

**Education
Standards
Board**



**Government
of South Australia**

Regulatory Practice Statement

December 2022



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Education Standards Board

Karna Country
GPO Box 1811
ADELAIDE SA 5001

1800 882 413
educationstandardsboard@sa.gov.au
esb.sa.gov.au

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Foreword

The Education Standards Board (Board) regulates the provision of education and care services to children and young people from birth through to secondary school in South Australia.

Access to high quality education and care services can contribute to better social, educational and employment outcomes for South Australia's children and young people. Early childhood education and care services also support families by enabling workforce participation of parents and guardians.

Effective regulation of early childhood and education services is fundamental to achieving better outcomes for children and young people and supports the commitment of the South Australian Government to strive for excellence in every child and young person's growth, learning and development.

We provide day to day regulatory oversight through authorised officers who have specific powers to monitor, respond and investigate to ensure high standards of competence and conduct by education and care service providers.

We are committed to continuously developing and improving our regulatory approach and regulatory capability to achieve our regulatory outcomes while reducing unnecessary regulatory burden.

We are cognisant of the broader regulatory environment and maintain positive partnerships and working relationships with co- and peer- regulators to support efficient and effective delivery of our regulatory functions.

We recognise that transparent and meaningful engagement with our regulated parties and stakeholders helps inform our regulatory work and deliver better regulatory outcomes.

Continuing to ensure the best interests of children and young people in an evolving environment is central to our regulatory role, and the various regulatory activities we undertake.

This statement aims to provide an understanding of how and why we regulate to support achieving improved outcomes for South Australia's children and young people.



A handwritten signature in black ink, appearing to read 'Kerry Leaver', written in a cursive style.

Kerry Leaver

Registrar and Chief Executive
Education Standards Board

Introduction

This Regulatory Practice Statement provides an overview of the Education Standards Board's approach to regulating the provision of education and care services to children and young people from birth through to secondary school in South Australia.

It sets out the regulatory frameworks we operate under and the way we approach our regulatory responsibilities, through the application of regulatory principles. Applying principles helps us achieve a consistent, risk-based approach to regulating as part of meeting our regulatory obligations and achieving our regulatory outcomes.

The statement aims to provide clarity to regulated parties about what we do and how we do it, establish clear roles and responsibilities and outline how we will be accountable for our performance, in support of our transparency principle.

Why we regulate

In regulating early childhood and education providers, our primary consideration is the welfare and best interests of children and young people.

We regulate to ensure high standards of competence and conduct by education and care service providers, in order to:

- recognise that all children and young people should have access to high quality education and care services that address their developmental needs; support educational achievement; promote enthusiasm for learning; and ensure their health, safety and wellbeing
- provide for a diverse range of services for families to access
- enhance public confidence in the operation of services.

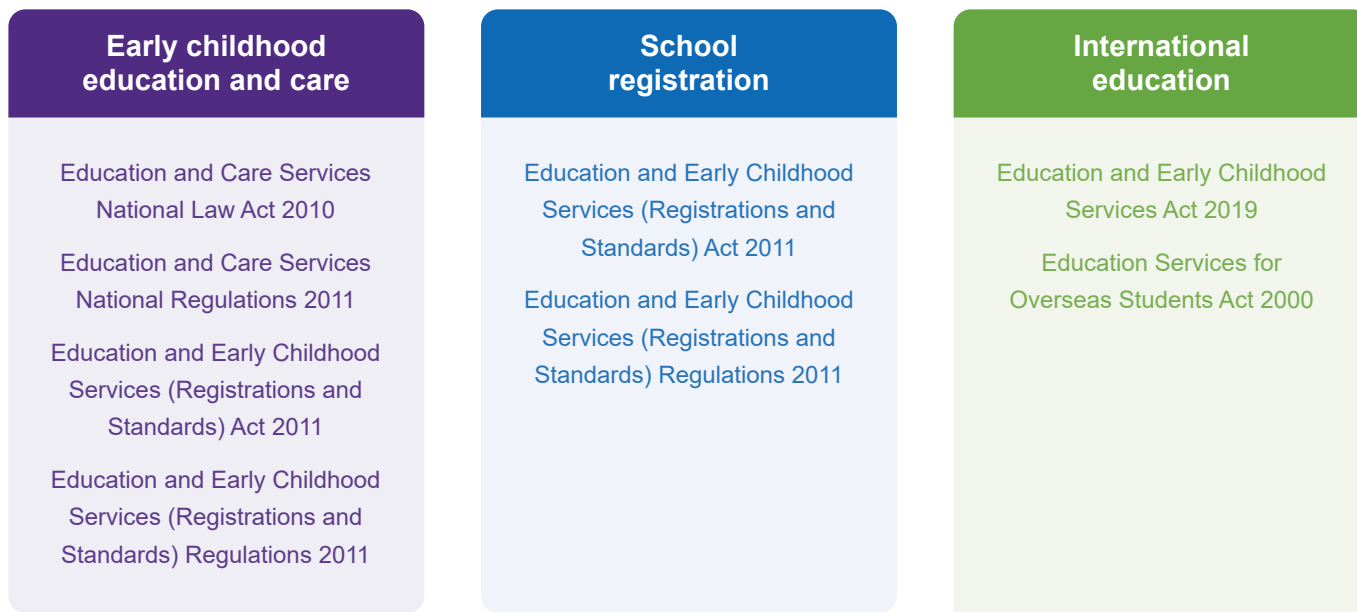
Registration gives the public confidence that a school has:

- governance arrangements in place to ensure accountability for the satisfactory quality of the education instruction provided
- policies and procedures for student learning and assessment that effectively deliver education services for each stage of schooling
- adequate provision for the safety, health and welfare of students.

Regulatory frameworks

The Board was established in 2012 in accordance with the Education and Early Childhood Services (*Registration and Standards*) Act 2011(Act).

The Board operates under three distinct regulatory frameworks, depicted in the figure below:



■ Early childhood education and care

We regulate a range of early childhood services under the National Quality Framework (NQF), including long day care, family day care, preschools, and outside school hours care. Services that do not fall in the scope of the NQF are known as residual services and are also subject to regulation. They include in-home care, mobile care and occasional care services.

The Board is the regulatory authority under the Education and Care Services National Law Act 2010 (National Law). The NQF provides the quality standards to improve education and care in the delivery of early childhood services.

The NQF includes:

- National Law and Regulations
- National Quality Standards (NQS)
- assessment and rating process
- approved learning frameworks.

Residual services are regulated through a modified use of the National Law and through service-specific regulations and standards. The modifications and exclusions of the National Law relating to residual early childhood services are listed in Schedule 2 of the Act.

Irrespective of whether the service is regulated under National Law or the Act, we undertake the following regulatory activities for early childhood services:

- **provider and service application approvals:** assessing and determining applications to ensure providers are fit and proper to operate a service and that services operate in a way that is compliant with relevant legislation
- **monitoring:** proactively and reactively assessing compliance with relevant legislation to ensure providers comply with their regulatory obligations and continuously improve quality of education and care at their services.

In addition, we assess and rate services approved under the NQF against NQS to provide an overall quality rating.

Further detail about our regulatory framework is available in our Early Childhood Services Regulatory and Quality Assurance Framework <<http://bit.ly/3HA4av8>>.

■ Schools

We regulate all government and non-government schools that provide primary and secondary education. This includes catholic and independent schools.

We undertake the following types of regulatory activities for schools under the Act:

- **provider applications:** assessing and determining applications for new government and non-government school registration and changes to school registration under the Act
- **schools register:** maintaining a register of government and non-government schools under the Act
- **registration review:** reviewing registration against the Standards for Registration and Review of Registration of Schools in South Australia (the Standards).

■ International education

We endorse schools to provide education services to overseas students; and register and monitor student exchange organisations that operate student exchange programs.

We undertake the following types of international education regulatory activities:

- **registering providers:** endorsing school providers for registration on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) under the Education Services for Overseas Students Act 2000
- **registering student exchange organisations:** assessing registration applications under the Education and Children's Services Act 2019
- **monitoring:** monitoring ongoing compliance and reciprocity of inbound and outbound exchange students by student exchange organisations.

A regulatory framework for schools and international education is planned for release in 2023.

How we approach regulation

■ Early childhood education and care

We monitor and respond to a regulated party's ability and willingness to meet their legislative obligations. We use a risk-based approach to encourage compliance and detect non-compliance.

We use data and intelligence to identify, target and review regulatory risks. Our regulatory risks include:

- risks of potential harm to the safety, health and wellbeing of children
- risks posed by regulated parties and stakeholders, when we see high levels of non-compliance across the sector or within a sub-sector, such as a service type
- risks arising from changes in the operating environment, such as new or revised regulation.

Our regulatory priorities are derived from regulatory risks. We publish our regulatory priorities and targets to show how and where we are focusing our efforts and to build public confidence in the Board. Publishing our priorities also supports regulated parties to voluntarily comply.

We prioritise responding to and investigating complaints and incidents that fall within the regulatory priority areas, while continuing to respond to individual instances of non-compliance or emerging trends.

■ Schools

We assess a school's compliance with the Standards at least once every five years through self-review verification methods and a validation review method.

The criteria to select schools for the annual validation review schedule are:

- newly registered schools
- schools with significant changes to registration
- existing schools using a random representative sampling method by:
 - school sector (including government, catholic education, independent schools)
 - type of education services (primary, secondary or combined)
 - location (metropolitan or country).

■ International education

We endorse school providers for registration on the CRICOS register. To make an endorsement, we assess a provider's application and accompanying evidence against the National Code of Practice for Providers of Education and Training to Overseas Students 2018 (National Code). The Commonwealth Department of Education (Department), as a co-regulator, is responsible for approval of a provider on the CRICOS register.

Once approved, the provider is responsible for notifying the Board of changes to their registration and course details. We are responsible for approving the changes prior to the Department updating the CRICOS register.

We do not undertake proactive monitoring of a provider's compliance with the National Code once registered.

On receipt of an application to register a student exchange organisation, we assess evidence provided in the application against the National Guidelines for the Operation of International Secondary Student Exchange Programs in Australia (guidelines).

We have a role in monitoring the inbound and outbound exchange student programs to ensure the student exchange organisation operates within the requirements of the guidelines.

Roles and responsibilities

Regulated parties have primary responsibility for maintaining and improving the quality of their services or schools and for ensuring the safety, health and wellbeing of children. They must comply with relevant legislative requirements and ensure they have appropriate controls in place to manage risks.

We exercise our legislative powers and functions to promote quality improvement and ensure compliance. We provide advice and guidance to regulated parties to support them to meet their responsibilities, and take action when requirements are not met.

Staff delegated to carry out specific functions under our legislation are known as authorised officers. Authorised officers have training, skills and experience to enable informed assessment of the educational aspects of the applicable laws, standards and guidelines.

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.

Our people are our biggest asset in delivering quality outcomes for children and young people. We invest in and support our staff to undertake professional development activities to ensure they are equipped with the necessary skills and knowledge to perform their role.

■ How we engage and educate

We aim to be trusted, professional, accountable and proportionate in our dealings with regulated parties and stakeholders.

We encourage voluntary compliance and, therefore, have an important role in providing guidance and advice to regulated parties and stakeholders, particularly new entrants to assist them to understand the requirements and responsibilities in operating a service or school.

Cooperative and productive relationships with sector associations and peak bodies are important to ensure that regulated parties are aware of, and comply with, their legal obligations.

We provide guidance and advice to our regulated parties through our website, monthly newsletter, educative tools and participation in industry events and forums.

We engage with our stakeholders and regulated parties when:

- designing regulatory policy
- reviewing and implementing regulatory strategy
- identifying risks and setting requirements.

This collaborative approach creates and enables a deeper understanding of our regulatory objectives and a shared responsibility for achieving regulatory outcomes.

Principles

Our regulatory approach and regulatory activities are underpinned by our regulatory principles outlined below:

Outcomes focused

We allocate resources to achieve the optimal regulatory outcomes, especially where the potential benefit and risks are more significant.

Proportionality

We manage and respond to risk and incidents of non-compliance proportionally with regard to the potential or actual harm to the safety, health and wellbeing of children and young people, while not imposing unnecessary regulatory burden.

Continuous improvement

We measure, report and review our regulatory outcomes and performance, and make improvements to the way we regulate.

Transparency

We are open, consistent and fair to encourage public confidence and provide assurance for regulated parties. Procedural fairness and natural justice are afforded to regulated parties. We clearly explain the reasons for our decisions.

Collaboration

We engage and exchange information with stakeholder groups, co- and peer-regulators to make regulatory activities more efficient and effective, and to obtain valuable feedback about our performance.

Responding to non-compliance

We will prioritise and continue efforts to provide educative material and undertake engagement activities to help regulated parties understand what is expected of them to further increase voluntary compliance.

We have a range of engagement, education, compliance and enforcement tools at our disposal to encourage voluntary compliance, monitor compliance and respond to non-compliance.

Regulated parties are willing and able to comply most of the time. When a regulated party is found to be unwilling and/or unable to comply with their regulated obligations, voluntarily or with reasonable assistance, we will draw on our regulatory tools to direct or enforce compliance.

In responding to substantiated breaches or contraventions of legislative obligations, a risk assessment is undertaken to determine an appropriate and proportionate regulatory response.

Any action taken will be based on a range of factors, including but not limited to:

- the seriousness of the matter
- the regulated party's attitude and response to non-compliance
- their compliance history
- the risk of potential non-compliance in the future.

Children and young people's health, safety and welfare are paramount in every action and decision made.

There will be times when immediate and firm enforcement action is warranted due to the circumstances and severity of the harm or potential risk of harm to a child or young person; this includes in instances of inappropriate discipline or inappropriate physical contact. There is zero tolerance for physical or sexual abuse of children and young people.

Evaluation and reporting

We evaluate our regulatory practice and report regularly about regulatory activities undertaken and sector performance.

For transparency, current and historical compliance actions are published on the Board's website.

An annual report that details our operations, regulatory activities and performance for the financial year is tabled by the Minister for Education, Training and Skills in the South Australian Parliament and published on the Board's website.

Glossary

Term	Definition
Act	An Act of Parliament creates a new law or changes an existing law.
Activity/ies	The main types of regulatory activities the ESB engages in: registration and approvals, monitoring compliance, assessment and rating and investigation and enforcement.
Advice and guidance	A regulatory activity which involves communicating regulatory requirements to regulated parties, and in some instances to other regulators, stakeholders and the wider community.
Alleged non-compliance	A claim or assertion that a regulated party is in breach of their regulatory obligations. An allegation can be made without proof.
Authorised officer	Person authorised under the legislation with powers and provisions to enter and inspect a registered school or early childhood education and care service.
Complaint	A complaint can be considered as: <ul style="list-style-type: none">• initial information that is received about a matter of potential non-compliance (usually from a victim, witness or concerned party); or• a process, often framed as 'laying of the complaint'.
Compliant	<p>A state of compliance, reflecting that a regulated party is complying with necessary requirements.</p> <p>Regulated parties are compliant when they meet their regulatory obligations.</p>

Term	Definition
Co-regulator	A regulator whose regulatory activities and interests overlap with another regulator.
Enforcement	Regulatory activity which involves the regulator taking action against non-compliant regulated parties to return them to compliance.
Investigation	A formal and systematic inquiry to establish facts about an incident, complaint or alleged non-compliance.
Monitoring	<p data-bbox="568 851 1477 878">A proactive way of assessing and influencing compliance with the law.</p> <p data-bbox="568 931 1445 999">Activities that can provide a strong incentive for regulated parties to comply with their regulatory obligations.</p> <p data-bbox="568 1057 1477 1124">A compliance tool regulatory authorities may apply as part of deciding whether further regulatory action is needed.</p>
Peer-regulator	A regulator that regulates the same matters and issues in another jurisdiction.
Regulation	Any rule endorsed by government, where there is an expectation of compliance.
Regulations	Subordinate legislation to particular Acts that provide specific detail related to an Act.
Regulator	An entity who has the statutory authority and mandate to administer and enforce regulation. Regulators ensure a particular industry or business activity is compliant with the relevant rules approved by the government, such as legislation.

Term	Definition
Regulatory outcome	Outcomes the regulator has been charged with achieving for the community that fall within the regulator’s legislative remit.
Regulated party	An entity (person, body or organisation) who is subject to regulation by a regulator.
Regulatory priorities	Regulatory priorities can be short to long term; directed towards ongoing and/or new emerging risks; drawn from the regulatory outcomes to be achieved.
Risk-based regulation	Involves a regulator targeting or directing regulatory resources and activities towards the most serious regulatory risks.
Stakeholder	An entity (person, body or organisation) who has an interest in regulation and its impacts.
Standards	Reflect the criteria or processes that need to be met to satisfy regulatory requirements and obligations.
Voluntary compliance	When a regulated party complies with their regulatory obligations without any additional assistance from the regulator.



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