

Early Learning Commission

Monitoring and Enforcement of Compliance in Early Childhood Education and Care Policy

NSW Early Learning Commission

26 February 2026



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We advise this resource may contain images, or names of deceased persons in photographs or historical content.

Monitoring and Enforcement of Compliance in Early Childhood Education and Care Policy

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Contents

1	Purpose	1
2	Scope	1
3	Guiding Principles	2
4	Policy	2
4.1	The Regulatory System	3
4.2	Risk Based Regulation.....	3
4.3	Escalating Approach to Promote Compliance	6
4.3.1	Inform and educate.....	7
4.3.2	Support to comply.....	7
4.3.3	Approach to non-compliant behaviours and practices.....	7
4.3.4	Proactive Regulatory Responses	9
4.3.5	Reactive Regulatory Responses.....	10
5	Enquiries	11
6	Approval	11
7	Document history	11

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 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 approach to monitoring ECEC sector compliance with the National Law and Regulations and enforcement.

The policy:

- outlines a risk-informed approach to monitoring of compliance across all NSW approved providers' and their ECEC services in a way that places the best interests of the child at the highest level.
- outlines the Commission's strengthened powers and escalating enforcement actions that can be taken when providers do not act in the best interests of children and/or fail in their responsibility to keep children safe from harm.
- explains how the Commission undertakes activities that focus on prevention upholding compliance and driving continuous improvement within the NSW ECEC sector.

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 all ECEC services regulated under National and State legislation.

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

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

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.

4 Policy

4.1 The Regulatory System

The Commission 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 Commission's decisions, approaches and strategic priorities.
- **Administrative systems:** procedures that support the implementation of the Commission'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 impact against stated objectives.

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

The Commission 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 Commission to deliver clarity of expectations and consequences as well as maintain strong and productive relationships with the regulated community and across government. The Commission communicates its regulatory approaches and actions, including why decisions have been made and what outcomes are expected.

The Commission 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 Commission 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 Commission 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 safety, wellbeing, rights and best interests of children attending ECEC will take precedence over and above any other perspectives. The Commission maintains this position in all its decision making.

4.2 Risk Based Regulation

The Commission 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 Commission 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 sector - 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.

The Commission's risk-based approach is consistent with the Braithwaite¹ 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.

By applying a risk-based approach, the Commission acts proportionately 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 appropriate tool to use is determined by severity or complexity of the situation, and does not have to be applied sequentially starting at the base of the pyramid.

For example, an event of a serious nature where there has been harm to a child can immediately be responded to via tools listed in the Incapacitation section of the pyramid and may not necessarily require the Commission to 'Support and Engage' a service at that point in time.

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

The Commission 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).

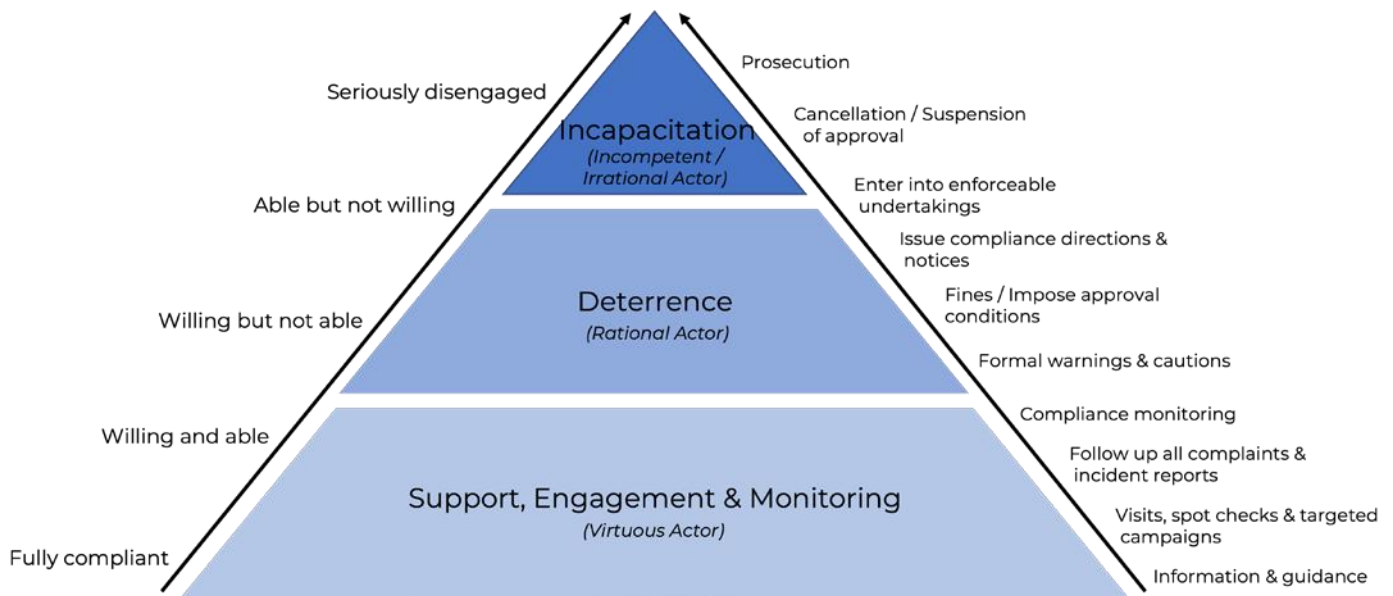


Figure 1: Braithwaite Regulatory Pyramid

This regulatory pyramid is a framework that supports the Commission’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 Commission make informed decisions about the best use of resources; monitoring of compliance and enforcement activities focused on the most serious 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 the community, their safety, health and wellbeing whilst attending ECEC services is paramount.

The Commission 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 wellbeing 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 provider and/or service
- any complaints about the service and/or provider
- the ages of the children attending the service, and
- the service model (e.g. single educator model).

The 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
- any circumstances where a child appears to be missing from the service or is locked in or out of a service
- any incident or allegation where the approved provider reasonably believes that physical or sexual abuse of a child has occurred or is occurring while the child is being educated and cared for by the service, and
- a sexual offence or sexual misconduct by someone working in the service (including volunteers or students).

The Commission considers this policy to be specifically relevant in investigations pertaining to incidents notifiable under Regulation 175(2), 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);

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.

Approved providers are required to notify the Commission of serious incidents within 24 hours of the incident or 24 hours from becoming aware of the incident. The Commission treats these notifications very seriously and uses a risk-based assessment and allocation framework to ensure that appropriate and prompt action is taken on all serious incident notifications.

4.3 Escalating Approach to Promote Compliance

The Commission's efforts are first and foremost focused on the safety of children attending ECEC services, so their early learning journey provides them with the best start in life and learning. To achieve this overarching objective the Commission 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 Commission uses available data to design and deliver proactive and reactive regulatory responses that promote and enforce compliance with the National Quality Framework. The Commission has prioritised and implemented a range of strategies and activities to support these complementary approaches, as listed below.

4.3.1 Inform and educate

The Commission 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 Commission 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.

4.3.2 Support to comply

It is 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 Commission 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 considers all available evidence to determine appropriate actions that a provider must take to address the problem and achieve desired outcomes.

Regulatory guidance may be offered in conjunction with other regulatory response tools, where the safety, health or wellbeing of children is not an 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 and context when determining whether regulatory guidance is an appropriate response. 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 to inform future visits and actions.

4.3.3 Approach to non-compliant behaviours and practices

The Commission's approach to monitoring of compliance is at all times focused on achieving a safe and high-quality ECEC sector in NSW. Where the Commission 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 Commission 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 rapid escalation of enforcement to promptly and 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 Commission monitors compliance over time, taking account of a range of data including behaviours and actions to inform its decisions. The Commission 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 providers' awareness of requirements, promote adherence to legislative obligations and achieve sustained 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 Commission uses a variety of approaches and tools in response to instances of non-compliance. 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 provider with 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 provider wants to comply but struggles to do so, due to lack of knowledge or resources, or other external factors.
- **Able to comply but unwilling to do so.** A provider has access, opportunity and resources to comply, however, doesn't genuinely attempt to address non-compliance, and generally has very low levels of engagement with the Commission, which leads to lower levels of trust and heightened risk to children's safety.
- **Unwilling and disengaged.** A provider with serious and/or patterns of non-compliance across their service(s), including those being prosecuted, is not engaging with the Commission to address non-compliance, leading to very low levels of trust and very high levels of risk to children's safety.

The Commission'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
- Conditions or directions imposed on a provider
- Prohibition notices
- Variations, suspensions and cancellations of provider or service approvals
- Enforceable undertakings
- Prosecutions and exiting the provider and service from the ECEC scheme.

The Commission's staff maintain contact with affected parties during any regulatory processes and clarify or request additional information where needed. Ongoing monitoring post issue of compliance actions is key to ensuring practice is embedded in the service and that risks have been effectively mitigated.

4.3.4 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:

- heightened regulatory visibility informed by levels of risk to children, and ECEC services visited regularly;
- 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 with a focus on behaviour change;
- 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.

4.3.4.1 Data analysis

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

4.3.4.2 Targeted monitoring campaigns and audits

The Commission 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 Commission to gauge overall compliance with the identified requirements and assist in planning for future education strategies.

4.3.4.3 Assessment for Quality Rating of Services

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

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

Quality rating assessments of ECEC services involves a site visit. Officers conducting the assessment and rating consider the service's current quality improvement plan, their quality rating and compliance history as well as current service practice aligned to the

National Law and Regulations and National Quality Standard. Officers ensure providers promptly address non-compliance identified during the visit and communicate and advise the provider of any planned enforcement action to ensure sustained compliance with regulatory requirements. These ECEC service visits may inform a partial or full quality assessment and rating.

Where serious non-compliance is identified during an assessment and rating visit, the Commission will take enforcement action in parallel with the quality assessment, which may affect the rating outcome. Where an investigation identifies serious breaches, the Commission may revoke the service rating or undertake an immediate partial or full reassessment to ensure the rating accurately reflects the service quality. In all cases, the Commission acts in accordance with the paramountcy principle that the safety, health and wellbeing of children is the first and overriding consideration.

4.3.5 Reactive Regulatory Responses

The Commission receives notifications, complaints, whistle-blower reports, intelligence and other data from staff working in services, providers, other regulators, government agencies and members of the public. This sensitive information is carefully analysed to ensure the Commission's response is adequate and that risks are managed and controlled.

Notifications include any serious incidents occurring at a service and any direct complaints or complaints received by the provider, or whistle-blower reports made about a service or a provider. These reports assist the Commission to identify non-compliance. All complaints and notifications are reviewed and, where necessary investigated. Where appropriate the Commission will share information and collaborate with other government agencies when serious harm to children has occurred.

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

- unannounced monitoring and compliance visits;
- assessment and rating of a service;
- a range of escalating enforcement measures relative to the type of non-compliance²;
- formal investigations of serious incidents and reports where children's safety, health and well-being may have been compromised.

4.3.5.1 Service visits to monitor compliance

Service visits can be either announced or unannounced and may be initiated in response to an identified risk. Monitoring of 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, as well as addressing systemic risks emerging in the sector.

More information is available in the [NSW Early Learning Commission's Approach to ECEC Service Visits Policy](#).

² See 'Approach to non-compliant behaviour and practices' section in this policy

4.3.5.2 Investigations

Investigation by the Commission's authorised officers is a key means of assessing reported or detected incidents or allegations 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.

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

6 Approval

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

Designation: A/Commissioner, NSW Early Learning Commission

Dated: 26 February 2026

7 Document history

Table 1. Document information

Document title	Monitoring of Compliance Policy
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Version number	1.0

NSW Early Learning Monitoring of Compliance in ECEC Policy

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