



**Education
Standards
Board**



Government
of South Australia

Early childhood services compliance and enforcement policy



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Overview

The Education Standards Board (Board) is the statutory authority responsible for the registration and regulation of early childhood education and care services in South Australia.

This policy articulates the Board's role in ensuring regulated parties providing early childhood education and care comply with their legislative and regulatory requirements.

The policy seeks to deliver regulatory activities and responses that are timely, proportionate, predictable, consistent and professional.

It provides information to regulated parties about the tools and sanctions available to enable the Board to respond to non-compliance.

Scope

This policy applies to regulated parties under the National Quality Framework (NQF), including long day care, family day care, preschools, and outside school hours care.

It also applies to services that fall outside the scope of the NQF, defined as residual services, including in-home care, mobile care and occasional care services.

Residual services are regulated through a modified use of the *Education and Care Services National Law (South Australia) Act 2010* (National Law SA) and through service-specific regulations and standards. The modifications and exclusions of the National Law SA relating to residual services are listed in Schedule 2 of the *Education and Early Childhood Services (Registration and Standards) Act 2011 (SA)* (State Act).

Definitions

Term	Definition
Administrative action	Additional monitoring, meetings, warning letters or cautions.
Authorised officer	A person authorised to be an authorised officer for the purposes of the State Act or National Law SA. Powers of authorised officers are set out under section 69 of the State Act and Part 9 Divisions 2 and 3 of the National Law SA. These powers include powers and provisions to enter and inspect a registered school or early childhood education and care service.
Approved provider	A person or legal entity who holds a provider approval (National Law SA or State Act). A provider approval authorises a person or legal entity to apply for one or more service approvals and is valid in all jurisdictions.
Complaint	Initial information that is received about a matter of potential non-compliance (usually from a victim, witness or concerned party).
Compliance	A state of compliance, reflecting that a regulated party is complying with necessary requirements. Regulated parties are compliant when they meet their regulatory obligations.
Education Standards Board	The regulatory authority appointed under Part 12 (s260-262) of the National Law SA.
Educator	An individual who provides education and care for children as part of an education and care service under National Law SA.
Investigation	A formal and systemic inquiry to establish facts about an incident, complaint or alleged non-compliance.
Monitoring	<p>A compliance tool used as part of deciding whether further regulatory action is needed whilst proactively assessing and influencing compliance with the law.</p> <p>Monitoring activities can provide a strong incentive for regulated parties to comply with their regulatory obligations.</p>

Term	Definition
National Law SA	<i>Education and Care Services National Law (South Australia) Act 2010.</i>
National Regulations	<i>Education and Care Services National Regulations 2011.</i>
Nominated supervisor	A person nominated by the approved provider under Part 3 National Law SA to be in day-to-day charge of a service. A nominated supervisor provides written consent to their nomination.
Regulated party	An entity (person, body or organisation) who is subject to regulation by a regulator. This includes an approved provider, service, nominated supervisor or educator under the National Law SA or the State Act.
Service	An education and care service for which a service approval exists under the National Law SA or the State Act. Service approval may be granted under Part 3 of the National Law or under the State Act in SA or in another participating jurisdiction.
State Act	<i>Education and Early Childhood Services (Registration and Standards) Act 2011 (SA).</i>
Statutory sanctions	Cancellations, suspensions, conditions, infringement notices, compliance notices, compliance directions, enforceable undertakings, emergency action notices, prohibition notices, direction to exclude an inappropriate person.

Introduction

The Board regulates the provision of early childhood services to ensure high standards of competence and conduct by regulated parties. The welfare and best interests of children is the primary consideration in the performance of our regulatory functions.

We work with regulated parties to support voluntary compliance with their regulatory requirements, including through education, guidance and advice, whilst minimising regulatory burden. More information about our role can be found in our [Regulatory Practice Statement](#).

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

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.

Voluntary compliance

Our approach to compliance aims to support the sector to provide sustainable high quality education and care services in South Australia.

We set clear expectations of what voluntary compliance is and looks like for any person or legal entity who has a duty or obligation under the National Law SA, the National Regulations or the State Act. We provide practical and constructive advice on how to comply with the law and regulations, interpret quality standards and, where necessary, how to remedy non-compliance and prevent it from reoccurring.

We work alongside the Australian Children's Education and Care Quality Authority (ACECQA) to provide timely and relevant information to the sector on legislative obligations and requirements to encourage voluntary compliance and improve quality. We achieve this through self-assessment tools, factsheets, guidelines, bulletins, our enquiries line, publishing regulatory priorities and sector forums.

If we identify that a regulated party may be having difficulty complying with legislative requirements, our initial focus, where appropriate, is to engage with the regulated party to support compliance whilst ensuring the safety, health and wellbeing of children attending the service.

Monitoring compliance

We monitor compliance with legislative requirements to ensure the safety, health and wellbeing of children attending education and care services. Information and intelligence gathered from monitoring is used to identify strengths, weaknesses, and opportunities for continuous improvement in the delivery of quality services and to understand broader regulatory trends and issues.

Where monitoring identifies non-compliance and action is required to remedy the issue, authorised officers work with the regulated party to determine appropriate actions to address the problem and achieve desired outcomes.

Monitoring activities can be scheduled or unscheduled and can be conducted onsite or via video or telephone conference. Factors that are used to decide which services are selected for monitoring include (but are not limited to):

- recent changes to service approval
- new service approval
- compliance history of the regulated party
- service type
- quality rating.

Our monitoring activities include:



Assessment and rating

Assessment and rating against the National Quality Standard (NQS) is embedded in the National Law SA.

The aim of assessment and rating is to allow a service to showcase its strengths and to engage the approved provider and the service in a process of self-evaluation to achieve continuous improvement.

If non-compliance is identified, authorised officers will communicate this to the service during the visit. Matters that can be rectified quickly and easily and have minimal impact on service quality will be addressed through the minor adjustment process.



Targeted campaigns

Targeted campaigns monitor address specific compliance risks, for example the Board's regulatory priorities, or risks identified at a specific service type or service location. Targeted campaigns are used to encourage and educate regulated parties to focus on specific issues.



Monitoring visits (scheduled and unscheduled)

We visit regulated parties with or without prior notice.

Scheduled visits are used to encourage regulated parties to comply with their obligations. Scheduling a compliance visit provides preparation time for services to ensure certain information, records and evidence are readily available or particular staff members are present. It also allows preparation for logistical arrangements (such as organising travel) and relevant cultural considerations.

Unscheduled visits are used when there is reason to believe the regulated party may be non-compliant and misrepresenting its self-reported data or is likely to destroy information, records and evidence if an inspection is organised with longer lead time. Unscheduled visits generally provide a more accurate picture of usual service quality.



Data analysis

We analyse data from the National Quality Agenda IT System (NQAITS) to identify, monitor and assess existing and emerging trends or patterns in compliance. This assists us to plan regulatory activities, to address emerging issues before they escalate and to implement strategies to assist where the sector may be experiencing difficulties.



Notifications and complaints

Approved providers are legally required to submit serious incident notifications and complaints notifications as defined by the National Law SA and National Regulations, using the National Quality Agenda IT System (NQAITS).

The Board also receives direct complaints from the public, educators, and families.

All complaints and notifications are assessed and, where necessary, investigated.



Investigation activities

An investigation may be initiated where there is reason to believe that an offence against the National Law SA has been or is being committed. Investigations are conducted in accordance with the investigative powers under the National Law SA.

We may decide to investigate an issue after receiving a notification or complaint or becoming aware of potential contravention through monitoring activities. We may also investigate where data analysis shows a pattern of non-compliance across a particular group of services or roles in a service.

Authorised officer powers

An authorised officer is a person who has been authorised by the Registrar of the Education Standards Board to exercise a variety of functions under the National Law SA.

An authorised officer must carry their identity card whenever they are exercising functions. The card must be presented before exercising a power of entry and, if requested, during the exercise of any other power under the National Law SA.

Authorised officers have power to:

- inspect the premises and any plant, equipment, vehicle or other thing
- photograph or film or make audio recordings or sketches of any part of the premises or thing at the premises
- inspect and make copies of, or take extracts from, any document kept at the premises
- take any document or thing from the premises
- ask a person at the premises to answer a question to the best of the person's knowledge, information and belief, or to take reasonable steps to provide information or produce a document.

Responding to non-compliance

■ Risk based and responsive regulation

When non-compliance is identified and substantiated, a risk assessment is undertaken to determine an appropriate and proportionate regulatory response, with clear references to our regulatory principles.

The risk matrix tool in figure 1 is used to identify the level of risk by looking at how likely it is a negative event may reoccur, and the severity of the consequence should it occur.

Understanding what has led to non-compliant behaviour helps when deciding the appropriate regulatory tool to use to respond to the non-compliance.

The use of regulatory tools is determined on a case-by-case basis.

We aim to use tools that:

- result in a return to compliance
- impose the least amount of regulatory burden
- are proportionate to the non-compliance.

Figure 1: Risk matrix tool

		Likelihood				
		Rare	Unlikely	Possible	Likely	Almost certain
Consequences	Major	Moderate	High	High	Critical	Critical
	Significant	Moderate	Moderate	High	High	Critical
	Moderate	Low	Moderate	Moderate	High	High
	Minor	Very low	Low	Moderate	Moderate	Moderate
	Insignificant	Very low	Very low	Low	Moderate	Moderate

Source: ACECQA, Guide to the National Quality Framework

We escalate our regulatory response according to the:

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

As shown in figure 2, the response can range from administrative actions when non-compliance is low-risk and the regulated party is willing and able to address the non-compliance, to statutory sanctions when non-compliance involves serious actual or potential harm to children and the regulated party has low levels of willingness and ability.

The enforcement pyramid model is consistent with the principle of earned autonomy, where regulatory intervention is focused on those who are unwilling and unable to comply, and therefore create higher risk for the Board in meeting regulatory outcomes.

The indicators and signs of a regulated party’s willingness and ability are the:

- level of engagement with the Board
- nature of their response and communications with the Board
- responsiveness to requests from the Board
- compliance history.

Figure 2: Enforcement pyramid (Adapted from Ayers and Braithwaite)



Source: ACECQA, Guide to the National Quality Framework

Enforcement tools

We use a wide range of methods and tools to address instances of non-compliance.



Administrative action

Administrative actions are communication activities such as meetings and letters, to inform and engage with a regulated party, clarify expectations and document identified non-compliance, where a breach is not being issued.



Caution letter

A caution letter notifies a regulated party when breaches are identified and recorded against them. The letter documents why a breach has been issued and informs the regulated party that the breach(es) form part of their compliance history.



Compliance direction

A compliance direction is a written direction that requires an approved provider to take steps to rectify a substantiated breach with a specific National Regulation within a specified timeframe not less than 14 calendar days. The compliance direction sets out the steps that need to be taken to address the breach. Penalties can be incurred if an approved provider does not comply with a compliance direction.



Compliance notice

A compliance notice requires an approved provider to rectify a substantiated breach of the National Law SA or National Regulations within a specified timeframe not less than 14 calendar days. The compliance notice sets out the steps that need to be taken to address the breach. Penalties can be incurred if an approved provider does not comply with a compliance notice. We publish information about compliance notices that we issue on our website.



Infringement notice

An infringement notice is a monetary penalty issued for non-compliance with specific requirements of the National Law SA and National Regulations. They are typically used for minor offences and used to give an immediate punitive effect to deter future non-compliance.



Emergency action notice

An emergency action notice is issued to an approved provider when the Board is satisfied that a service is operating in a manner that poses an immediate risk to the safety, health or wellbeing of children attending a service. It requires action to be taken in 14 calendar days or less to remove or reduce the risk. We publish information about emergency action notices that we issue on our website.



Prohibition notice

A prohibition notice is a written notice given to a person that prohibits the person from providing education and care to children for an education and care service. A notice can prohibit a person from being engaged as a nominated supervisor, educator, family day care educator, employee, contractor or staff member, or being a volunteer at an education and care service.

In most cases, the Registrar will issue a show cause notice first to provide natural justice for the person. A show cause notice may not be issued first when the Board is satisfied that there is an immediate risk to the safety, health or wellbeing of children.



Conditions on approved provider or service approval

A condition is a legally enforceable limitation on an approved provider or service approval, in addition to those found in the legislation. Conditions can be applied at the time of initial approval or at a later time. They can cover a broad range of issues relating to management capacity, service premises and staff. A condition may be imposed for a set time or until removed by the Board. An approved provider can apply to vary or remove a condition imposed.



Suspension and cancellation of approval

Suspension or cancellation of approval prevents a provider, service or family day care educator from operating for a specified time or permanently. The grounds for provider or service approval suspension or cancellations are set out in the National Law SA and include failure to comply with conditions on a service approval and failure to comply with the National Law SA.

In most cases the Registrar will issue a show cause notice first to provide natural justice for the approved provider, service or family day care educator. This notice may not be given where the Board is satisfied that there is an immediate risk to the safety, health or wellbeing of children.



Enforceable undertaking

An enforceable undertaking is a written undertaking from a person or legal entity, in which the person or legal entity sets out what they will do or refrain from doing, to comply with the National Law SA and National Regulations. An approved provider, service or educator may enter into an enforceable undertaking.

Enforceable undertakings are only offered or accepted by the Board where the person or legal entity is willing to abide by their undertaking. We use this tool most commonly when a prohibition or suspension notice may be issued, to address the non-compliance with a less severe enforcement tool. We may publish information about enforceable undertakings on our website.



Prosecution

Prosecution involves instituting legal proceedings in a court against a person or legal entity who has allegedly committed an offence under the National Law. If the offence is proven, then a fine or other form of penalty is applied.

We consider prosecution for very serious breaches of the National Law SA or the National Regulations. The Board will only proceed with prosecution if there is enough admissible evidence to make it likely the offence will be proved, and it is in the public interest to prosecute a case.



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