (NSW).

The National Regulations include a provision applying only in NSW requiring that the approved provider of a FDC service ensure any swimming pool at a FDC residence or venue in NSW is fenced in accordance with the requirements for fencing a new swimming pool under the *Swimming Pools Act 1992 (NSW)*<sup>30</sup>.

### Tasmania

In response to a 1999 drowning death of a girl at a Tasmanian FDC residence (prior to the introduction of the NQF), a Coroner's report was released and:

- the preferred recommendation was to exclude FDC homes where children under the age of five are admitted to care, any property that has erected on it, or has built into it, a swimming pool, spa or jacuzzi.<sup>31</sup>

In making the recommendation, the Coroner noted if a blanket ban would impose hardship on existing FDC homes with such equipment:

- the recommendation should apply to any future home that is sought to be licenced, or alternatively, the following recommendations should be considered, including:
  - local government advising all owners of existing pools, and all applicants for future installation of pools of the necessary Australian Standards and that a system of regular annual inspections by a suitably qualified person should occur to ensure continued compliance;
  - an annual refresher course for family day carers about laws and applicable amendments, particularly those relating to safety and health;
  - consideration being given as to whether it is appropriate for educators to visit other educators during work hours.

A Tasmanian specific regulation was subsequently made to the National Regulations stating that "The approved provider of an education and care service must ensure that there is no swimming pool on the education and care service premises."

It is understood in Tasmania, FDC residences may be registered by an approved provider where the pool, spa or jacuzzi is completely separate from the approved areas of the FDC residence, locked securely and not visible to children being educated and cared for at the residence. This is the case in only a limited number of FDC residences.

## Key risk factors - toddler drowning deaths in WA

---

<sup>30</sup> Under the *Swimming Pools Act 1992 (NSW)*, a 'swimming pool' is defined as an excavation, structure or vessel (a) that is capable of being filled with water to a depth greater than 300 millimetres; and (b) that is solely or principally used, or that is designed, manufactured or adapted to be solely or principally used, for the purpose of swimming, wading, paddling or any other human aquatic activity, and includes a spa pool, but does not include a spa bath, anything that is situated within a bathroom or anything declared by the regulations not to be a swimming pool for the purposes of that Act.

<sup>31</sup> Government of Tasmania, Magistrates Court Tasmania Annual Report 1999-2000, Appendix A Coroner's Reports, retrieved from courtlists.tas.gov.au on 15 October 2018

## Aquatic environment – swimming pools

According to the Royal Life Saving Society Australia's National Drowning Report 2018, swimming pools were the leading location for drowning deaths for children aged 0-4 years<sup>32</sup> nationally, accounting for 67 per cent of all drowning deaths. Accidental falls into water is the leading activity prior to drowning among children under 5 years.

Similarly, in WA between 1 July 2003 and 30 June 2013, the majority of drowning deaths occurred at home swimming pools, particularly below ground swimming pools<sup>33</sup>. The Royal Life Saving Society WA's *A 10 Year Analysis of Drowning in Toddlers Aged 0-4 Years in Western Australia (2003/04 to 2012/13)* states that "aquatic locations in the home environment posed the highest drowning risk to toddlers aged 0-4 years in WA, with 90 per cent of drowning deaths, and 73 per cent of hospitalisations following a non-fatal drowning incident occurring at locations in and around the home."<sup>34</sup>

Apart from swimming pools, other common locations for WA drowning deaths included:

- bathtubs and showers<sup>35</sup>
- fishponds
- dams
- soak wells
- inflatable swimming pools<sup>36</sup>.

## Lack of supervision

It was noted in the ten-year study of drowning deaths in WA that a lack of appropriate adult supervision, most likely between 5 to 10 minutes, was a factor in all recorded drowning incidents relating to toddlers.

The most common reasons for the lapse in supervision included:

- adults undertaking household chores;
- adults were sleeping;
- adults were attending to other children;
- confusion about who was responsible for supervising the toddler<sup>37</sup>.

The WA Ombudsman noted that "none of the 18 children aged under five years who died by drowning (between 2009 and 2013) and were known to be in, on or around water were under active supervision."<sup>38</sup>

## Barriers to water

### **Swimming pools**

---

<sup>32</sup> Royal Life Saving Society Australia 2018, op cit, page 24

<sup>33</sup> Ombudsman WA (2017), op cit, page 15, also stated the majority of children who were admitted to a hospital following a non-fatal drowning incident between 2009 and 2015, the incident occurred in a swimming pool.

<sup>34</sup> Royal Life Saving Society WA (undated), op cit, page 7

<sup>35</sup> Ibid, page 7 and the WA Ombudsman's Report (2017), page 15: Both reports state for children under one who died by drowning, the incident more frequently occurred in a bath or shower.

<sup>36</sup> Royal Life Saving Society WA (undated), op cit, page 7

<sup>37</sup> Royal Life Saving Society WA (undated), op cit, page 8

<sup>38</sup> Ombudsman WA (2017), op cit, page 67

Of the toddler swimming pool drowning deaths that were recorded during 2003-2013, 62.5 per cent had a barrier installed at the time of the incident, but the toddler was able to gain access through:

- the gate being propped open;
- the gate not being self-closing/self-latching;
- a gap underneath the fence or gate.<sup>39</sup>

Where information was available for the swimming pool drowning deaths that occurred in WA during the ten-year period, local government inspections of the pools had occurred from between 3 years to 3 days prior to the incident. However, despite an inspection having occurred, either non-compliance was noted at the inspection or the barrier had become non-compliant between the time of inspection and the incident occurring<sup>40</sup>.

The WA Ombudsman found that all children under 5 who died by drowning between 2009 and 2015 and were not known to be in and around water, died in a private swimming pool with either no barrier, a defective barrier, or a climbable object near the permanent barrier.<sup>41</sup>

### **Fish ponds**

During 2003-2013, 83 per cent of fishponds in which toddlers died from drowning had no barrier or cover, while in the remaining cases, the toddler was able to gain access via a faulty barrier or cover<sup>42</sup>.

### Other factors

Other factors that were highlighted as contributing to toddler drowning deaths in WA between 2003 and 2013 were:

- swimming ability;  
The majority of toddlers who drowned in WA were determined to be non-swimmers, however the effectiveness of swimming and water safety programs for children less than 2 years of age is yet to be proven<sup>43</sup>.
- ethnicity;  
It was noted in the report that Aboriginal toddlers were over-represented in drowning deaths in WA<sup>44</sup>, while children from culturally and linguistically diverse backgrounds accounted for 5 per cent of drowning deaths.
- socio-economic status  
Toddlers living in higher socio-economic areas were at greater risk of fatal drowning than those living in lower socio-economic areas<sup>45</sup>.

### Suggested actions to prevent drowning - WA

The Royal Life Saving Society WA made the recommendations outlined below following the ten-year study of toddler deaths in WA.

---

<sup>39</sup> Royal Life Saving Society WA (undated), op cit, page 8

<sup>40</sup> Ibid, page 8

<sup>41</sup> Ombudsman WA (2017), op cit, page 17

<sup>42</sup> Royal Life Saving Society WA (undated), op cit, page 8

<sup>43</sup> Royal Life Saving Society WA (undated), op cit, page 11

<sup>44</sup> The Ombudsman's Report (2017) also found that Aboriginal children were twice as likely to die by drowning as non-Aboriginal children (page 15)

<sup>45</sup> Royal Life Saving Society WA (undated), op cit, page 8

- Promote importance of adult supervision: close adult supervision is considered to be the most effective way to prevent toddler drowning.
- Encourage early introduction to water familiarisation: introducing children to water from an early age was important to build confidence, particularly in children less than 2 years of age, since acquisition of swimming and survival skills is not likely to be possible.
- Promote home pool safety: current barrier assessment programs should continue and targeted information provided to pool owners about current requirements and practical tips for pool barrier maintenance.
- Targeted education strategies for at-risk groups and communities: toddler education strategies need to be developed for pool owners; parents of children aged 0-2 years; Aboriginal families and those living in the Perth metropolitan region, the North West and Great Southern Regions.
- Engage with local government authorities: partnerships should focus on home pool safety and the provision of training to those responsible for undertaking home pool barrier assessments.
- Promote community wide CPR and first aid skills, for parents and caregivers of young children: evidence suggests early CPR can contribute to an increased chance of a child surviving water immersion.
- Improved reporting, particularly non-fatal drowning data.

### [International research on drowning](#)

The Global Report on Drowning<sup>46</sup> states:

- globally, over half of all drowning deaths are among those aged under 25 years;
- males are twice as likely to drown as females;
- drowning is one of the 10 leading causes of death for people aged 1-24 years in every region of the world, with the highest drowning rates globally among toddlers.
- the main risk factors are:
  - lack of physical barriers between people and water, particularly close to home
  - inadequate supervision of young children
  - uncovered or unprotected water supplies and lack of safe water crossings
  - lack of water safety awareness and risky behaviour around water, such as swimming alone;
  - travelling on water, especially on overcrowded or poorly maintained vessels
  - flood disasters.

### **Suggested actions to prevent drowning - internationally**

The Global Report on Drowning included the following actions to prevent drownings:

- Community based action
  - Install practical, sustainable and safe barriers controlling access to water
  - Provide safe places for pre-school children with capable child care
  - Teach school-age children basic swimming, water safety and safe rescue skills

---

<sup>46</sup> World Health Organisation (2014), Global Report on Drowning, retrieved from apps.who.int on 15 October 2018, page 6, 9



- Train by-standers in safe rescue and resuscitation
- Strengthen public awareness and highlight the vulnerability of children
- Effective policies and legislation
  - Co-ordinate drowning prevention efforts with those of other sectors and agendas
- Further research<sup>47</sup>

## The WA Coroner's Recommendations

In seeking to prevent another drowning death following Lachlan Mitchell's drowning in WA in 2015, the Coroner made four recommendations, namely that the Honourable Minister for Child Protection and Community Services give consideration to:

1. amending the relevant legislation in WA to exclude homes with a swimming pool, outdoor spa or jacuzzi from being used to operate a FDC service where children under the age of five are admitted to care, which should come into effect immediately given the high level of risk of drowning.
2. amending the relevant legislation in WA to exclude new FDC educators from being approved to operate a FDC from a home with a swimming pool, outdoor spa or jacuzzi.
3. amending the relevant legislation in WA to require that where an existing FDC educator operates a FDC service from a home with a swimming pool, outdoor spa or jacuzzi (which will only be for children over the age of 5 years) the approved provider must physically inspect the property monthly to ensure that the safety barrier to the water hazard is functioning effectively and there are no climbable hazards in proximity to the fencing. The need for direct supervision in proximity to the water hazard must also be reiterated to the educator during each inspection.
4. requiring all FDC educators to have a fixed landline installed at their premises so that it is available to contact emergency services in the case of an emergency<sup>48</sup>.

### Responses from the family day care sector

As previously stated, approved providers of FDC services, and peak bodies were invited to provide feedback on the Coroner's recommendations. In discussing the submissions, the term 'pool' will be used to encompass swimming pools, both in-ground or above ground portable outdoor spas (or hot tubs) and jetted bathtubs (or Jacuzzis).

#### Submissions received from the family day care sector

During the three-week consultation period, 94 submissions were received, including a submission from Melanie Mitchell, Lachlan's mother. Of these submissions received:

- 43 were from parents/families of children attending FDC services, with 18 parents from the metropolitan area; 1 from the non-metropolitan area and the rest unknown:

---

<sup>47</sup> Ibid, page 19

<sup>48</sup> Linton, Sarah H (2018), op cit, pages 22-24

- 33 of these submissions were form letters, or modified form letters from the perspective of the parent, in which concern was expressed about all the Coroner's recommendations;
  - of the 9 'original' submissions (not form letters) received, concern was focussed on the impact of the Coroner's first recommendation;
  - a separate section outlines the content of [Ms Mitchell's submission](#)
- 28 were from FDC educators, with 25 respondents from the metropolitan area and 3 respondents from the non-metropolitan area:
    - 4 of these submissions were form letters, or modified form letters from the perspective of the educator.
  - 19 were from FDC approved providers:
    - 4 of these submissions were form letters, or modified form letters from the perspective of a parent or a peak body.
  - 3 were from peak bodies.

A visual representation of the positions indicated in the submissions received in relation to the Coroner's recommendations is contained in the table below.



**Table 2: Summary of responses from the family day care sector, by respondent and submission type**

Respondent type	Form of response	REC 1: Existing FDC with pools only children 5 years and over	REC 2: No new FDC with pools	REC 3: Existing FDC with pools (children over 5): monthly inspections, reiterate supervision	REC 4: All FDC educators have fixed landline to contact emergency services
Parents: 43 respondents	34 form letters	34- X	30- X	30- X	27- X
	9 original letters	9- X	2- X	2- X	9 - ?
Educators: 28 respondents	4 form letters	4- X	2- X	2- X	2- X
	24 original letters*	24- X	1- ✓ 7- X	5- X	1- ✓ 5- X
Approved providers: 19 respondents	4 form letters: • Parent • Peak	4- X	3 - ✓(conditional) 1 - X	3 - ✓(conditional) 1 - X	4- X
	15 submissions (not standard form letter)	3 - ✓ 1 - ✓(conditional) 11- X	6 - ✓ 4 - ✓(conditional) 5 - X	6 - ✓ 4 - ✓(conditional) 6 - X	5 - ✓ 3 - ✓(conditional) 5 - X
Peak bodies	3 original submissions	3 - X	1- X 1- ✓(conditional)	2- X 1- ✓(conditional)	2- X

Legend: X denotes the respondent does not agree with the recommendation  
 ✓ denotes the respondent agrees with the recommendation  
 ? denotes the respondent did not address the recommendation in the submission

\* Note: one respondent submitted an original letter and a form letter response

### What we heard from the family day care sector

Unsurprisingly, there was not a lot of support for recommendation 1 from the FDC sector, including respondents outside the metropolitan area, highlighting:

- that more explicit requirements around supervision by FDC educators of children near water hazards have been imposed since 2015 and there has been overall compliance in the sector, whilst acknowledging the devastating scale of this drowning incident;
- the importance of maintaining supervision;
- children under 5 years of age are exposed to water hazards outside of care, yet the recommendations target FDC residences;
- restricting FDC services to over 5 years of age would be unviable, and many educators believe that over 5s pose a greater risk for FDC residences with pools;
- families have a right to choose an education and care service with a pool, and the pool could be used as a teaching aid, particularly in assisting toddlers to start considering risks and hazards; and
- the negative social and financial impacts upon educators, families and the community generally.

It is apparent many parents and educators who submitted original submissions did not address recommendation 2. Respondents who submitted form letters and did not support recommendation 2, mentioned the likely reduction in supply of FDC, which would impact existing and future families in finding alternative, comparable quality care.

For other respondents, there appeared to be mixed responses to this recommendation, particularly amongst approved providers.

- Some respondents queried the scope of this recommendation, particularly whether existing operators with pools would be considered 'new' educators by moving to another:
  - FDC residence with a pool; or
  - approved provider.
- Some respondents accepted the recommendation on the basis the sector was given sufficient lead time and existing educators were exempt.
- Some approved providers suggested services in regional and remote areas would have difficulty in recruiting new educators if this recommendation were to be implemented.

Other than families who submitted a form letter, responses to recommendation 3 were mainly received from educators, approved providers and peaks. The main reason given by respondents who rejected this recommendation was that it would increase service costs, which would be passed on to families as higher fees. Some approved providers and peaks focussed on, and appeared to support, the monthly visit aspect of this recommendation, provided the sector received appropriate support, including training, and consideration is given to the type of visit required for regional and remote residences.

Other than families who submitted a form letter, responses to recommendation 4 were mainly received from educators, approved providers and peaks. This recommendation was either rejected or not opposed. Those who rejected the recommendation suggested it was not necessary, as mobile devices were preferable, and more practical, in an emergency. Other respondents who rejected the recommendation, or did not oppose it, queried the availability of a fixed copper line telephone service in all areas of WA.

It is understood that universal access to the traditional landline telephone, which was the subject of Australia's Universal Service Obligation (USO), is being reviewed<sup>49</sup>. It appears, following the submissions received, access to a traditional landline telephone may not currently be available in all areas of WA and this situation may not be resolved until the USO has been reviewed and the National Broadband Network has been fully rolled out.

In many of the submissions above, where respondents did not agree with the recommendations, alternative suggestions were made. These suggestions have been considered in developing the options that are presented in the Policy Options of this paper.

## Response from Melanie Mitchell, Lachlan's mother

Since Lachlan's drowning, Melanie Mitchell has become a parent ambassador for Royal Life Saving Society WA to advocate for the prevention of toddler drowning, and supports the proposed banning of pools from FDC services.

---

<sup>49</sup> Telstra Exchange (2016, July 21), Universal Service Obligation Under Review, retrieved from <https://exchange.telstra.com.au/universal-service-obligation-review/> on 18 October 2018.

Melanie Mitchell provided a submission regarding the WA Coroner's recommendations, stating that Lachlan's death has proven pools are an unnecessary and unacceptable risk for children under five years of age in a childcare environment. Mrs Mitchell is sympathetic towards educators who have swimming pools and who have operated without incident. However, while a pool ban would prompt tough discussions with educators and approved providers, a further toddler drowning would provoke an even tougher discussion between the educator and the toddler's family. At the very least, Mrs Mitchell supports tougher barrier and safety requirements around pools to reduce the risk of another toddler drowning.

# Policy Options

The policy options detailed in this document have been developed based on the Coroner's recommendations. Whilst the Coroner's recommendations form the basis of the policy options, additional options have also been identified based on suggestions made during the first stage of consultation.

Preliminary costs and benefits under each option have been identified and quantified to the extent that the available data permits. In many instances, it is not possible to quantify these impacts at this time. Where quantification is not possible, the anticipated effects of each option have been described qualitatively.

Stakeholders are requested to provide additional data in their submission, wherever possible, to assist in the preparation of the Decision Statement. Alternatively, [the submission template](#), which is not mandatory, seeks the nomination of a preferred option or combination of options for each recommendation along with relevant feedback.

## Recommendation 1

Amend the relevant legislation in WA to **exclude homes** with a swimming pool, outdoor spa or jacuzzi from being used to operate a FDC service where children under the age of five are admitted to care, which should come into effect immediately.

This recommendation relates to existing FDC educators operating from a residence with a pool, spa or water hazard. The options outlined for this recommendation are proposals only, and we welcome your feedback and suggested alternative options, including details about how your proposal might work and to whom it applies.

### Option 1: Status Quo/No further change

Maintaining the Status Quo following the death of a child in early childhood education and care is unlikely to satisfy community expectations. The major contributing factor to the death was the failure by the educator to ensure adequate supervision of a child in her care in a high-risk environment.

The swimming pool was located within the approved FDC residence and the approved provider complied with the legislated inspection requirements. On the day of Lachlan's death, the educator was caring for three children under the age of three years. The current regulations allow one FDC educator to care for up to four children of pre-school age or under, plus three school age children. This places high pressure on an educator, particularly at transition times when pre-school children are engaged in activities whilst the school-age children are departing for school or arriving back at the FDC residence.

Following Lachlan's death, the Education and Care Regulatory Unit (ECRU) imposed a service condition on all FDC service approvals stating:

'The approved provider must ensure that, where there is a swimming pool, spa or other water feature at the residence of an educator who is registered with the service, the educator must be directly supervising and physically in proximity to any child in their care who is near the swimming pool, spa or other water feature.'

However, this requirement was already a feature of the water safety policies of most approved providers at the time and failed to prevent the tragedy. Supervision of multiple children by a lone educator in her own home, is fallible and must be reinforced by a safe physical environment.

### **Advantages**

- No decrease in availability of family day care places;
- No increase in cost of family day care;
- No impediment to recruitment of new educators;
- No added risk to sustainability of current family day care services.

### **Disadvantages:**

- Safety of children in family day care is not improved;
- No acknowledgment of the seriousness of the incident.

### **Cost to sector:**

Nil
-----

### **Option 2: Ban FDC for children under five at homes with water hazard/s, with transition period**

The *Education and Care Services National Regulations 2012 (WA)* may be amended to prohibit existing FDC educators operating from a residence with a pool, spa or water hazard enrolling children under the age of five years old and the ban will take effect immediately the amended regulations commence. Notwithstanding the immediate ban, currently enrolled children under the age of five would be permitted to remain in the care of an educator operating from a residence with a swimming pool or water hazard. However, such an educator would be prohibited from taking any new enrolments of children under the age of five years, or moving to another residence with a water hazard.

Under this option:

- the existing FDC educator would be required to provide the ages and numbers of children under five years currently enrolled at the residence on the FDC register; and
- the Education and Care Regulatory Unit would be given the power, on reasonable grounds, such as compliance issues, to prohibit an existing FDC educator from continuing to operate from a residence with a swimming pool or other water hazard.

An immediate ban on existing FDC educators operating from a residence with a pool, spa or water hazard enrolling children under the age of five years old is unlikely to be supported by the family day care sector.

Family day care is predominantly used by families with children under the age of five years. Most children aged five and over are enrolled in part-time or full-time school and therefore need little, if any, long day care.

Approved providers and educators have advised that the demand for out of school hours and vacation family day care is not sufficient to maintain a viable business. Removing all children under the age of five years old would have a major detrimental effect on the approved providers, educators and the families using family day care.

**Advantages:**

- Eventual removal of risk to a child under five years drowning while being cared for at family day care.
- Provides FDC educators and families with a means of transitioning to the new policy.

**Disadvantages:**

- Disruption to children and families currently using family day care residences with a pool;
- Loss of educator’s business and income;
- Risk to viability of family day care services.

**Cost to sector<sup>50</sup>:**

<p>Educators:</p> <p>Average loss of educator income - \$109 per child per day (calculated using average hourly rate for care: \$10.90 Average length of care day: 10 hours)</p> <p>Approved Providers:</p> <p>Family Day Care Services charge membership and/or administration fees in addition to this daily rate. These fees vary across the sector and an indicative cost could not be calculated due to the variance.</p>
--

**Option 3: Allow existing FDC educators with water hazard/s to operate**

The *Education and Care Services National Regulations 2012 (WA)* may be amended to allow existing FDC educators with currently enrolled children under the age of five to continue to operate from a specific residence with a swimming pool or water hazard. These existing FDC educators would also be permitted to accept new enrolments of children under the age of five years.

This option would be supported by a FDC register that is closed to new educators from a specified date. The register would contain the name of existing educators who are linked to one specific residence with a pool or water hazard. Only the educator named on the register would be able to operate a FDC service from that residence. Therefore, a new, temporary or existing educator who buys the residence with a pool or water hazard from

---

<sup>50</sup> The average daily loss of income is based on the Australian Government Department of Education & Training hourly rate cap for Family Day Care. The hourly rate cap was calculated according to the average national daily fee for family day care.

the educator named on the register, would not be permitted to operate a FDC service from that residence.

Under this option, the Education and Care Regulatory Unit would be given the power, to be exercised at any time on reasonable grounds, such as compliance issues, to prohibit an existing FDC educator from continuing to operate from a residence with a swimming pool or other water hazard.

**Advantages:**

- minimises the disruption to children and their families;
- gives educators time to explore their future options.

**Disadvantages:**

- There is still a drowning risk for children attending this care.

**Cost to sector:**

Cost will be deferred, but ultimately similar to option 2.
--

**Option 4: Discretionary power of regulator**

This option was suggested during the targeted consultation with the sector.

The *Education and Care Services National Regulations 2012 (WA)* may be amended to empower the Education and Care Regulatory Unit to grant approval to allow an existing FDC educator to operate from their residence with a swimming pool or water hazard to continue to enrol children, including those under the age of five years on a case-by-case basis with consideration of factors including but not limited to:

- The compliance record of the educator and the family day care service
- Allowing the younger and future children of currently enrolled families to remain with the educator
- Location of swimming pool or water hazard on property
- Proximity of swimming pool or water hazard to areas used for family day care
- Availability of alternative family day care places in area (actual places for immediate enrolment)
- Availability of centre-based care in local area.
- Approving the use of a venue in place of the educator's residence

If this option is considered feasible and agreed, the extent and basis of the discretionary power will be determined through consultation with relevant legal professionals such as the State Solicitor's Office.

**Advantages:**

- Allows assessment of risk on a case-by-case basis.
- Allows assessment of need for family day care on a case-by-case basis.

**Disadvantages:**



**There is still a drowning risk for children attending this care.**

**Cost to sector:**

Will vary according to circumstances.

**Guiding questions – policy options to deal with recommendation 1:**

**1. Which option, or combination of options, do you prefer regarding existing FDC educators? Why?**

**a. Do you have any comment about the lead-in time required to implement your preferred option/s? Why?**

2. Which options do you think won't work? Why?

For example, is it possible for *any* educator with a swimming pool or water hazard on the premises to ensure the safety of children in care?

3. Which options will affect you, the education and care sector and/or the general community? Specifically:

a. Will any of the options benefit you, the education and care sector and/or the community? In what ways and how much?

(Note: these benefits might be financial, social and/or related to time and/or effort)

b. Will any of the options cost you, the education and care sector and/or the community time, effort and/or money? In what ways and how much?

(Note: these costs might be financial, social and/or related to time and/or effort)

c. Are you able to provide an estimate of the costs (if any) you would incur that are associated with a ban on FDC services with a swimming pool or water feature from providing care to children under 5 years?

4. Do you have any comments about who might be considered an 'existing' FDC educator under this option?

5. If you live in a non-metropolitan area, are there specific costs or benefits, or implementation issues, associated with any of the proposals that are not relevant to those in the metropolitan area?

## Recommendation 2

Amend the relevant legislation in WA to **exclude new FDC educators** from being approved to operate a FDC from a home with a swimming pool, outdoor spa or jacuzzi.

This recommendation relates to new FDC educators and operates alongside recommendation one, it is not intended to be a stand-alone recommendation. The options outlined for this recommendation are proposals only, and we welcome your feedback and suggested alternative options, including details about how your proposal might work and to whom it applies.



### **Option 1: Status Quo/No further change**

Maintaining the Status Quo following the death of a child in early childhood education and care is unlikely to meet community expectations. The major contributing factor to the death was the failure by the educator to ensure adequate supervision of a child in her care in a high-risk environment.

The swimming pool was located within the approved FDC residence. The approved provider had a water safety policy and complied with the legislated inspection requirements. On the day of Lachlan's death, the educator was caring for three children under the age of three years. The current regulations allow one FDC educator to care for up to four children of pre-school age or under. This places high pressure on an educator, particularly at transition times when pre-school children are engaged in activities whilst the school-age children are departing for school or arriving back at the FDC residence.

Following Lachlan's death, the Education and Care Regulatory Unit (ECRU) imposed a service condition on all FDC service approvals stating:

'The approved provider must ensure that, where there is a swimming pool, spa or other water feature at the residence of an educator who is registered with the service, the educator must be directly supervising and physically in proximity to any child in their care who is near the swimming pool, spa or other water feature.'

However, this requirement was already a feature of the water safety policies of most approved providers at the time and failed to prevent the tragedy. Supervision of multiple children by a lone educator in her own home, is fallible and must be reinforced by a safe physical environment.

#### **Advantages**

- No decrease in availability of family day care places;
- No increase in cost of family day care;
- No impediment to recruitment of new educators;
- No added risk to sustainability of current family day care services.

#### **Disadvantages:**

- Safety of children in family day care is not improved;
- No acknowledgment of the seriousness of the incident.

#### **Cost to Sector:**

Nil
-----

## **Option 2.1: Ban new FDC educators at homes with swimming pools, except people in the application process**

The *Education and Care Services National Regulations 2012 WA* may be amended to prohibit the approval of new FDC educators who wish to operate their business from a residence with a swimming pool or other water hazard.

The strictest application of this prohibition would be effective immediately upon gazettal of the amended regulations. The prohibition would apply to future applicants, or any current educator proposing to move to a new residence with a swimming pool. However, applicants who were in the process of applying to be a FDC educator ('current applicants'), and subsequently approved, would not be considered a 'new educator' and might only be permitted to take enrolments of children over five years. Under this option, current applicants would be given six months to finalise their application to become a FDC educator. In addition, the Education and Care Regulatory Unit would be given the power, to be exercised at any time on reasonable grounds, such as compliance, to prohibit a FDC educator from operating from a residence with a swimming pool or other water hazard and accepting enrolments of children over five years.

### **Advantages:**

- Significant reduction of risk of a child drowning while being cared for at family day care.

### **Disadvantages:**

- Decreased options of family day care services for families;
- Loss of income for family day care educators;
- Decreased recruitment options for family day care services;
- Risk to viability of family day care services.

### **Cost to Sector<sup>51</sup>:**

#### Educators:

Average loss of educator income - \$109 per child per day

(calculated using average hourly rate for care: \$10.90

Average length of care day: 10 hours)

#### Approved Providers:

Family Day Care Services charge membership and/or administration fees in addition to this daily rate. These fees vary across the sector and an indicative cost could not be calculated due to the variance.

---

<sup>51</sup> The average daily loss of income is based on the Australian Government Department of Education & Training hourly rate cap for Family Day Care. The hourly rate cap was calculated according to the average national daily fee for family day care.

## **Option 2.2: Ban new FDC educators at homes with water hazard/s, except educators transferring to another service**

The *Education and Care Services National Regulations 2012 WA* may be amended to prohibit the approval of new FDC educators who wish to operate their business from a residence with a swimming pool or other water hazard. However, under this option, an educator who has been providing education and care services from an existing residence with a pool or water hazard and becomes affiliated with a new approved provider may be deemed to be continuing to operate, rather than considered a 'new' FDC educator. Such a FDC educator would then be treated in accordance with the options under recommendation one above.

This option would be supported by a FDC register, that is closed to new educators from a specified date. The register would contain the name of existing educators who are linked to one specific residence with a pool or water hazard. Only the educator named on the register would be able to operate a FDC service from that residence. Therefore, a new, temporary or existing educator who buys the residence with a pool or water hazard from the educator named on the register, would not be permitted to operate a FDC service from that residence.

### **Advantages:**

- lessens impact on family day care services, particularly affected FDC educators who are considering their affiliation with a particular Approved Provider;
- reduces the disruption to children and their families;
- gives educators time to explore their future options.

### **Disadvantages:**

- There is still a drowning risk for children attending this care.

## Cost to Sector:<sup>52</sup>

Sector cost would vary according to circumstances.

### Guiding questions - policy options to deal with recommendation 2:

1. Which option, or combination of options, do you prefer regarding new FDC educators? Why?
2. Which option/s do you think won't work? Why?
3. Which options will affect you, the education and care sector and/or the general community? Specifically:
  - a. Will any of the options benefit you, the education and care sector and/or the community? In what ways and how much?  
(Note: these benefits might be financial, social and/or related to time and/or effort)
  - b. Will any of the options cost you, the education and care sector and/or the community time, effort and/or money? In what ways and how much?  
(Note: these costs might be financial, social and/or related to time and/or effort)
  - c. Are you able to provide an estimate of the costs (if any) you would incur that are associated with excluding you from establishing a new FDC service with a swimming pool or water feature?
4. Do you have any comments about who might be considered a 'new' FDC educator?
5. If you live in a non-metropolitan area, are there specific costs or benefits, or any implementation issues, associated with any of the proposals that are not relevant to those in the metropolitan area?

---

<sup>52</sup> The Department of Communities is unable to obtain information about the number of educators who are currently setting up family day care in a residence with a pool, or who are in the process of moving to a new residence.

## Recommendation 3

Amend the relevant legislation in WA to require that where an existing FDC educator operates a FDC service from a home with a swimming pool, outdoor spa or jacuzzi (which will only be for children over the age of five years) the approved provider must **physically inspect the property monthly** to ensure that the safety barrier to the water hazard is functioning effectively and there are no climbable hazards in proximity to the fencing. The need for direct supervision in proximity to the water hazard must also be reiterated to the educator during each inspection.

This recommendation would operate alongside recommendations one and two, it is not intended to be a stand-alone recommendation. Accordingly, the options below would apply to existing FDC educators who would be permitted to operate from a residence with a swimming pool, spa or water hazard. The options outlined for this recommendation are proposals only, and we welcome your feedback and suggested alternative options, including details about how your proposal might work and to whom it applies.

### **Option 1: Status Quo/No further change**

The regulations require the approved provider to conduct an assessment (including a risk assessment) of each proposed residence before education and care is provided to children at the residence and at least annually to ensure the health, safety and wellbeing of children.

An annual inspection of a swimming pool or water hazard is inadequate for ensuring that the swimming pool or water hazard does not pose a risk to children being cared for at the residence. Safety features are only effective if they are well maintained, checked regularly and used correctly.

#### **Advantages**

- No inconvenience to the FDC educator of increased inspections
- No increase in the cost of family day care from increased inspections.
- The annual inspection by the approved provider would occur in addition to the local council four-yearly inspections (in relevant areas) and greater restrictions on the sector through implementing options relating to recommendations one and two.

#### **Disadvantages**

- These is still the risk of drowning
- The water hazard may be in a poorly maintained state between inspections

### **Option 2: Increased frequency of inspections by the approved provider**

Evidence was given during the Coronial Evidence that the FDC co-ordinator employed by the approved provider to support the educator did conduct monthly visits to the educator's residence, however two monthly visits were missed due to the co-ordinator being on leave. There was no explicit requirement to inspect the pool during those visits and evidence

given during the inquest suggests that the pool was not inspected over the winter months. Amending the regulations to mandate more frequent inspections of the swimming pool or water hazard, including the barrier and area adjacent to the barrier, by the approved provider will provide increased certainty and direction for the approved provider and the educator.

However, the approved provider is not trained to evaluate the safety of swimming pools and water hazards.

Legislation requires that WA local councils inspect private pools in their jurisdiction at least once every four years to ensure they have complying fences or other safety barriers.

**Advantages:**

- Heightened awareness of the risk of pools and water hazards
- Educators are more vigilant regarding the environment around pools and water hazards.

**Disadvantages:**

- More frequent visits will lead to increased costs to family day care service and these costs may be passed on to educators and families.

**Cost to Sector:**

Cost would vary depending on the fees charged by Approved Providers and individual circumstances.
---

**Option 3: Appropriate, qualified third-party organisation conduct regular inspections of educator's pools**

Regular inspections by trained officers would provide the highest level of quality and safety regarding swimming pools and water hazards at FDC residences.

This option may be a transitional solution where the appointed organisation undertakes monthly inspections for a fixed time whilst the FDC sector develops the skill-set to assume responsibility for the inspections.

**Advantages:**

- Increased safety of pool and surrounds;
- Increased knowledge of FDC educator.

**Disadvantages:**

- Increased costs to family day care service may be passed on to educators and families.

## Cost to Sector:<sup>53</sup>:

### Schedule of Rates

#### Onsite Assessments

Cost range from approximately \$100 - \$200 per property subject to volume of properties inspected. Additional costs may also be imposed depending on the location of the pool or water hazard.

Administration costs will also apply.

## Option 4: Appropriate, qualified third-party organisation provides training

Approved providers and/or the FDC co-ordinator is trained to undertake monthly inspections of educator's swimming pools and water hazards.

This can be achieved by a regulation amendment that requires FDC approved providers who have registered educators operating from a residence with a swimming pool or water hazard to have at least one FDC co-ordinator who has received training from the appointed organisation in evaluating the safety of barriers and surrounds of swimming pools and water hazard.

### Advantages:

- The sector is upskilled;
- Safety of children increases.

### Disadvantages:

Increased costs to family day care service may be passed on to educators and families.

## Cost to Sector:<sup>54</sup>:

These courses are only available in Queensland and New South Wales and these costs are indicative only:

SPASA pool barrier inspection course - \$1990 – currently SPASA is only offering this course in New South Wales and Queensland

<https://www.spasa.com.au/education-training/pool-barrier-inspection-courses/>

Traxion Training Queensland Pool Safety Inspections Courses - \$1495

---

<sup>53</sup> This information is based on a quote provided by a third-party provider at the request of the Department of Communities.

<sup>54</sup> Equivalent courses for Western Australia could not be found. Royal Life Saving WA conducts home pool inspections on behalf of local councils but does not provide pool safety inspection training courses.

## **Option 5: Additional safety improvements**

Adding additional barriers to pool access and improving the educator's ability to respond quickly and effectively to a drowning incident may save lives, however additional security features may also increase complacency and lessen active supervision.

Only safety equipment able to be sourced from a business located in Australia have been included, to ensure that the products comply with all relevant Australian standards.

Additional security and safety features including installation and maintenance of all of the following in proximity to the pool:

- External Automated Defibrillator,
- Oxygen resuscitation device,
- First Aid Kit,
- CPR Chart visible from pool area,
- Mandatory annual CPR refresher, and
- Emergency response/evacuation plan

Improved safety through the installation of at least one of the following:

- Double fencing
- Motion detector
- Pool alarm
- Perimeter alarm
- Gate alarm
- Child wrist alarm
- Pool cover (safety net)

### **Advantages:**

- Improved physical barriers will decrease access and improve safety;
- Improved ability to respond to emergency.

### **Disadvantages:**

- Complacency leads to less active supervision;
- Security and safety features are only effective if they are used correctly and maintained in good working order.
- Increased costs to family day care service may be passed on to educators and families.



## Cost to Sector.<sup>55</sup>:

- Defibrillator \$2,400

Source: Royal Life Saving Society, royallifesaving.com.au  
St John Ambulance WA, stjohnewa.com.au

- Oxi-Boot Oxygen Resuscitator \$650-\$750

Source: Royal Life Saving Society, royallifesaving.com.au  
St John Ambulance WA, stjohnewa.com.au

- First Aid Kit \$80-\$150

Source: Royal Life Saving Society, royallifesaving.com.au  
St John Ambulance WA, stjohnewa.com.au

- Evacuation Plan: Quotes available from Royal Lifesaving, comply with Australian Standard, developed to scale and need to be updated every 5 years

Source: <https://royallifesavingwa.com.au/professional-services/risk-management/public-swimming-pools/evacuation-diagrams>

- Fencing

Pool fencing material varies from:

- \$90-\$200 per linear metre – timber fencing
- \$600 per linear metre – frameless glass

Pool fence installation: from \$100 to \$9 500

Sources:

1. hipages.com.au – accessed on 28 November 2018
2. www.finder.com.au – accessed on 28 November 2018
3. Hunterandco.com.au – accessed on 28 November 2018

- Pool Alarm

Alarm sounds when someone falls into the pool. About \$265

Source: Kidspot Health, "The simple device that could save your child from drowning," kidspot.com.au, accessed on 28 November 2018  
Source: poolandspawarehouse.com.au

- Gate Alarm

Alarm sounds when someone opens the latch. \$150

Source: Bunnings Warehouse, Bunnings.com.au/magnalatch-alert-pool-gate-latch-lock-with-dual-electronic-alarms\_p4150123

- Child Wrist Alarm

Activated when wrist alarm is immersed in water, communication via base station.

Approximately \$250 (\$215 from Safety Store)

Sources: Pool+Spa, "Prevent Drowning – Install Pool Safety Devices" 16 December 2012, poolandspareview.com.au, accessed on 28 November 2018

Safety Store Australia, safetystoreaustralia.com.au

- Safety Net Pool Cover from \$1450 to \$4300

Source: My Perfect Pool, Australia: myperfectpool.com.au/much-pool-cover.html

---

<sup>55</sup> Information accessed on 28 November 2018

### Guiding questions - policy options to deal with recommendation 3:

1. Which option, or combination of options, do you prefer, to enable FDC services caring for children over 5 years and with swimming pools and/or water hazards to continue to operate? Why?
  - a. For example, is it possible for *any* educator with a swimming pool or water hazard on the premises to ensure the safety of children in care who are under 5 years?
  - b. How much lead time, if any, do you think is required to implement your preferred option/s? Why?**
2. Which options do you think won't work to enable FDC services caring for children over 5 years and with swimming pools and/or water hazards to continue to operate? Why?
3. Which of the options in this section will affect you, the education and care sector and/or the general community? Specifically:
  - a. Will any of the options benefit you, the education and care sector and/or the community? In what ways and how much?  
(Note: these benefits might be financial, social and/or related to time and/or effort)
  - b. Will any of the options cost you, the education and care sector and/or the community time, effort and/or money? In what ways and how much?  
(Note: these costs might be financial, social and/or related to time and/or effort)
  - c. Are you able to provide an estimate of the costs you would incur (if applicable) to undertake inspections of swimming pools and other water hazards?
4. If you live in a non-metropolitan area, are there specific costs or benefits, or implementation issues, associated with any of the proposals that are not relevant to those in the metropolitan area?

## Recommendation 4

Require all FDC educators to have a fixed landline installed at their premises so that it is available to contact emergency services in the case of an emergency.

This recommendation applies to all FDC educators. The options outlined for this recommendation are proposals only, and we welcome your feedback and suggested alternative options, including details about how your proposal might work and to whom it applies.

### **Option 1: Status Quo/No further change**

There is already a requirement that staff members of an approved education and care service, including FDC educators, must have ready access to an operating telephone or similar means of communication including "Fixed-line telephone, mobile phone, satellite phone, two-way radio, video conferencing equipment."

**Advantages:**

- no additional cost.

**Disadvantages:**

- risk of communication device being lost or misplaced or otherwise not able to be used.

**Cost to Sector:**

Nil
-----

**Option 2: require all family day care educators to have a fixed landline installed at their premises**

There is doubt about whether this option can be achieved or is the best option available. The Productivity Commission Inquiry Report on the Telecommunications Universal Service Obligation recommended that the Universal Service Obligation be wound up following the completion of the national broadband network infrastructure rollout (scheduled for 2020). The report also recommended that the universal service obligation be reframed as an objective for universal communications services to provide *baseline* broadband and voice services to all premises in Australia on request.<sup>56</sup>

**Advantages:**

- Telephone is accessible because it is in a fixed location.

**Disadvantages:**

- Possibly not available in all areas of Western Australia

**Cost to Sector:**

Would vary depending on circumstances.
--

**Option 3: require all FDC educators to have at least one telephone or similar means of communication that is kept in a fixed location as a back-up in case of emergency.**

This could include a landline, or a second mobile phone that is attached to a wall or desk and only accessed in an emergency.

**Advantages:**

- Decreased risk of no means of communication being available in an emergency.

---

<sup>56</sup> Recommendation 3.1 and Recommendation 5.1, *Overview – Telecommunications Universal Service Obligation* – *Inquiry Report*  
<https://www.pc.gov.au/inquiries/completed/telecommunications/report/telecommunications-overview.pdf>, accessed 6 November 2018

## Disadvantages:

- Cost of purchasing and operating second means of communication.

## Cost to Sector:

Uniden corded and cordless phone \$79.00 Officeworks

<https://www.officeworks.com.au/shop/officeworks/p/uniden-corded-and-cordless-phone-2145-1-undt21451>

Prepaid Mobile phones:

Telstra Nokia 2.1 \$99.00

Optus X Power \$89.00

<https://www.officeworks.com.au/shop/officeworks/p/uniden-corded-and-cordless-phone-2145-1-undt21451?q=pre-paid%20mobile%20phone&view=grid&page=1&sortBy=prod-product-wc-bestmatch>

Search conducted on 4 December 2018

## Guiding questions:

1. Which option do you prefer? Why?

**a. How much lead time, if any, do you think is required to implement your preferred option/s? Why?**

2. Which options do you think won't work? Why?

3. Which of the options in this section will affect you, the education and care sector and/or the general community? Specifically:

a. Will any of the options benefit you, the education and care sector and/or the community? In what ways and how much?

(Note: these benefits might be financial, social and/or related to time and/or effort)

b. Will any of the options cost you, the education and care sector and/or the community time, effort and/or money? In what ways and how much?

(Note: these costs might be financial, social and/or related to time and/or effort)

4. If you live in a non-metropolitan area, are there specific costs or benefits, or implementation issues, associated with any of the proposals that are not relevant to those in the metropolitan area?

# Implementation and Engagement Strategy

## Implementation

Implementation of all options except “retaining status quo/no further change” will require amendments to the Education and Care Services National Regulations (WA) 2012. All amendments to the regulations require the approval of the Coalition of Australian Governments (COAG) Ministerial Council.

Transitional provisions will be used in the options that include transition times, and may be used elsewhere to provide time for the sector to comply with any new requirements. Stakeholders are requested, during the consultation phase, to provide feedback about implementation issues, including time for stakeholders to adjust to any of the options proposed, so that they can be taken into account when preparing the Decision Statement.

## Evaluation

An evaluation process will be outlined in the Decision Statement once the preferred options have been identified.

# Submissions Template

This template is a guide only and submissions that do not use the template will still be accepted.

## Type of Respondent:

- Approved Provider
- Educator
- Co-ordinator
- Family
- Interested individual

Peak Organisation (include Name)

Other (specify name and type of organisation)

## 1. Feedback on recommendation 1

### Recommendation 1 -

Amend the relevant legislation in WA to **exclude homes** with a swimming pool, outdoor spa or jacuzzi from being used to operate a FDC service where children under the age of five are admitted to care, which should come into effect immediately.

This recommendation relates to existing FDC educators operating from a residence with water hazard/s and is intended to operate alongside the other three recommendations.

Please check “support” or “don’t support” for each option outlined below. You may indicate in the comments field which is your preferred option, or combination of options. Please attach additional pages if required, and any other supporting information you wish to have considered.

Note however that the options outlined for this recommendation are proposals only: the template includes space for you to provide alternative options.

Option	Support	Don't Support	Comments
Option 1 Status Quo/No further change	<input type="checkbox"/>	<input type="checkbox"/>	
Option 2 Ban FDC for children under 5 at homes with water hazard/s, with transition period	<input type="checkbox"/>	<input type="checkbox"/>	

Option 3 Allow FDC educators with water hazards to operate	<input type="checkbox"/>	<input type="checkbox"/>	
Option 4 Discretionary power of regulator	<input type="checkbox"/>	<input type="checkbox"/>	

Please use this space below for any alternative options you may have to deal with recommendation one, including details about how your proposal might work and to whom it applies. Please attach additional pages if required, and any other supporting information you wish to have considered.

Alternative Option/s – Recommendation 1

## 2. Feedback on recommendation 2

<p><b>Recommendation 2:</b></p> <p>Amend the relevant legislation in WA to <b>exclude new FDC educators</b> from being approved to operate a FDC from a home with a swimming pool, outdoor spa or jacuzzi.</p>
--

This recommendation relates to new FDC educators and operates alongside the other three recommendations.

Please check “support” or “don’t support” for each of the options outlined below. You may indicate in the comments field which is your preferred option, or combination of options. Please attach additional pages if required, and any other supporting information you wish to have considered.

Note however that the options outlined for this recommendation are proposals only: the template includes space for you to provide alternative options.

Option	Support	Don't Support	Comments
Option 1 Status Quo/No further change	<input type="checkbox"/>	<input type="checkbox"/>	
Option 2.1 Ban new FDC educators at homes with water hazard/s, except people in the application process	<input type="checkbox"/>	<input type="checkbox"/>	

Option 2.2 Ban new FDC educators at homes with water hazard/s, except educators transferring to another service	<input type="checkbox"/>	<input type="checkbox"/>	
---	--------------------------	--------------------------	--

Please use this space below for any alternative options you may have to deal with recommendation two, including details about how your proposal might work and to whom it applies. Please attach additional pages if required, and any other supporting information you wish to have considered.

Alternative Option/s – Recommendation 2

### 3. Feedback on recommendation 3

<p><b>Recommendation 3:</b></p> <p>Amend the relevant legislation in WA to require that where an existing FDC educator operates a FDC service from a home with a swimming pool, outdoor spa or jacuzzi (which will only be for children over the age of five years) the approved provider must <b>physically inspect the property monthly</b> to ensure that the safety barrier to the water hazard is functioning effectively and there are no climbable hazards in proximity to the fencing. The need for direct supervision in proximity to the water hazard must also be reiterated to the educator during each inspection.</p>
---

This recommendation relates to additional safeguards and operates alongside the other three recommendations.

Please check “support” or “don’t support” for each of the options outlined below. You may indicate in the comments field which is your preferred option, or combination of options. Please attach additional pages if required, and any other supporting information you wish to have considered.

Note however that the options outlined for this recommendation are proposals only: the template includes space for you to provide alternative options.

Option	Support	Don't Support	Comments
Option 1 Status Quo/No further change	<input type="checkbox"/>	<input type="checkbox"/>	



Option 2 Monthly inspections by the approved provider	<input type="checkbox"/>	<input type="checkbox"/>	
Option 3 Suitably qualified third-party organisation conduct monthly inspections of educator's pools	<input type="checkbox"/>	<input type="checkbox"/>	
Option 4 Appropriate, qualified organisation provides training	<input type="checkbox"/>	<input type="checkbox"/>	
Option 5 Additional safety improvements	<input type="checkbox"/>	<input type="checkbox"/>	

Please use this space below for any alternative options you may have to deal with recommendation three, including details about how your proposal might work and to whom it applies. Please attach additional pages if required, and any other supporting information you wish to have considered.

Alternative Option/s – Recommendation 3

#### 4. Feedback on recommendation 4

<p><b>Recommendation 4:</b></p> <p>Require all FDC educators to have a fixed landline installed at their premises so that it is available to contact emergency services in the case of an emergency.</p>
--

This recommendation applies to all FDC educators.

Please check “support” or “don’t support” for each of the options outlined below. You may indicate in the comments field which is your preferred option, or combination of options. Please attach additional pages if required, and any other supporting information you wish to have considered.

Note however that the options outlined for this recommendation are proposals only: the template includes space for you to provide alternative options.

Option	Support	Don't Support	Comments
Option 1 Status Quo/No further change	<input type="checkbox"/>	<input type="checkbox"/>	
Option 2 require all family day care educators to have a fixed landline installed at their premises	<input type="checkbox"/>	<input type="checkbox"/>	
Option 3 require all FDC educators to have at least one telephone or similar means of communication that is kept in a fixed location as a back-up in case of emergency.	<input type="checkbox"/>	<input type="checkbox"/>	

Please use this space below for any alternative options you may have to deal with recommendation four, including details about how your proposal might work and to whom it applies. Please attach additional pages if required, and any other supporting information you wish to have considered.

Alternative Option/s – Recommendation 4