MONITORING COMPLIANCE   
POLICY

REGULATORY AUTHORITY FOR EARLY CHILDHOOD EDUCATION AND CARE SERVICES IN VICTORIA

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# Monitoring Compliance Policy

This document sets out the Regulatory Authority’s approach to monitoring compliance. It operates in conjunction with the Regulatory Framework for Education and Care Services in Victoria (available [here](https://www.education.vic.gov.au/childhood/providers/regulation/Pages/which.aspx)).

## Purpose

The Secretary of the Department of Education and Training is the Regulatory Authority for Early Childhood Education and Care (ECEC) Services in Victoria. A core function of the Regulatory Authority is to monitor the compliance of ECEC services with the *Education and Care Services National Law Act 2010* (National Law) and the Education and Care Services National Regulations 2011 (National Regulations).[[1]](#footnote-1)

This document, the Monitoring Compliance Policy, sets out the Regulatory Authority’s approach to monitoring. It outlines expectations the Regulatory Authority has for those operating ECEC services and details the Regulatory Authority’s commitments for planning and delivering transparent and efficient monitoring activities. The safety, health and wellbeing of children is paramount and guides the Regulatory Authority’s monitoring activities (including that ECEC services are meeting the Child Safe Standards).

This policy also applies to ECEC services operating under the *Children’s Services Act 1996* (Children’s Services Act) and Children’s Services Regulations 2020.

## Defining monitoring and its objective

Monitoring is the regular assessment of an ECEC services’ compliance with the National Law and National Regulations. Whilst the majority of ECEC services voluntarily comply with their obligations and seek assistance or information where required, monitoring is the proactive checking of compliance by the Regulatory Authority.

The objective of the Regulatory Authority’s monitoring is to ensure ECEC services meet the requirements of the National Law and National Regulations. This is because compliance helps ensure the safety, health and wellbeing of children in the service. Monitoring is also part of the continuous improvement cycle and allows the Regulatory Authority to identify and prevent non-compliance or react to it before it escalates.

Monitoring activities can include both formal and informal interactions with services. Primarily, the Regulatory Authority undertakes its monitoring function by conducting visits to ECEC services and inspecting the rectification of non-compliance that has been identified. The safety, health and wellbeing of children attending an ECEC service is the primary focus for any visit and this includes how the Child Safe Standards are being implemented within the service.

Visits are an important and effective means for assessing compliance and allow identification of areas for regulatory attention that have otherwise gone unnoticed and/or unreported. Analysis of data recorded by the Regulatory Authority and collection of information from a range of stakeholders are also important aspects of the Regulatory Authority’s monitoring activities.

The frequency and focus of visits to ECEC services varies based on the purpose of the visit and visits may be announced or unannounced. Many visits are conducted for the primary purpose of monitoring compliance, including the implementation of Child Safe Standards in the service. Other visits are for one of the following purposes and also involve assessment of general compliance to varying degrees:

* the approval process,
* the assessment and rating process,
* an investigation in response to information received from an approved provider, member of the public, parent or stakeholders (such as other government departments),
* an audit program informed by data, stakeholder engagement or Authorised Officer observations,
* as part of imposing or enforcing a statutory sanction.

## Visits to a service

Authorised Officers of the Regulatory Authority conduct visits in accordance with their powers under the National Law.[[2]](#footnote-2) The priorities of visits to ECEC services are based on risk to the safety, health and wellbeing of children as well as the reason and purpose for the visit. At times, the focus of a visit may change based on what is observed during the visit.

Generally, Authorised Officers gather evidence at visits through some or all of 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 discuss their visit activities with the responsible person[[3]](#footnote-3). If non-compliance is observed by the Authorised Officer during the visit, this will also be discussed with the responsible person so that there is opportunity to commence addressing non-compliance immediately. 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 as necessary.

Following a visit, the Authorised Officer will notify the approved provider in writing about the visit findings. 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 not addressed.

The visit findings form part of the service’s compliance history and are used by the Regulatory Authority when making any future decisions about the approved provider or the service. The findings are also used to determine whether additional monitoring of the service is required based on the principle of earned autonomy, as outlined in the sections below.

## The monitoring schedule

The Regulatory Authority targets the frequency and focus of monitoring activities to areas of risk and likely benefit of regulatory action. A schedule of visits ensures the Regulatory Authority has regular engagement with, and checking of, ECEC services.

The Regulatory Authority conducts a visit before granting approval to an ECEC service and then conducts scheduled visits to approved services:

* During the first year of operation (or a change of approved provider);
* For assessment and rating;
* To monitor an ECEC service at least every three years.

In addition, the Regulatory Authority conducts visits to ECEC services in response to data analysis, or information received from stakeholders. For example, complaints, notifications from approved providers and information from stakeholders (including parents/guardians and the general public), play a key role in alerting the Regulatory Authority to potential risks to the safety, health and wellbeing of children, and often prompt visits to ECEC services. These visits may also form part of an investigation. Data collection and analysis, including of a service’s quality rating, service characteristics and history of compliance, may also lead to targeted visits and/or influence the timing of visits to ECEC services.

Specific ‘additional monitoring’ visits may also be conducted to ECEC services where non-compliance has been detected during a previous visit and further regulatory activities are required (this is explained further below).

## Additional monitoring explained

After conducting a visit to an ECEC service, Authorised Officers consider the assessed non-compliances that were identified. Where a service has not demonstrated a satisfactory level of compliance, additional monitoring or regulatory activities will be conducted by the Regulatory Authority (noting that emergency action will be taken in response to immediate or serious risk to children where needed[[4]](#footnote-4)).

‘Additional monitoring’ means the service is subject to increased regulatory activities compared to the minimum visit schedule. This aims to address problematic non-compliance before it escalates or causes serious harm. The benefit of additional monitoring is that the Regulatory Authority can provide support that is tailored to the service to assist them in reaching satisfactory compliance.

Determining whether satisfactory levels of compliance have been achieved is an assessment based on the level of risk presented at the time of the visit. The Regulatory Authority can then implement 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:

* extra monitoring 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,
* the Regulatory Authority providing guidance on documents and/or prescribed records,
* an approved provider (and/or their staff) attending an educative session, forum, training or workshop,
* the provision of advice, best practice guidance material and/or relevant research to the approved provider,
* referral of an approved provider to relevant support programs and services.

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 (QIP), detailing how they are addressing non-compliance and how they will maintain compliance.

The imposition of statutory sanctions in response to non-compliance may also 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 statutory sanctions or prosecution.

### How is additional monitoring concluded?

The Regulatory Authority expects compliance to be achieved as quickly as possible. Where satisfactory levels of compliance are not achieved within a reasonable timeframe the Regulatory Authority will determine whether statutory sanctions or prosecution are required. These decisions will depend on the facts of each situation and the impact to the safety, health and wellbeing of children.

Where additional monitoring activities are being undertaken, the service will be provided opportunities 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.

It should be noted that statutory sanctions, including emergency action, will be utilised to ensure the safety, health and wellbeing of children when deemed necessary by the Regulatory Authority and this may be in conjunction with additional monitoring.

## Disclosure of information

The Regulatory Authority is committed to upholding the rights of children and reducing regulatory burden in order to maximise the benefit of government organisations to the community. As a result, the Regulatory Authority promotes coordinated information sharing with other government organisations and expects ECEC services to comply with all their legislative obligations.

The Regulatory Authority may disclose information to State or Commonwealth Government Departments (under section 271 of the National Law or 166 of the Children’s Services Act) 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, the Regulatory Authority works closely with:

* all areas of the Department of Education and Training (Vic)
* the equivalent regulatory authorities in other states/territories
* the Commission for Children and Young People (Vic)
* the Department of Education, Skills and Employment (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.

## Feedback

The Regulatory Authority continuously reviews its practices with the aim of ensuring safety, health and wellbeing of children and improving the provision of quality ECEC services in Victoria. The Regulatory Authority welcomes feedback about this policy as part of, and to assist with, continual improvement.

1. Section 260 of the National Law sets out the functions of the Regulatory Authority. [↑](#footnote-ref-1)
2. These powers are set out in sections 197-201 of the National Law (if the Authorised Officer is acting under the Children’s Services Act, similar powers are set out in sections 138-142 of the Children’s Services Act). [↑](#footnote-ref-2)
3. 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-3)
4. The Regulatory Authority has powers to take various emergency responses as appropriate to the circumstances such as: issuing an emergency action notice, the emergency removal of children or immediately suspending the service approval or provider approval (see sections 28, 73, 179 and 189 of the National Law for further detail of these powers). [↑](#footnote-ref-4)