

Early childhood services regulatory and quality assurance framework

A risk-based approach to regulating early childhood education and care in South Australia



**Education
Standards
Board**

early childhood to
senior schooling



Government
of South Australia

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1. Who we are and what we do

The Education Standards Board is the independent regulatory authority responsible for the regulation and quality assurance of early childhood education and care services in South Australia.

Research shows that high-quality education and care contributes to better social, educational and employment outcomes across the lifespan. At the Education Standards Board, we value our role in assisting families and the wider community to access high-quality early childhood education and care services. This supports the South Australian Government's commitment to strive for excellence in every child and young person's care, learning and development.

We are committed to making sure that all South Australian children and young people have access to high-quality early childhood education and care services.

The Education Standards Board regulates approximately 1200 early childhood education and care services¹ under the National Quality Framework (NQF). These comprise long day care (LDC), out of school hours care (OSHC), preschools and family day care (FDC), delivering education and care to families across metropolitan, rural and remote locations.

In addition, we also regulate over 100 services referred to as 'residual services'. These services comprise in-home care, rural and mobile care, occasional care and individual family day care services and are regulated under a modified version of the *Education and Care Services National Law (South Australia)* (the National Law).

Our regulatory approach is in line with the key objectives of the NQF, which are to:

- ensure the safety, health and wellbeing of children attending education and care services

- improve the educational and developmental outcomes for children attending education and care services
- promote continuous improvement in the provision of quality education and care services
- improve public knowledge, and access to information, about the quality of education and care services.

This framework sets out our regulatory response: using a contemporary risk-based approach to regulation and quality assurance to support effective outcomes to the sector, families and the wider community.

2. Legislation and quality framework

We regulate early childhood education and care services in accordance with the National Law and the Education and Care Services National Regulations 2011 (the Regulations). The Registrar of the Education Standards Board is responsible for administering and enforcing the NQF and compliance with the National Law in South Australia.

The NQF includes the National Law and Regulations, the National Quality Standard (NQS), the assessment and rating process and approved learning frameworks.

The term *early childhood education and care service* refers to services in scope of the National Law and those referred to as residual services.

The Australian Children's Education and Care Quality Authority (ACECQA) is the national body that monitors consistency with the NQF. ACECQA works with the Australian and state and territory governments to provide guidance, resources and services to support the sector to improve outcomes for children. Useful information for families and the sector can be found on their website.

¹ *Early childhood education and care services* refers to all approved services regulated under the *Education and Early Childhood Services Registration and Standards Act 2011 (SA)*, incorporating the *Education and Care Services National Law (South Australia)*.

3. A shared responsibility

The Education Standards Board, approved providers and families all have a part to play in ensuring that services provide safe, high-quality learning environments for South Australian children.

As the regulatory authority, we work closely with our stakeholders to achieve quality outcomes for children. We support approved providers to meet their responsibilities by providing information, guidance and advice and will take action when required. Positive partnerships and working relationships with our stakeholders is a priority, as outlined in the *Education Standards Board strategic plan*.

Approved providers have a responsibility for the health, safety and wellbeing of children who are in education and care. Approved providers must comply with the relevant legislative requirements and ensure that they have appropriate controls in place to manage risks within their services.

Children's brains develop connections faster in the first five years than at any other time in their lives. This is the time when the foundations for learning, health and behaviour throughout life are laid down. That is why it is important that families work with approved providers to ensure the individual needs of their children are understood and met.

4. Authorised officers

In carrying out their regulatory functions, our staff are bound by the *Code of ethics for the South Australian public sector*, which is underpinned by the foundations of public service and public sector values. Under the National Law, staff who are delegated to carry out specific functions are identified as *authorised officers*. Their roles and responsibilities may include:

- monitoring and promoting compliance
- assessing applications for approval
- conducting assessment and rating visits

- investigating incidents and complaints
- exercising powers to require information, documents and evidence
- exercising powers of entry
- providing advice and guidance.

Authorised officers are required to complete mandatory training to ensure they are equipped with the necessary skills and knowledge to undertake their role. Authorised officers undertaking assessment and rating functions have skills and experience to enable informed assessment of the pedagogical aspects of the NQS.

Authorised officers' powers under the National Law are further explained in the NQF.

5. Best practice regulatory principles

Our regulatory activity is guided by these principles:

Outcomes focused: Regulatory actions should promote quality outcomes for children and further the objectives of the laws being administered.

Proportionality and efficiency: The design and application of regulation should be proportionate to the problem or issue it is seeking to address and focused where it will generate the greatest benefit from the resources employed.

Responsiveness and flexibility: The Education Standards Board will consider the available options and tailor our approach with regard to the specific case with a focus on outcomes for children.

Transparency and accountability: Regulatory actions should be open and transparent, fair and consistent to encourage public confidence.

Independence: When exercising a power, this should be done in the absence of actual or perceived conflicts of interest or influences that may impinge on objectivity.

Communication and engagement: Engaging with a broad range of stakeholder groups makes regulatory activities more efficient and effective.



Mutual responsibility: Providers, managers and staff of early childhood education and care services have the primary responsibility for ensuring the safety, health, wellbeing and educational outcomes of children in their care.

Consistency and cooperation across jurisdictions: Cooperation and coordination across jurisdictions can reduce duplication of effort and improve efficiency and effectiveness.

Awareness of the broader regulatory environment: The Education Standards Board will be aware of inter-related regulatory schemes, cooperating and sharing information to reduce duplication of regulatory effort and burden.

6. A contemporary and collaborative approach to regulation

The Education Standards Board has strong relationships with the sector in South Australia and works with approved providers to ensure they

are aware of their responsibilities in meeting the regulatory requirements. We support them to strive for continuous improvement in the quality of the service they provide.

The vast majority of approved providers comply with their regulatory obligations. In responding to proven breaches of regulatory obligations, we draw on a range of escalating regulatory responses to ensure the action applied is proportionate to the regulatory breach. When non-compliance is identified and substantiated—whether at a monitoring visit, following a notification or as a result of an investigation—a risk assessment is undertaken to determine an appropriate and proportionate regulatory response. As the Ayres and Braithwaite enforcement pyramid² (on next page) shows, this action can range from providing information and advice where non-compliance is low-risk and the approved provider is willing and able to address the non-compliance, to high-level statutory sanctions when the non-compliance involves serious harm to children and/or significant negligence on the part of the approved provider.

² Cited in ACECQA, *Guide to the National Quality Framework*, (p. 587). Last updated September 2020.

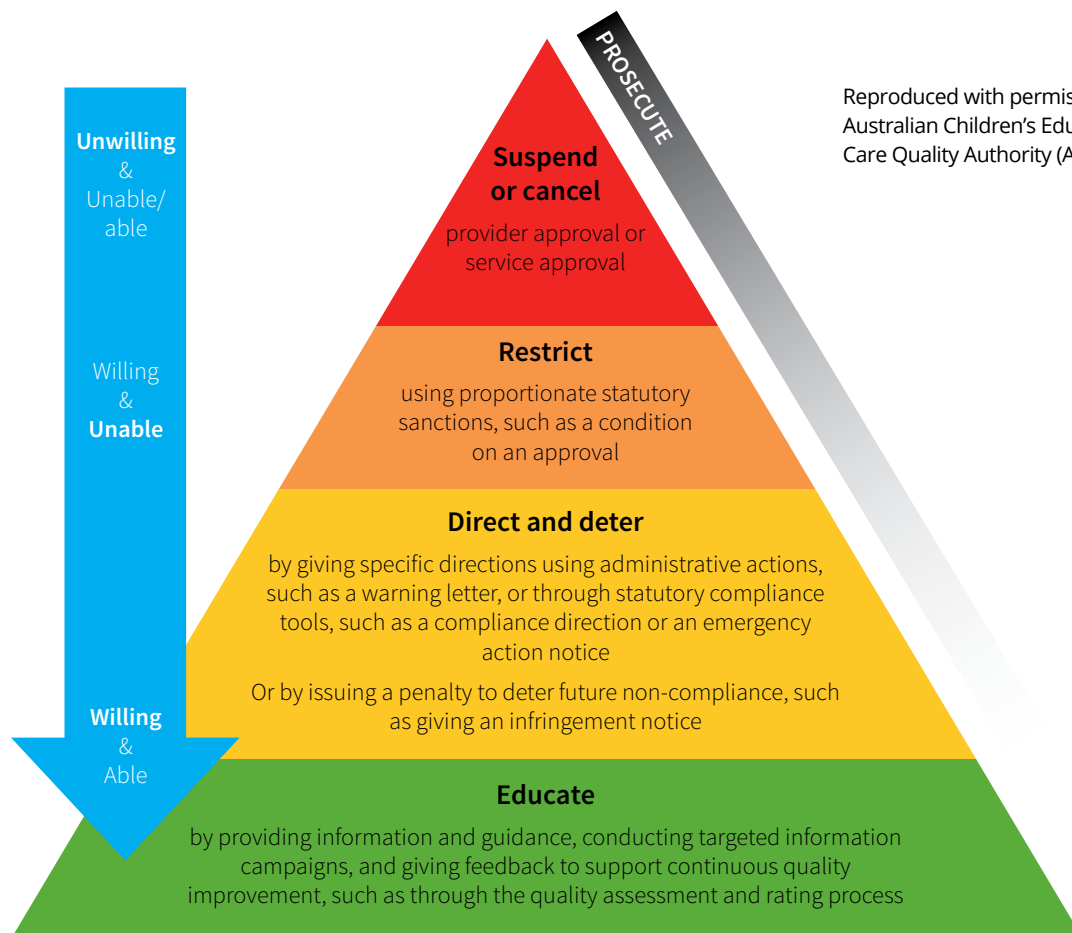
Where compliance is not met, the enforcement pyramid is applied to determine the appropriate course of action.

In deciding on the appropriate regulatory action, a regulatory risk differentiation approach is used, treating those who are regulated differently, based on an assessment of the risks of non-compliance. This assessment includes an assessment of the provider's or educator's position on a compliance continuum as well as an assessment of the risk to children.

The compliance continuum is a means of describing a provider's ability and willingness to comply with the law. At one end of the continuum are those who are more than willing and very able to comply or exceed the requirements of the law. Next are those who are able and agreeable to compliance, but need support and education to meet the requirements of the law. At the far end of the continuum are a small minority who deliberately engage in unlawful activity.



Enforcement pyramid



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This approach recognises that the majority of providers are willing to comply with the law, but that there are a number of different reasons why non-compliance may occur. It follows that the response to non-compliance should differ according to the reason. For example, if a provider does not understand how to meet their reporting requirements, the most effective and efficient response may be to provide that information. However, if there is an ongoing risk to children, a more directive response may be required.

The responsive compliance pyramid model is also consistent with the **principle of earned autonomy, where regulatory intervention is focused towards those who are unwilling and/or unable to comply.**

The regulatory cycle involves a series of processes and actions, detailed below.

Application approvals

Applicants must be deemed fit and proper and hold relevant management capabilities to operate a service. Careful consideration is made of the applicant's ability to provide safe, high-quality early childhood education and care services that are compliant with the legislation and NQF.

Provider approval: A person or organisation may apply to obtain provider approval to operate one or more education and care services. An approved provider must obtain service approval for each individual service prior to commencing education and care.

Service approval: Each service operated by an approved provider requires service approval. Service approvals relate to the individual site/premises and the type of care they intend to provide. Authorised officers assess the suitability of the proposed premises, the adequacy of policies and procedures, and the capability of the approved provider to operate in a manner that will meet the requirements of the NQF.

How we support continuous improvement

Monitoring visits

Monitoring activities encourage providers to meet their regulatory obligations and support continuous improvement of quality of education and care. Monitoring can also promote relationship building with our stakeholders and provide opportunity for educative approaches.

Monitoring activities can be conducted either by onsite announced or unannounced visits or by telephone or video conference and can be used to inform if further regulatory action is required.

The selection of services included on the monitoring schedule is based on a range of factors, including promoting compliance with the National Law, to inform future assessment and rating visits and to support and acknowledge services in their continuous improvement cycle.

Assessment and rating of services

The National Law places a strong emphasis on the importance of services participating in the assessment and rating system. It requires services to assess themselves against the NQS and develop and annually review a Quality Improvement Plan outlining areas that they consider may need improvement.

Services can receive one of five ratings:

- *Excellent* (awarded by ACECQA)
- *Exceeding* NQS
- *Meeting* NQS
- *Working Towards* NQS
- *Significant Improvement Required* (SIR).

As agreed nationally, new services will usually be assessed and rated for the first time at around 12 months of commencing operation. This means that at any given time there will always be a percentage of services not eligible for an assessment and rating.



Quality education and care yields higher returns for children from disadvantaged backgrounds, and the accrued benefit is greater than the cost of early interventions. Research indicates that children from more disadvantaged backgrounds are more likely to experience developmental vulnerability than children from less disadvantaged backgrounds.

At 30 June 2020, 85% of South Australian early childhood services were rated as Meeting the NQS or above. To date, our regulatory focus has been to support services on their quality improvement journey with a particular emphasis on services who are rated as Working Towards NQS.

Our regulatory strategy is developed annually and approved by the Board. While new services and services who are Working Towards NQS will always be a key priority for our regulatory strategy, research conducted and intelligence and data collected by national and state sector bodies and services is considered to help inform our thinking and focus. Anticipated resourcing availability is also a key driver to determine what activities can be successfully achieved.

Therefore the regulatory strategy prioritises the allocation of resources towards the assessment and rating of new services who have commenced operations within the past 12 months, and services rated as Working Towards NQS. However, not all resources are committed to these activities, as we need to ensure that we have capacity to manage emerging issues if/when they arise.

To manage potential risks to children and improve the quality of education and care provided at services rated as Working Towards NQS, services are reassessed at least once in a two-year period. This risk-based approach is consistent with encouraging continuous improvement and supporting the service to improve their practices above the minimum standards.

In addition, a number of Meeting and Exceeding NQS services are included on the schedule. Considerations may include time passed since the last assessment and rating, changes to the service risk rating, changes to the approved provider or key personnel, monitoring activities indicating that the service may not be operating at the current rating and other intelligence gathered through notifications, complaints and investigations.



This approach is consistent with the principle of earned autonomy by minimising regulatory burden for proven high-performing providers with a history of compliance. This means that approved providers rated as Meeting the NQS and above have proven they do not require the same level of support or scrutiny as those who are rated as Working Towards NQS.

Intensive intervention program

In South Australia, services are not rated as SIR. Instead services are either placed on the intensive intervention program or, if found to be in breach of the regulatory requirements, are referred to our Compliance and Investigations Team to consider if regulatory action is required. If the usual monitoring activities have not encouraged the service to adopt a continuous improvement regime, the service may be considered for the intensive intervention program. This is a planned and time-limited approach to support the service by monitoring the service towards compliance and continuous improvement. At the end of the program, a further assessment and rating is conducted and a decision is made about whether the service has adopted a trajectory of improvement or if compliance action should be taken.

Information, advice and support

The Education Standards Board supports voluntary compliance and, therefore, has an important role in providing guidance and information to the sector, particularly new entrants to assist them to understand the requirements and responsibilities in operating an early childhood service. Co-operative partnerships with the sector associations is important to ensure that early childhood services are aware of, and comply with, their legal obligations.

The Education Standards Board provides guidance and support for services through its website, social media platform, monthly newsletter and educative tools and participates in industry events and forums. Education Standards Board staff are also always willing to provide support over the phone or in person when needed.

How we respond to non-compliance

We have an important role in ensuring that services comply with the legislation. To do this, we may need to investigate complaints or concerns raised about services.

We receive information about potential non-compliance through notifications, complaints and other intelligence. We assess risks and benefits, educate services about required changes and act in proportion to the situation. This is to maximise positive outcomes for children and reduce regulatory burden for the sector.

Notifications

Approved providers are required to notify the Education Standards Board about a range of incidents that may occur within specified timeframes as outlined in the NQF. On receipt of a notification an authorised officer will assess the matter and determine if it meets the threshold and what action, if any, needs to be taken.

Complaints

We receive complaints from a range of stakeholders, generally regarding concerns with the health, safety or wellbeing of a child or children



within a service. Approved providers are required to have policies and procedures for dealing with complaints and processes in place to ensure all grievances and complaints are addressed, investigated fairly and documented in a timely manner. Complainants are encouraged to raise their concerns with approved providers and/or services before making a complaint to the Education Standards Board.

However, if the issue is unable to be resolved with the service, or if there are circumstances where it is not possible or appropriate for the complaint to be managed with the service, the complaint can be progressed by the Education Standards Board.

Complaints will be:

- assessed for risk to the health, safety or wellbeing of any child
- investigated by an authorised officer
- reviewed for non-compliance with the legislation.

Any action taken will be based on the seriousness of the matter, how the approved provider has responded to the incident and the level of risk to children.

Other intelligence

Non-compliance may be observed by authorised officers during a monitoring or assessment and rating visit. In some cases, this information may be sufficient to substantiate a breach and take immediate action or require further enquiries or investigation.

Investigations

When reviewing notifications received, an investigation may be initiated where there is reason to believe that an offence against the National Law has been or is being committed. The NQF includes summaries of offences under the National Law and Regulations.

The NQF describes an investigation as “a formal and systematic inquiry to establish facts about an incident, complaint or alleged non-compliance”.

When undertaking investigations, the Education Standards Board is guided by the NQF best-practice regulation principles.



Compliance and enforcement action

“Providers and other people with obligations under the legislation who are willing and able to respond to regulation comply most of the time. Those who are unwilling and/or unable to respond require more persuasive deterrents and remedies.”³

The NQF outlines a wide range of methods and tools regulatory authorities may use when addressing non-compliance. These tools can include:

Prosecutions: Bring an offence against the National Law or Regulations for decision by a court or tribunal.

Statutory sanctions: Cancellations, suspensions, conditions, infringement notices, compliance notices, compliance directions, enforceable undertakings, emergency action notices, prohibition notices, direction to exclude an inappropriate person.

Administrative actions: Additional monitoring, meetings, warning letters or cautions.

Information and guidance: Fact sheets, newsletters, FAQs, helplines, campaigns, capacity-building, practice notes and guidelines.

7. Reporting

We regularly report to the Board about regulatory activities undertaken. To ensure transparency, current and historical compliance actions are detailed on the Education Standards Board website.

An annual report is also tabled by the Minister for Education in the South Australian Parliament and subsequently published on the Education Standards Board website. This report includes details about our operations and achievements and also regulatory activities that have been undertaken for the financial year.

8. Review of decisions

Decisions made by the Education Standards Board can be challenged if they have “negatively impacted an individual’s rights, interests or legitimate expectations”.⁴

The National Law allows for internal and external reviews. An individual may also be able to seek a judicial review of a decision.

What decisions can be reviewed and the process for managing these requests are further explained in the NQF.

9. Useful links

Education Standards Board: www.esb.sa.gov.au

Australian Children’s Education & Care Quality Authority (ACECQA): www.acecqa.gov.au

³ ACECQA, *Guide to the National Quality Framework* (p. 588). Last updated September 2020.

⁴ ACECQA, *Guide to the National Quality Framework* (p. 600). Last updated September 2020.



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