Monitoring and Assessing Compliance and Quality

Policy of the Victorian Regulatory Authority for Early Childhood Education and Care Services

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# Monitoring and Assessing Compliance and Quality

This document sets out the policy of the Victorian Regulatory Authority in relation to monitoring and assessing compliance and quality in early childhood education and care services. It operates in conjunction with the Regulatory Framework ([available here](https://www.education.vic.gov.au/Documents/childhood/providers/regulation/Regulatory_Framework_June_2023.docx?web=1)).

## Background

Under the *Education and Care Services National Law Act 2010* (National Law), the Secretary of the Department of Education is the Regulatory Authority for early childhood education and care (ECEC) services in Victoria. From 1 January 2023, the Regulatory Authority is also the integrated sector regulator of the Child Safe Standards under the *Child Wellbeing and Safety Act 2005*.

The Regulatory Authority has core functions to:

* **monitor compliance** of ECEC services with the National Law, Education and Care Services National Regulations 2011 (National Regulations) and the Child Safe Standards.[[1]](#footnote-1)
* **assess** **quality** of ECEC services against the National Quality Standards and the National Regulations and determine ratings of those services.

The Regulatory Authority is also the regulator of the small number of services who are governed by the *Children’s Services Act 1996* (Children’s Services Act). The general principles and processes set out in this document are also applicable to those services with the exception of assessment and rating, which is not part of the Children’s Services Act.

## Purpose

The purpose of monitoring and assessing ECEC services is to protect the safety, health and wellbeing of children, and drive quality and continuous improvement in those services, for the benefit of children and the community. This document sets out the Regulatory Authority’s approach to this work. It outlines expectations the Regulatory Authority has for regulated entities operating approved ECEC services and details the Regulatory Authority’s commitment to transparent, effective and efficient monitoring and assessment activities.

## Monitoring and assessing by the Regulatory Authority

Monitoring and assessing are regulatory tools for evaluating, supporting and influencing compliance and quality. The Regulatory Authority uses the following regulatory activities to determine a regulated entities compliance with the National Law, National Regulations and Child Safe Standards:

* compliance visits to ECEC service premises[[2]](#footnote-2)
* desktop audits and reviews
* targeted compliance campaigns, and
* the assessment and rating process which provides detailed appraisal of a service against the National Quality Standards and National Regulations.

Through these activities, the Regulatory Authority identifies, and then controls or prevents, real and potential risks and harms. This includes identifying systemic or sector wide compliance challenges as well as individual entities who are unwilling and/or unable to comply. The Regulatory Authority tailors responses to the problem, including initiating the use of proportionate enforcement tools where necessary to ensure the safety, health and wellbeing of children.

A robust monitoring and assessment program incentivises regulated entities to operate safe, quality services. The majority of ECEC services voluntarily comply with their obligations and are directly supported by these activities through the provision of information and resources, reports about their compliance and quality including a service rating they can promote, as well as indirectly, through ensuring a level playing field of minimum standards across the sector.

**Monitoring and Assessment Schedule**

The Regulatory Authority may conduct monitoring and assessment activities at any time. The frequency and type of activity used by the Regulatory Authority to monitor and/or assess an ECEC service is informed by risk, regulatory priorities and regulatory benefit. This includes ensuring the regulator’s presence and visibility as tools to influence outcomes in services while also acting as a deterrent to non-compliance.

The following table outlines the general monitoring and assessment schedule undertaken by the Regulatory Authority. The schedule includes stages of an ECEC service life that present greater compliance risk or, in the case of assessment and rating, to drive quality and provide a comprehensive baseline to inform future regulatory activity.

|  |  |
| --- | --- |
| Timing | Activity |
| Before granting approval to an ECEC service (or for a new waiver) | * Pre-approval visit to premises, and/or * Desktop audit of applications and associated documents and any other relevant information available to the Regulatory Authority, and/or * Meetings/interviews with applicant/s. |
| During the first year of operation | * Discussion with approved provider or service leadership, and/or: * Desktop audit of identified documents, and/or * Compliance visit to the approved ECEC service. |
| For assessment and rating (or reassessment and re-rating) | * Discussion with approved provider or service leadership, and * Review of Quality Improvement Plan, compliance history and other documents, and * Assessment and rating visit to the service (where observations of practice are needed to inform a rating). |
| To be present in a service at least every three years | * Discussion with approved provider or service leadership, and/or * Desktop audit of identified documents, compliance history and any other relevant information available to the Regulatory Authority, and * Compliance visit to the approved ECEC service premises. |
| **Following identification of a regulatory concern, major change or as part of other regulatory activity, such as:**   * **within 12 months of approved provider change,** * **to check/oversee remedies or sanctions to previously identified non-compliance,** * **part of an investigation or targeted campaign.** | * Discussion/meeting/interview (depending on reason for the activity) with approved provider or service leadership, and/or * Desktop audit of identified documents, compliance history and any other relevant information available to the Regulatory Authority, and/or * Compliance/investigation/targeted campaign visit to the approved ECEC service. |

## Visits to an ECEC service

Visits to ECEC service premises or family day care educator residences are an important and effective means of monitoring and assessing as they allow identification of areas for regulatory attention that have otherwise gone unnoticed and/or unreported. They are also an opportunity to maintain connections with, and provide information and guidance to, services.

The National Law provides powers for Authorised Officers of the Regulatory Authority to enter a service premises for assessing or monitoring compliance, or for investigations.[[3]](#footnote-3) Visits may be announced or unannounced and the priorities are always based around risk to the safety, health and wellbeing of children. As outlined in the table in the previous section, the Regulatory Authority conducts the following types of visits:

* Pre-approval visits: to verify premises compliance in relation to an application for service approval or a waiver.
* Compliance visits: to check or reinforce compliance, including follow-up visits to check compliance with any remedy or sanction imposed by the Regulatory Authority as a result of previously identified non-compliance.
* Investigation visits: to check compliance and collect evidence in relation to an investigation regarding an incident, complaint or other intelligence received by the Regulatory Authority.
* Targeted campaign visits: to check compliance as part of a targeted campaign and usually focused on particular risks or issues.
* Assessment and rating visits: to assess and rate a service as described in the relevant section below.

Authorised Officers may gather evidence during these visits through the following practices:

* observing children and the practice of educators within the program,
* inspecting the premises and equipment,
* discussing aspects of the service’s operations and leadership with staff,
* sighting records and documents,
* making copies or photographs or film of any of the above.

During a visit, Authorised Officers will explain the purpose of their attendance and discuss their planned activity at the premises with the responsible person.[[4]](#footnote-4) Non-compliance observed by an Authorised Officer may also be discussed so there is immediate opportunity to commence mitigation or rectification. Where there is non-compliance that creates serious or imminent risk to safety, health and wellbeing of children, this is escalated immediately within the Regulatory Authority and emergency action is taken where necessary.

Following a visit, the Authorised Officer will provide written findings to the approved provider. The approved provider is expected to promptly rectify any non-compliance and to provide evidence of rectification. Sanctions or other action may be applied by the Regulatory Authority if compliance is inadequate and/or risks to children’s safety, health and wellbeing are unacceptable or persist.

Findings from a visit, as well as the approved provider’s response, form part of the service’s compliance history. Compliance history is relevant to the Regulatory Authority when making future decisions about the approved provider or the service. The findings are also used to determine whether additional monitoring of the service is required, as outlined in the relevant section below.

## Assessment and rating process

The Regulatory Authority may at any time assess an ECEC service to determine whether, and at what rating level, the service meets the National Quality Standard and the requirements of the National Regulations.[[5]](#footnote-5) Usually, the Regulatory Authority conducts the first full assessment and rating of an ECEC service between 12 and 18 months after a new service commences operating. The process for the first full assessment and rating typically involves authorised officers:

* Reviewing the current quality improvement plan (QIP),
* Reviewing the service compliance and rating history,
* Conducting a leadership discussion (prior to a visit) with service leadership,
* Conducting a site visit to the service and in the case of family day care, one or more family day care venue or educator residences,
* Reviewing any additional information as prescribed by the National Regulations.[[6]](#footnote-6)
* Analysing all information and evidence gathered through the process and comparing it to the assessment criteria of the National Quality Standards to determine rating and prepare a report. A draft version of the rating report is sent to the approved provider, who then has 14 days to provide feedback to the Regulatory Authority before the final rating notice is issued.

**Reassessment process**

The Regulatory Authority reassesses ECEC services for a variety of reasons. Reassessments may be full reassessments or partial reassessments where only certain aspects or elements of the service are reassessed.

Partial reassessments can only occur if a full assessment and rating has previously been completed. Partial reassessments provide the opportunity to target quality areas with a direct link to improving educational and developmental outcomes for children without needing a full assessment. The steps in a partial reassessment, and the aspects to be reassessed, are determined by the Regulatory Authority based on the reasons for the reassessment. The partial reassessment process will usually include:

* A review of the QIP,
* Leadership discussion,
* A review of the service history and prior assessment and rating findings, and
* A visit to the service premises if observations of practice are needed to inform a rating.

**Reassessment schedule**

Reassessments are primarily undertaken as part of a cyclical program based on the previous rating, as outlined in the table below. The cyclical program is designed to maintain currency of quality ratings while recognising the earned autonomy provided to higher quality rated services. In most of these cases, a full reassessment will be undertaken:

|  |  |
| --- | --- |
| Overall rating | Schedule for reassessment since last Rating Notice |
| Exceeding | Between 3 years and 4 years |
| Meeting | Between 2 years and 3 years |
| Working Towards | Between 1 year and 2 years |
| Significant Improvement required | Within 1 year |
| Excellent | About 5 years |

##### The Regulatory Authority also undertakes reassessments based on risk and occasionally as part of its own quality assurance processes. In addition to the cyclical program outlined above, reassessments may occur upon application from an approved provider or in circumstances where there is uncertainty about the accuracy of a current rating, such as when:

* There are significant changes to the service’s operating environment, for instance, a change in approved provider or significant staffing changes.
* A compliance or investigation visit reveals that overall quality, or an area, standards or element does not equate to the service rating.
* Information from other government bodies, stakeholders and/or the public, suggests that overall quality, or an area, standards or element does not equate to the service rating.

The Regulatory Authority determines whether a full or partial reassessment is required in each case based on the reasons for the reassessment and review of the service history.

ACECQA publishes further information about the assessment and rating process including the quality ratings, the QIP and self-assessment tool, the draft report and giving feedback on the draft report, the review of final ratings and reassessments. This information, along with the Guide to the NQF, is available on ACECQA’s website at [www.acecqa.gov.au](http://www.acecqa.gov.au).

## Desktop audits

The Regulatory Authority may at any time assess an ECEC service to determine whether, and at The Regulatory Authority undertakes desktop audits to check or verify compliance in certain situations. Desktop audits are predominately paper-based and may also involve online/telephone meetings and discussions with regulated entities and duty holders.

Desktop audits are used by the Regulatory Authority for checking certain aspects of compliance by an ECEC service where observation of practice and inspection of physical premises is unnecessary. For example, desktop audits may be used when:

* reviewing required policies, QIP or other documents,
* inspecting evidence of rectification of certain non-compliance,
* assessing large volumes of information about a service, or many services, such as confirming that Emergency Management Plans are in place,
* undertaking partial reassessments where the required evidence includes documentation for sighting or discussions that can be conducted virtually.

Desktop audits may involve discussions with approved providers or staff members and/or reviewing any information available to the Regulatory Authority, such as:

* Information held by the Regulatory Authority or other government bodies,
* Responses from the approved provider to compliance findings or questionnaires,
* Policies, procedures, records, assessments, logs, registers, QIP or other documents maintained by approved providers as part of a service’s operations.

Depending on the scope and findings of the desktop audit, additional monitoring activities may follow. The Regulatory Authority will inform the approved provider of the findings of a desktop audit and any applicable next steps.

## Targeted compliance campaigns

Targeted compliance campaigns are monitoring activities designed to control or treat identified harms, risks or issues. Targeted compliance campaigns involve a project approach, usually combining multifunctional teams of specialist resources, to design a monitoring activity to achieve and deliver specific objectives and outcomes.

Targeted compliance campaigns may be used to address systemic and sector wide concerns or focus on services or duty holders who share risk factors or other similarities. A targeted compliance campaign may also be used to research and understand compliance behaviours and can lead to the Regulatory Authority taking enforcement action for non-compliance if necessary to ensure safety, health and wellbeing of children.

Targeted compliance campaigns are typically characterised by:

* analysis and research that forms the evidence for the Regulatory Authority to determine this particular monitoring response is required,
* stakeholder engagement,
* communications material as well as development and circulation of information and resources,
* compliance visits or desktop audits,
* investigations into concerns identified by visits or audits,
* enforcement activity to ensure compliance and deterrence is achieved,
* analysis and report on the achievement/s of the campaign against the objectives.

## Additional monitoring

Where any of the above-mentioned monitoring and assessment activities reveal that a service is not demonstrating satisfactory compliance, additional monitoring and/or sanctions (including emergency actions) will be imposed by the Regulatory Authority to ensure the safety, health and wellbeing of children.

‘Additional monitoring’ means the service is subject to increased regulatory activities focused on addressing problematic non-compliance before it escalates or causes serious harm. The benefit of additional monitoring is that the Regulatory Authority can maintain visibility of the risks and provide tailored support to assist a service to reach satisfactory compliance.

Determining whether compliance is satisfactory is an assessment based on the level of risk presented during the monitoring or assessment activities that identified the non-compliance. For example, following a compliance visit, the authorised officer reviews the determined non-compliance and assesses the risk posed to children at the service. The Regulatory Authority then implements measures that are proportionate to the risk. Approved providers of services that are to be additionally monitored are informed of this in writing.

Additional monitoring activities, including supports to achieve compliance, may include:

* additional compliance visits by the Regulatory Authority,
* an approved provider meeting with the Regulatory Authority to discuss and determine strategies to support continuous improvement and service compliance,
* an approved provider conducting a self-assessment and improvement action plan (usually as a new or revised part of their Quality Improvement Plan),
* the Regulatory Authority providing advice on particular aspects or issues including relevant research or best practice guidance materials,
* an approved provider (and/or their staff) attending educative sessions, forums or training identified to build particular skills or capabilities,
* referral of an approved provider to relevant programs and services,
* initiation of a full or partial reassessment process,
* sanctions.

In all cases of additional monitoring, the Regulatory Authority expects the approved provider to engage with the process by developing an action plan linked to their Quality Improvement Plan, detailing how they are addressing non-compliance and how they will maintain compliance.

The imposition of sanctions in response to non-compliance may be part of the Regulatory Authority’s actions depending on the seriousness of the issues and the engagement of the approved provider. In situations where children are at immediate or serious risk, the Regulatory Authority will respond accordingly with sanctions or prosecution.

**Concluding additional monitoring**

The Regulatory Authority expects compliance to be achieved as quickly as possible. Where additional monitoring activities are being undertaken, the service will be provided opportunity to demonstrate their compliance. When the Regulatory Authority can determine, based on evidence, that compliance has been achieved to a satisfactory level, the approved provider will receive correspondence that additional monitoring activities have concluded.

Where satisfactory levels of compliance are not achieved within a reasonable timeframe the Regulatory Authority will determine whether sanctions, such as limiting, suspending or cancelling service approval, or prosecution are required. These decisions, including reasonableness of timeframes, will depend on the facts of each situation, the types of non-compliance that persist and the impact to the safety, health and wellbeing of children.

## Disclosure of information

As set out in the departments Privacy Policy (National Law), the Regulatory Authority collects and handles personal information in accordance with the Commonwealth *Privacy Act 1988* (Privacy Act) unless otherwise required by law.

Under the National Law and Children’s Services Act, the Regulatory Authority may disclose information to State or Commonwealth Government Departments[[7]](#footnote-7) where the information relates to:

* promoting the objectives of the National Law or Children’s Services Act,
* assisting authorities and other government departments to perform or exercise their functions and powers under the National Law or Children’s Services Act,
* research or the development of national, state/territory policy with respect to ECEC services,
* the funding of ECEC services,
* the payment of benefits or allowances to persons using education and care services,
* compliance, monitoring and enforcement.

In particular, in so far as is permitted by the National Law and/or Children’s Services Act, and in compliance with the Privacy Act, the Regulatory Authority shares information with:

* all areas of the Department of Education (Vic)
* the equivalent early childhood Regulatory Authorities in other states/territories
* the Commission for Children and Young People (Vic)
* the Department of Education (Cth)
* the Department of Health (Vic)
* the Department of Justice (Vic)
* the Department of Families, Fairness and Housing (Vic)
* the Victorian Institute of Teaching
* Worksafe Victoria
* Victoria Police.

1. Section 260 of the National Law sets out the functions of the Regulatory Authority. [↑](#footnote-ref-1)
2. In the case of family day care, this includes visits to family day care residence/s and/or venues. [↑](#footnote-ref-2)
3. See sections 197-201 of the National Law (and sections 138-142 of the Children’s Services Act). [↑](#footnote-ref-3)
4. Section 162 of the National Law makes it an offence to operate an education and care service without a responsible person present and sets out who a ‘responsible person’ can be. [↑](#footnote-ref-4)
5. Section 133 of the National Law and regulation 63 of the National Regulations. [↑](#footnote-ref-5)
6. Regulation 63(2) of the National Regulations. [↑](#footnote-ref-6)
7. Section 271 of the National Law and 166 of the Children’s Services Act [↑](#footnote-ref-7)