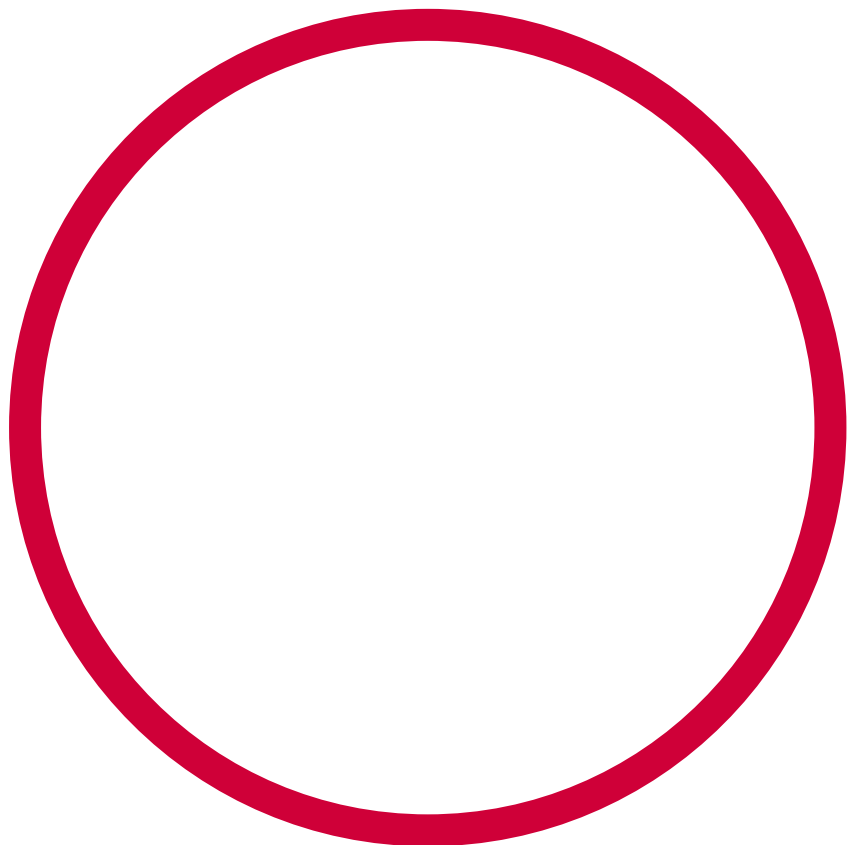
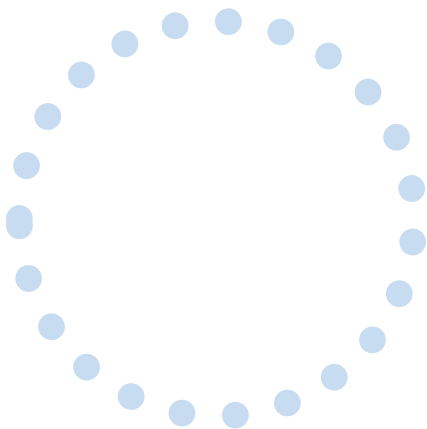
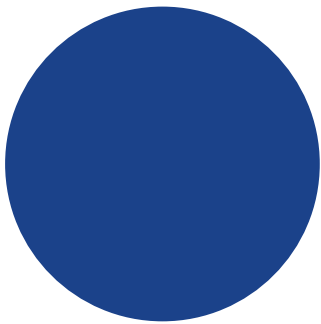


# Monitoring of Compliance in Early Childhood Education and Care Policy

## NSW Early Childhood Education and Care Regulatory Authority

21 February 2025



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# 1 Purpose

The NSW Early Childhood Education and Care Regulatory Authority (the Regulatory Authority) regulates more than 6,000 early childhood education and care (ECEC) services in NSW so that children attending those services receive healthy, safe, and quality care.

This policy outlines the Regulatory Authority's approach to monitoring ECEC sector compliance with the National Law and Regulations and enforcement.

The policy:

- explains how the Regulatory Authority undertakes activities that promote and uphold compliance and drive continuous improvement within the NSW ECEC sector, and
- guides the Regulatory Authority's decision-making so activities and actions designed to uphold compliance across ECEC are consistent, risk-based and proportionate.

## 2 Context

The Secretary of the NSW Department of Education (the department) is the Regulatory Authority for ECEC services in New South Wales. The Secretary has delegated powers and functions to a distinct business directorate within the department, the NSW Early Childhood Education and Care Regulatory Authority. Officers of the Regulatory Authority exercise functions across NSW in accordance with the Secretary's delegations.

The Regulatory Authority exercises its regulatory functions under the following legislation and regulations:

### National Legislation

- [Children \(Education and Care Services\) National Law \(NSW\) 2010](#) (the 'National Law')
- [Education and Care Services National Regulations \(NSW\) 2011](#) (the 'National Regulation')

### NSW State-based Framework:

- [Children \(Education and Care Services\) Supplementary Provisions Act 2011](#)
- [Children \(Education and Care Services\) Supplementary Provisions Regulation 2024](#)

Most education and care services for children around Australia are regulated under the National Quality Framework (NQF). Service types covered by the NQF are regulated under the National Law and National Regulations. These services include Family Day

Care, Long Day Care, Out of School Hours Care and Preschools.

The NQF also includes the [National Approved Learning Frameworks](#) and the [National Quality Standards](#) (NQS) against which education and care services are assessed and rated.

The [Guide to the National Quality Framework may assist in understanding the NQF.](#)

Occasional care services, Multifunctional Aboriginal Children's Services (MACS) and mobile services are out of scope of the NQF and regulated under the state-based framework. National Law Alignment Provisions are applicable to NSW state regulated education and care services. These types of services are referred to as 'state regulated' services.

## 3 Scope

This policy applies to all ECEC services regulated under National and State legislation.

Families have an expectation the Regulatory Authority enforces compliance with relevant legislation to uphold the safety, health and wellbeing of all children attending any type of ECEC service in NSW.

The Regulatory Authority achieves this by assisting the NSW ECEC sector to understand and meet its legislative obligations, and by pursuing proportionate actions directed to those who fail to comply with the law and regulations.

The Regulatory Authority operates on best practice principles, applying contemporary risk-based approaches to its monitoring and enforcement strategies. The Regulatory Authority regularly evaluates the effectiveness of its approaches and makes improvements as required.

### 3.1 Relevant Legislation and Regulations

The legislation and regulations relevant to this Policy include:

#### Legislation

- *Children (Education and Care Services) National Law (NSW) 2010 ("National Law")*
- *Children (Education and Care Services) Supplementary Provisions Act 2011*
- *Children and Young Persons (Care and Protection) Act 1998*
- *Children (Criminal Proceedings) Act 1987 (NSW)*
- *Child Protection (Working with Children) Act 2012 (NSW)*

- *Privacy and Personal Information Protection Act 1998 (NSW)*
- *Children’s Guardian Act 2019 (NSW)*
- *Government Information (Public Access) Act 2009 (NSW)*
- *State Records Act 1998 (NSW)*
- *Health Records and Information Privacy Act 2002 (NSW)*
- *Crimes Act 1900 (NSW)*
- *Government Information (Public Access) (Consequential Amendments and Repeal) Act 2009 No 54*
- *Work Health and Safety Act 2011 (Cth)*
- *Privacy Act 1988 (Cth)*
- *Young Offenders Act 1997 (NSW)*
- *Teaching Service Act 1980 (NSW)*

### **Regulations**

- *Education and Care Services National Regulations 2011 (“National Regulations”)*
- *Children (Education and Care Services) Supplementary Provisions Regulation 2024*
- *State Records Regulation 2024*

## **4 Guiding principles**

The Regulatory Authority’s over-arching principles for implementing its functions are set out in the [Guiding Principles policy](#). In applying the Guiding Principles in its approach to monitoring of compliance, the Regulatory Authority:

- considers the regulatory tools at its disposal and selects the most appropriate and proportionate tool for the circumstances of non-compliance, and which is most likely to achieve the best outcome for children.
- applies a risk-based approach to monitoring of compliance. Monitoring activities focus on the highest risks to children and, on providers who are least likely to comply with the legislation.
- provides the ECEC sector and families with clear information and guidance regarding its approach to regulating the ECEC sector, regulatory requirements and the NQF. Being clear about the outcomes expected raises awareness of the benefits of complying with the law and the potential consequences of failing to do so. It also helps to address misconceptions that might foster non-compliance.
- ensures its officers are skilled, appropriately trained and supported. When non-compliance is identified, decisions and activities align to legislated powers.
- takes actions that are proportionate and considered in the context of the safety, rights and best interests of children.

- makes decisions regarding non-compliance based on evidence and relevant factors and assesses each situation according to its own merits.
- upholds consistency in the decision-making process in responses to non-compliance.
- facilitates the integrity and reliability of its regulatory decisions by adhering to documented policies and procedures.
- collaborates and engages with the ECEC sector to improve compliance and quality.
- upholds the conduct of its officers in accordance with the department's Code of Conduct, the NSW Regulatory Authority's Guiding Principles, and any other relevant policies and guidelines.
- documents, and is answerable and accountable for its compliance related decisions and actions.

For more information, see [Guiding Principles Policy](#).

## 5 Policy

### 5.1 The Regulatory System

The Regulatory Authority operates within a robust and sound regulatory system that incorporates the following inter-related parts:

- **Legislation and policy:** clear and appropriate National and State legislation and policies that underpin and guide the Regulatory Authority's decisions, approaches and strategic priorities.
- **Administrative systems:** processes and procedures that support the Regulatory Authority's statutory functions and resource management.
- **Information and accountability systems:** national and NSW State information systems that provide intelligence and data for problem identification, decision-making and the setting of priorities, and that allow for the measurement of progress against stated objectives.

Communication and engagement with the regulated sector and with other state, territory and national jurisdictions that operate within the NQF is an integral part of the regulatory system.

The Regulatory Authority aims to lead communication and engagement in a culturally safe manner and form respectful relationships with Aboriginal peoples, communities and services.

Communication and engagement with the ECEC sector and other jurisdictions enable the Regulatory Authority to maintain strong and productive relationships with the regulated community and across government. The Regulatory Authority communicates its regulatory

approaches and actions, including why decisions have been made and what outcomes are expected.

The Regulatory Authority is focussed on achieving outcomes, consistent with the regulatory and policy aims of the National and State education and care legislation. Regulatory approaches are aimed at influencing the behaviours of individuals and organisations in ways that encourage a genuine commitment to meeting regulatory requirements and of promoting continuous improvement in the delivery of safe, quality ECEC services for children.

The Regulatory Authority maintains high levels of public trust and confidence in the performance and regulation of the ECEC sector. Regulatory actions and responses are proportionate to the nature and severity of the non-compliance identified.

In exercising its regulatory functions, the Regulatory Authority considers the perspectives of:

- children and families utilising education and care services
- NSW education and care sector
- individuals (including companies) who are subject to the regulatory framework in NSW, including state regulated services
- the broader community

In considering different perspectives, the Regulatory Authority places the safety, wellbeing, rights and best interests of children attending ECEC at the highest level.

## 5.2 Risk Based Regulation

The Regulatory Authority applies a proactive and responsive risk-based approach to regulation and its monitoring and enforcing of compliance functions.

In an ECEC service context, risk is measured in terms of the likelihood of non-compliance occurring or reoccurring, and the level of risk posed to children because of that non-compliance. The Regulatory Authority implements measures, so risks are identified, known, analysed and adequately controlled, to uphold children's safety, health and wellbeing in ECEC.

Effective risk controls are implemented across the lifecycle of regulatory oversight including:

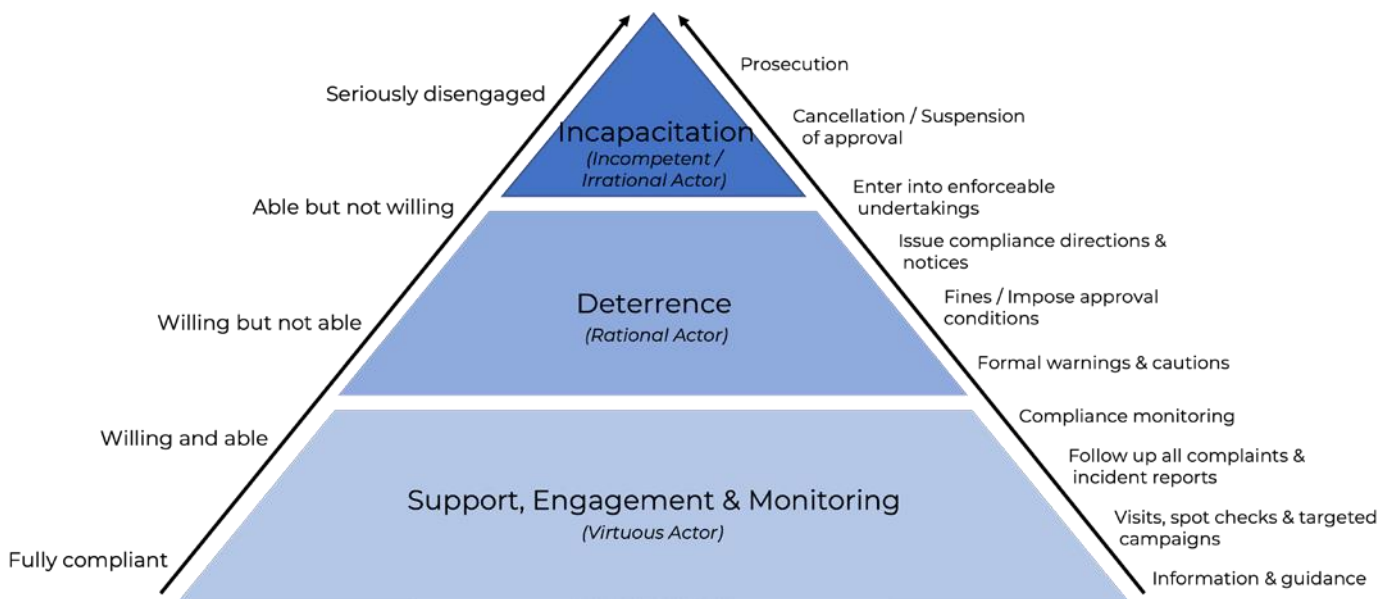
- entry into the regulated ECEC scheme – assessing new ECEC providers and services
- day to day operation of an ECEC service
- significant changes that impact on a provider or a service, and
- exiting the ECEC scheme.

By applying a risk-based approach, the Regulatory Authority acts proportionate to the risks posed to children. Under the National Law, the safety, wellbeing, rights and best interests of children are paramount.

The regulatory pyramid is applied to determine what type of regulatory response or tool is required to effectively control the risk and prevent harm to children.

The Regulatory Authority’s risk-based approach is consistent with the Braithwaite<sup>1</sup> Regulatory Pyramid, which has been adapted in Figure 1. This regulatory pyramid shows regulatory response stages that escalate relative to the regulated entities’ behaviour or practices. The Regulatory Authority analyses information and data to understand behaviours and practices which in turn, inform the right type of regulatory response. Each stage is proportionate to the type of behaviour exhibited by a regulated entity (regulatory actor).

**Figure 1: The Regulatory Pyramid**



This regulatory pyramid is a framework that supports the Regulatory Authority’s proportionate risk-based approach with the aim of upholding consistency, transparency and accountability, and evidence-based decisions through all its regulatory response stages.

Applying a risk-based approach helps the Regulatory Authority make informed decisions about the best use of resources; monitoring, compliance and enforcement activities focus on the highest risks to children and, on providers who are least likely to comply with the legislation. As children, and particularly very young children, are vulnerable members of

<sup>1</sup> <https://johnbraithwaite.com/responsive-regulation>



the community, their safety, health and wellbeing whilst attending ECEC services is paramount.

The Regulatory Authority considers the following factors when assessing potential risks to children:

- patterns of incidents or complaints received about the service or provider
- compliance history of the service and/or provider
- the type of non-compliance and the impact it may have on the safety, health and well-being of children in education and care
- instances where a provider has not remedied the non-compliance
- the service's quality rating
- the level and frequency of contact with the service
- any complaints about the service and/or provider
- the ages of the children attending the service
- the service model (e.g. single educator model), and
- how long the service has been operating.

The National Regulations define the following events as 'serious incidents' for the purposes of the National Law:

- the death of a child
- an incident involving serious injury, trauma to, or illness of a child requiring urgent medical attention or hospitalisation.
- an incident requiring the attendance of emergency services at the service premises, and
- any circumstances where a child appears to be missing from the service or is locked in or out of a service.

The Regulatory Authority consider this policy to be specifically relevant in investigations pertaining to incidents notifiable under [Regulation 175](#), specifically parts (d) and (e):

- (d) any incident where the approved provider reasonably believes that physical abuse or sexual abuse of a child or children has occurred or is occurring while the child is or the children are being educated and cared for by the education and care service;
- (e) allegations that physical or sexual abuse of a child or children has occurred or is occurring while the child is or the children are being educated and cared for by the education and care service (other than an allegation that has been notified under section 174(2)(b) of the Law);

Approved providers are required to notify the Regulatory Authority of serious incidents. The Regulatory Authority treats these notifications very seriously and uses a risk-based assessment and allocation framework to ensure that appropriate action is taken on all serious incident notifications.

## 5.3 Escalating Approach to Promote Compliance

The Regulatory Authority's efforts are first and foremost focused on the safety of children attending ECEC services, so their early childhood journey provides them with the best start in life and learning. To achieve this overarching objective the Regulatory Authority develops regulatory priority programs and campaigns that focus on areas where ECEC services have the greatest challenges in meeting legislative requirements. These priority programs and campaigns are delivered within the constraints of available resources.

The Regulatory Authority uses available data to design and deliver proactive and reactive regulatory responses that promote and enforce compliance. The Regulatory Authority has prioritised and implemented a range of strategies and activities to support these complementary approaches, as listed below. An escalating approach is used, consistent with the Regulatory Pyramid (Figure1).

### 5.3.1 Inform and educate

The Regulatory Authority provides accessible information and education to the sector and broader public to promote understanding of the sector's legislative obligations and transparency of the regulator's expectations around compliant behaviours and practices. Being clear about regulatory requirements and the functions of the Regulatory Authority helps raise awareness about requirements to comply with the law and the consequences of failing to do so. It also helps to remove misconceptions that might foster non-compliance.

### 5.3.2 Support to comply

It is fundamentally the responsibility of the regulated entities (approved providers) to ensure they understand and can implement compliant practices and behaviours across their ECEC services in accordance with relevant laws and regulations.

Where appropriate and in line with a risk-based approach, the Regulatory Authority provides practical and constructive regulatory guidance on how to comply with the law, interpret quality standards and, where necessary, how to remedy non-compliance to any person who has a duty or obligation under the legislation. This may include generalised information and education, specific guidance to a service, access to or referrals to tailored safety and quality practice programs.

Where an authorised officer identifies non-compliance on ECEC premises and action is required to remedy the issue, the authorised officer works with the provider and their staff to determine appropriate actions to address the problem and achieve desired outcomes.

Regulatory guidance may be offered only if the safety, health or wellbeing of children is not at unacceptable risk; the quality of the service provided is minimally impacted; rectification can take place quickly and easily; and the change required involves simple, concrete solutions that can be implemented within the specified timeframe (e.g. before the end of the visit so the authorised officer can witness / observe the action taken). The authorised

officer also considers the service's history. While the non-compliance identified does not result in a compliance action, it still constitutes a confirmed breach under the National Law and Regulations and is recorded on the service's history.

### 5.3.3 Approach to non-compliant behaviours and practices

The Regulatory Authority's approach to monitoring compliance is at all times focused on achieving a safe and high-quality ECEC sector in NSW. Where the Regulatory Authority identifies a breach of the National Law and Regulations, it will record this breach and will make a decision on what action is then required.

The Regulatory Authority ensures:

- its decisions are informed by evidence,
- each situation is assessed according to its own merits, and
- regulatory tools are applied proportionate to the risks identified with escalation of response to effectively address non-compliant behaviour and practices.

The escalating regulatory approach, outlined in the regulatory pyramid at Figure 1 is a foundational guide to how the Regulatory Authority monitors compliance over time, taking account of a range of data to inform its decisions. The Regulatory Authority is committed to ensuring the integrity and reliability of its regulatory decisions by conducting activities in accordance with documented, approved policies and procedures.

Compliance and enforcement actions are most effective when they raise awareness of legislative obligations and encourage behavioural change, by both the non-compliant party and across the ECEC sector. These changes in attitudes and behaviours improve compliance rates and the safety and quality of ECEC for children.

A key consideration in changing behaviour is to identify what motivates providers and educators to comply with the law, as well as factors that lead to non-compliance. Understanding what has led to non-compliant behaviour also helps in deciding the most appropriate regulatory tool to use in addressing the non-compliance.

The Regulatory Authority uses a variety of approaches and tools in response to instances of non-compliance, in accordance with the Regulatory Pyramid at figure 1. The choice of regulatory tool is informed by the type of behaviour and motivation a regulated entity is exhibiting, which is informed by data. A non-compliant service may be in any of the following groups at a defined point in time:

- **Willing to comply but unable to do so.** A service wants to comply but struggles to do so, due to lack knowledge or resources, or external factors.
- **Able to comply but unwilling to do so.** A service has access, opportunity and resources to comply, however, doesn't seriously attempt to address non-compliance, and generally has very low levels of engagement with the Regulatory Authority, which leads to lower levels of trust and heightened risk to children's safety.

- **Unwilling and disengaged.** A service with serious and/or ongoing non-compliance, including those being prosecuted, is not engaging with the Regulatory Authority to address non-compliance, leading to very low levels of trust and very high levels of risk to children's safety.

The Regulatory Authority's response to non-compliance depends on the above behavioural groups, and may include any of the following:

- Regulatory guidance
- Administrative letters
- Caution letters
- Compliance directions and notices
- Penalty infringement notices
- Emergency action notices
- Prohibition notices
- Variations, suspensions and cancellations of approvals
- Enforceable undertakings
- Prosecutions and exiting the provider and service from the ECEC scheme.

The Regulatory Authority staff maintain contact with affected parties during any regulatory processes and clarify or request additional information where needed.

### **5.3.4 Proactive Regulatory Responses**

Proactive regulatory responses are informed by in-depth data analyses to identify regulatory behaviours and patterns of risk by ECEC services and providers. Proactive regulatory responses, focused on harm prevention and reducing the likelihood of repeated non-compliance, include the following:

- Use of data to identify trends in risk and to inform the approach to and frequency of monitoring and visits to services;
- proactive educational programs to respond to sector-wide emerging regulatory issues or trends;
- heightened regulatory visibility, with every ECEC service visited and inspected at least once in an eighteen-month period;
- tailoring and targeting educational content, such as webinars, e-learning, and guidance notes to providers and ECEC services;
- targeted monitoring campaigns as part of a planned priority program focusing on regulations and requirements that uphold children's safety.

#### **5.3.4.1 Data analysis**

The Regulatory Authority draws on data from the National Quality Agenda IT System to undertake analysis of emerging trends or patterns in non-compliance. This assists the Regulatory Authority to plan its proactive and responsive activities and address emerging problems before they escalate.

#### **5.3.4.2 Targeted monitoring campaigns and audits**

The Regulatory Authority may undertake targeted campaigns and audits that focus on a specific, pre-identified aspect of legislated requirements, for example, supervision of children or understanding of child protection requirements.

These campaigns allow the Regulatory Authority to gauge overall compliance with the identified requirements and assist in planning for future education strategies.

#### **5.3.4.3 Quality Assessment and Ratings**

The NQS and the assessment and rating system is embedded in the National Law. Quality assessment and rating of services is a cornerstone of the system of continuous improvement for education and care services operating under the National Law.

The Regulatory Authority is committed to implementing an effective and efficient assessment and rating process that supports the integrity of quality ratings and encourages continuous improvement to service quality over time. This is crucial to ensuring parents and families can make informed decisions for their child.

Quality assessment and rating of ECEC services also afford an opportunity to identify areas of potential non-compliance. Officers conducting assessments provide advice to providers on matters that need to be addressed to ensure compliance with regulatory requirements. Officers work with providers to examine opportunities for quality improvements at the service. These ECEC site visits may inform a partial or full quality assessment and rating.

Where serious non-compliance is identified during an assessment and rating visit, compliance actions will be issued in parallel with the quality assessment and may affect the rating. Conversely, where a compliance visit is undertaken and identifies serious breaches, an immediate partial or full reassessment of the rating may be undertaken to reflect the non-compliance concerns.

#### **5.3.5 Reactive Regulatory Responses**

The Regulatory Authority receives notifications, complaints, intelligence and other data from services, providers and members of the public, which it carefully analyses to ensure the reactive regulatory response is adequate and that risks are managed and controlled. Notifications include any serious incidents occurring at a service and any complaints made about a service to the provider. These reports assist the Regulatory Authority to identify non-

compliance. All complaints and notifications are reviewed and, where necessary investigated.

Reactive regulatory responses, tailored to ensure they adequately control risks to children, may include:

- unannounced monitoring visits;
- partial or full re-assessment and rating visits;
- a range of enforcement measures relative to the type of non-compliance<sup>2</sup>;
- formal investigations on more serious incidents and reports where children's safety, health and well-being are compromised.

#### **5.3.5.1 Visits to monitor compliance**

Visits can be either announced or unannounced and may be initiated in response to an identified risk. Monitoring and compliance visits are scheduled as a proactive and reactive regulatory response to control risks and prevent harm to children. Monitoring checklists are utilised to aid consistency in monitoring activities in different service types and across geographical areas commensurate with risk. More information is available in the [NSW ECEC Regulatory Authority's Approach to ECEC Service Visits Policy](#).

#### **5.3.5.2 Investigations**

Investigation by authorised officers of the Regulatory Authority is a key means of assessing reported or detected incidents of harm or risk to children or other breaches of legislation to determine the priority for further enforcement action. During an investigation, authorised officers gather evidence of the incident or alleged breach to establish whether an offence has occurred, the severity of the offence, and the identity of those who may be responsible. Evidence may be gathered in the form of videos, photographs, samples and physical evidence, documents, witness statements and records of interviews. Investigative powers are conducted in line with legislative authority and approved agency policies.

## **6 Enquiries**

For enquiries about this policy, please contact the NSW ECEC Regulatory Authority's Information and Enquiries team 1800 619 113 (toll free) or [ececd@det.nsw.edu.au](mailto:ececd@det.nsw.edu.au).

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<sup>2</sup> See 'Approach to non-compliant behaviour and practices' section in this policy

# 7 Document Version Control

<b>Policy Owner</b>	<b>Version</b>	<b>Approved By</b>	<b>Date last reviewed</b>
Director, Regulatory Strategy, Policy and Practice	1.0	Executive Director, Quality Assurance and Regulatory Services	May 2022
Director, Statewide Operations Network	2.0	Executive Director, Early Childhood Education and Care Regulatory Authority (ECEC RA)	21 February 2025