

Early Learning Commission

# Engaging with families following serious incidents in Early Childhood Education and Care Policy

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NSW Early Learning Commission

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Early Learning  
Commission

## Acknowledgement of Country

The Early Learning Commission acknowledges the Traditional Custodians of the lands where we work and live. We celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

We pay our respects to Elders past, present and emerging and acknowledge the Aboriginal and Torres Strait Islander people that contributed to the development of this Policy.

We advise this resource may contain images, or names of deceased persons in photographs or historical content.

Engaging with families following serious incidents in Early Childhood Education and Care Policy

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# 1 Purpose

The NSW Early Learning Commission (the Commission) regulates more than 6,000 Early Childhood Education and Care (ECEC) services in NSW so that children attending those services receive safe and high quality education and care. The Commission, as part of its legislated functions, undertakes investigations of serious incidents that occur in ECEC services.

The protection of the rights and best interests of each child and the children attending education and care services must be the paramount consideration in giving effect to the National Law, including in making decisions or otherwise exercising functions under this Law. The protection of the rights and best interests of each child and the children attending education and care services prevails over the financial interests of approved providers; and other fiduciary duties owed by persons with management or control of education and care services.

The Commission expects all services to deliver safe, high-quality education and care and takes strong regulatory action where these expectations are not met. The Commission adopts a prevention-led and risk-informed approach to regulation to protect children from harm and acts with integrity, confidence and courage to ensure children's safety.

The purpose of this policy is to specify the Commission's response to complaints and notifications of serious incidents, and the transparent communication families and the community can expect when a serious incident occurs.

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# 2 Scope

The NSW Early Learning Commission is the Regulatory Authority for New South Wales (NSW) for regulating the ECEC sector. The Commissioner has delegated the exercise of powers and functions to officers across NSW in accordance with the Commissioner's delegations.

The Early Learning Commission exercises its regulatory functions under the following legislation:

## 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. Service types covered by the National Quality Framework 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 National

Quality Framework also includes the National Approved Learning Frameworks and the National Quality Standard against which education and care services are assessed and rated. The Guide to the National Quality Framework is designed to support education and care providers, educators and authorised officers understand and apply the requirements of the National Quality Framework.

Occasional care services, Multifunctional Aboriginal Children's Services (MACS) and Mobile services are out of scope of the NQF and are regulated under the state-based framework. These types of services are referred to as 'state regulated' services. In NSW, this means they can expect the same regulatory oversight as other services. National Law Alignment Provisions are applicable to NSW state regulated education and care services.

This policy applies to any serious incident under investigation by the Commission in relation to ECEC services regulated under the National Quality Framework or the State Law in NSW.

Section 12 of the National Regulations provides the meaning of a serious incident as:

- a. the death of a child
  - i. while that child is being educated and cared for by an ECEC service; or
  - ii. following an incident occurring while that child was being educated and cared for by an ECEC service;
- b. any incident involving serious injury or trauma to a child occurring while that child is being educated and cared for by an ECEC service
  - iii. which a reasonable person would consider required urgent medical attention from a registered medical practitioner; or
  - iv. for which the child attended, or ought reasonably to have attended, a hospital;
- c. any incident involving serious illness of a child occurring while that child is being educated and cared for by an ECEC service for which the child attended, or ought reasonably to have attended, a hospital;
- d. any emergency for which emergency services attended;
- e. any circumstance where a child being educated and cared for by an ECEC —
  - v. appears to be missing or cannot be accounted for; or
  - vi. appears to have been taken or removed from the ECEC service premises in a manner that contravenes these Regulations; or
  - vii. is mistakenly locked in or locked out of the ECEC premises or any part of the premises; or
  - viii. appears to have been involved in a sexual offence or sexual misconduct, within the meaning of the Children's Guardian Act 2019, Part 4.

The Commission considers this policy to be relevant in investigations pertaining to incidents notifiable under Regulation 175, specifically parts (d) and (e):

- f. 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;
- g. 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);

The policy is also applicable where the Commission becomes aware of allegations or incidents involving inappropriate conduct towards children under Section 166A — including physical, sexual or other conduct a reasonable person would consider inappropriate in an ECEC setting.

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## 3 Guiding Principles

The Commission's over-arching principles for the exercise of its powers and functions are set out in the [Guiding Principles policy](#).

In exercising its powers and functions, the Commission must uphold the objectives and guiding principles set out in section 3 of National Law. In accordance with the NSW Children (Education and Care Services National Law Application) Amendment Act 2025, the rights and best interests of each child attending ECEC services are the paramount consideration. The Commission ensures this paramountcy principle informs all its decisions and the exercise of all functions under the National Law.

The Commission is also guided by the [Child Safe Standards](#), which are regulated by the NSW Office of the Children's Guardian, and is committed to upholding the safety of children through its regulatory decision making.

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## 4 Policy

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### 4.1 Serious Incident Notifications

The National Law and Regulations require all ECEC services to notify the Commission of serious incidents within 24 hours.

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### 4.2 Complaints and concerns

If families, or a member of the community, have a concern about, or, in relation to an ECEC service, the Commission recommends raising it with the director, or manager or other staff at the service in the first instance. All approved providers are required to have complaint handling policies that are child-centred and fully implemented at their ECEC service. They are expected to always ensure that, the safety of children is paramount.

Where the service receives a complaint, it is the responsibility of the provider to ensure the complaint is managed in accordance with its prescribed policy. The provider is required to notify the Commission within 24 hours of a complaint that alleges a child's safety, health or wellbeing has been compromised, or the National Law or Regulations have been contravened. The provider is required to notify the family within 24 hours of any incident impacting their child.

If a family member, provider or ECEC staff member have a concern or wants to make an allegation of physical or sexual abuse occurring to a child/children that has been caused while attending an ECEC service a report needs to be made to the NSW Police. The provider should also complete mandatory reporting and reportable conduct reporting.

If it is not appropriate to raise the concern with the service (as per above, regarding physical or sexual abuse), or if the provider does not resolve the issue, families or a member of the community are encouraged to contact the Commission to make a formal complaint and/or

report with the NSW Police. More information is available in the Commission's [Complaint Handling Policy](#) on how to make a complaint.

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## 4.3 The Commission's response to incidents and complaints

The operational environment of ECEC services is dynamic, with young children actively participating in education, play and early childhood development activities. Despite regulatory standards and regular monitoring, incidents and accidents can, and do, happen in these service delivery settings.

It is the Commission's responsibility to monitor and enforce approved providers compliance with their obligations in respect to the safety and quality of their NSW ECEC services, and in the primary and best interests of children attending ECEC.

The Commission assesses and prioritises all complaints and incident notifications in accordance with its risk-based approach to regulation. In doing so, the Commission upholds the child paramountcy principle, ensuring that the safety, wellbeing, and best interests of children are the foremost consideration in determining the urgency and nature of the response. The Commission takes appropriate action to compel providers to remove or minimise potential or actual risks to children's safety, and that they are delivering safe, quality education and care to children.

Following the assessment of a complaint or incident related to or a serious incident notification, the Commission may decide to investigate the incident. All allegations of physical or sexual abuse or inappropriate conduct are investigated.

Where an investigation is initiated, the Commission will contact the family within 1 business day to advise the matter is to be investigated, what investigation process entails and where to seek additional information. Where an additional review of information is required or the notification does not pertain to an immediate threat to the safety, health, and wellbeing of a child/children, a family can expect notification of a decision within 3 business days. In other complex cases, updates will be provided on the progress of the investigation as soon as practicably possible.

In cases where the NSW Police or Australian Federal Police are also investigating, the Commission will work with the Police and discuss family communication with the Police to ensure the best approach for children and families.

Visit the Commission's website to get more information about the [investigation process](#).

### 4.3.1 Act with empathy

The Commission will treat all families with courtesy, empathy, respect and understanding. The Commission is also committed to understanding the needs of impacted families with respect to additional support for mental health and wellbeing, as well as being culturally respectful and inclusive, as a priority, and will endeavour to make referrals to supports where possible.

The Commission leads their discussions and communication in a culturally safe manner and forms respectful relationships with Aboriginal and Torres Strait Islander people, communities and services, as well as those from culturally and linguistically diverse backgrounds.

### 4.3.2 Provide timely and appropriate advice

The Commission deals with the investigation of a serious incident as soon as possible. The Commission's actions are subject to Police direction where they are involved.

The Commission will set expected timeframes for finalising investigations, which recognise the differing levels of seriousness, urgency and complexity of matters received.

An expected timeframe for the serious incident being investigated will be discussed with the impacted family or families by the officer and/or expert team responsible for managing the investigation. Where Police or other agencies are involved, this will be explained.

Investigations are generally conducted for more serious or complex matters and may take more time to complete. The Commission aims to complete investigations within 60-100 days (depending on complexity), however delays may occur where there are additional complexities, such as requiring information from other agencies or where Police are involved. If there is an immediate and significant risk to children, the Commission will take immediate action to address those risks while the investigation progresses.

Where there are unavoidable delays with the investigation, the Commission will make direct contact with the impacted family or families as soon as practicable and keep them informed of the revised timeframe, any changes and the progress of the investigation until an outcome is achieved.

The Commission staff who conduct investigations are appropriately trained and skilled to provide advice. The officer responsible for managing the investigation will provide their contact details to the family or families and will inform them if the investigation is transferred to another officer or team.

### **4.3.3 Provide clear information on what to expect**

The Commission's commitment is for the investigation process to be easily understood, transparent and accessible for all families. The Commission provides clear information, so families can feel confident, supported and importantly, can trust that the Commission is being accountable in how it exercises its regulatory functions.

Providers of ECEC services and affected staff are made aware of the Commission's expectations and avenues of support through the investigations process and reminded to maintain their focus on the delivery of safe, quality education and care to children and their families.

### **4.3.4 Communicate the outcome**

The Commission is committed to ensuring that all serious incidents and issues are appropriately managed, and where required, action is taken. The Commission communicates the outcome of the investigation to families of directly impacted children as soon as it is determined.

While the Commission communicates with families in respect to the outcome of the investigation, it can only do so within the limits of the relevant privacy laws under which it is bound as well as the provisions of the National Law and Regulations and any directions from Police. This means that the Commission may not be able to disclose all details pertaining to the investigation or its outcome.

In communicating the outcome, the Commission's focus is for families to understand the reasons for the outcome and any actions taken. The officer responsible for managing the investigation will discuss the outcome with families and be available for questions.

### **4.3.5 Engage the community**

The Commission understands that families attending a service where a serious incident has taken place, while not being directly impacted, are likely to want to receive information about the issue.

Information can only be shared subject to the advice of police, and subject to the provisions of the National Law and Regulations and privacy laws. Each situation is treated on a case-by-case basis, and the Commission endeavours to be as transparent as possible within the specific circumstances.

Where a trend or emerging issue is identified from a serious incident, the Commission will engage with the sector and community to understand how it can support the sector in delivering safe, high-quality education and care that prioritises the safety, wellbeing, and best interests of children. Where updates are made to best practice guidelines and regulatory responsibilities, the Commission will reiterate its expectations of providers of ECEC services and their staff, and explain any actions taken that impact the wider sector, ensuring that the child paramountcy principle underpins all guidance and communications.

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## 5 Enquiries

For enquiries about this policy, please contact the NSW Early Learning Commission Information and Enquiries team 1800 619 113 (toll free) or [information@earlylearningcommission.nsw.gov.au](mailto:information@earlylearningcommission.nsw.gov.au)

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## 6 Approval

**Approved by:** Daryl Currie, A/Commissioner, NSW Early Learning Commission

**Designation:** A/Commissioner, NSW Early Learning Commission

**Dated:** 26 February 2026

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## 7 Document history

Table 1. Document information

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