

REGULATORY FRAMEWORK

REGULATORY AUTHORITY FOR EARLY CHILDHOOD
EDUCATION AND CARE SERVICES IN VICTORIA

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REGULATING EARLY CHILDHOOD EDUCATION AND CARE SERVICES

This document sets out the Regulatory Framework used by the Regulatory Authority in relation to Early Childhood Education and Care Services in Victoria.

THE ROLE OF THE REGULATOR

The Secretary of the Department of Education and Training (the Department) is the Regulatory Authority in relation to Early Childhood Education and Care (ECEC) Services in Victoria. The Regulatory Authority is responsible for the regulation of around 4,600 ECEC services operating in Victoria. This includes kindergartens, long day care, family day care, outside school hours care, occasional care, early childhood intervention, sports and leisure, and limited hours services.

The role of the Regulatory Authority is established by the *Education and Care Services National Law Act 2010* (National Law) and the Education and Care Services National Regulations 2011 (National Regulations). Additionally, the Regulatory Authority is also the regulator of children's services under the Victorian *Children's Services Act 1996* (Children's Services Act).

The Regulatory Authority regulates providers of ECEC services to ensure they protect children's safety, health and wellbeing. Under the National Law, the Regulatory Authority also drives continuous improvement in ECEC services in order for children to receive quality education and care to support their health, learning and development.

The National Law's aspiration for continuous quality improvement within ECEC services creates a distinct regulatory role for the Regulatory Authority; one where quality is embedded within minimum requirements and is therefore regulated alongside, and as part of, ensuring those minimum requirements are met.

The need for such a regulatory environment is clear. Evidence from Australia and overseas indicates that the early years of a child's life have a profound impact on their future health, development, learning and wellbeing.¹ Research shows that quality education and care early in life can lead to better health, education and employment outcomes later in life.²

It is therefore no surprise that the needs and best interests of children form the guiding and paramount concern for the activities, decisions and actions taken by the Regulatory Authority.

Consistent with the Child Safe Standards and Reportable Conduct Scheme, when undertaking its regulatory functions, the Regulatory Authority seeks to continue to improve the way ECEC services prevent and respond to child abuse that may occur in, or be detected by, those services.

This Framework explains how the Regulatory Authority undertakes its regulatory role, including driving continuous quality improvement in ECEC services. It seeks to provide clarity to the regulatory community about what we do and how we do it, and give confidence to the broader community who trust us to undertake such an important role and to do so in a proper and fair manner.

¹ COAG, *Investing in the early years – a national early childhood development strategy* (2009). Available at <http://apo.org.au/node/19168>

² Australian Children's Education and Care Quality Authority (ACECQA). Available at: <https://www.acecqa.gov.au/resources/research#ECSR>

The Regulatory Authority has a strong commitment to transparency and accountability as well as to ongoing reflection and learning. We welcome feedback about this Framework, including the manner in which our staff deliver the activities it describes.

THE NATIONAL SYSTEM

There has been a national regulatory system in place in relation to ECEC services since the introduction of the National Quality Framework (NQF) from 1 January 2012.

The NQF created a new, national system, governed by the National Law and National Regulations, and replaced the licensing, accreditation and compliance processes previously undertaken by a variety of bodies across the country.

The introduction of the NQF included creating the Australian Children's Education and Care Quality Authority (ACECQA) and regulatory authorities in each state and territory. ACECQA are an independent and national body overseeing the implementation of the NQF and working with the state and territory regulatory authorities to implement and administer the NQF.

VICTORIAN CHILDREN'S SERVICES

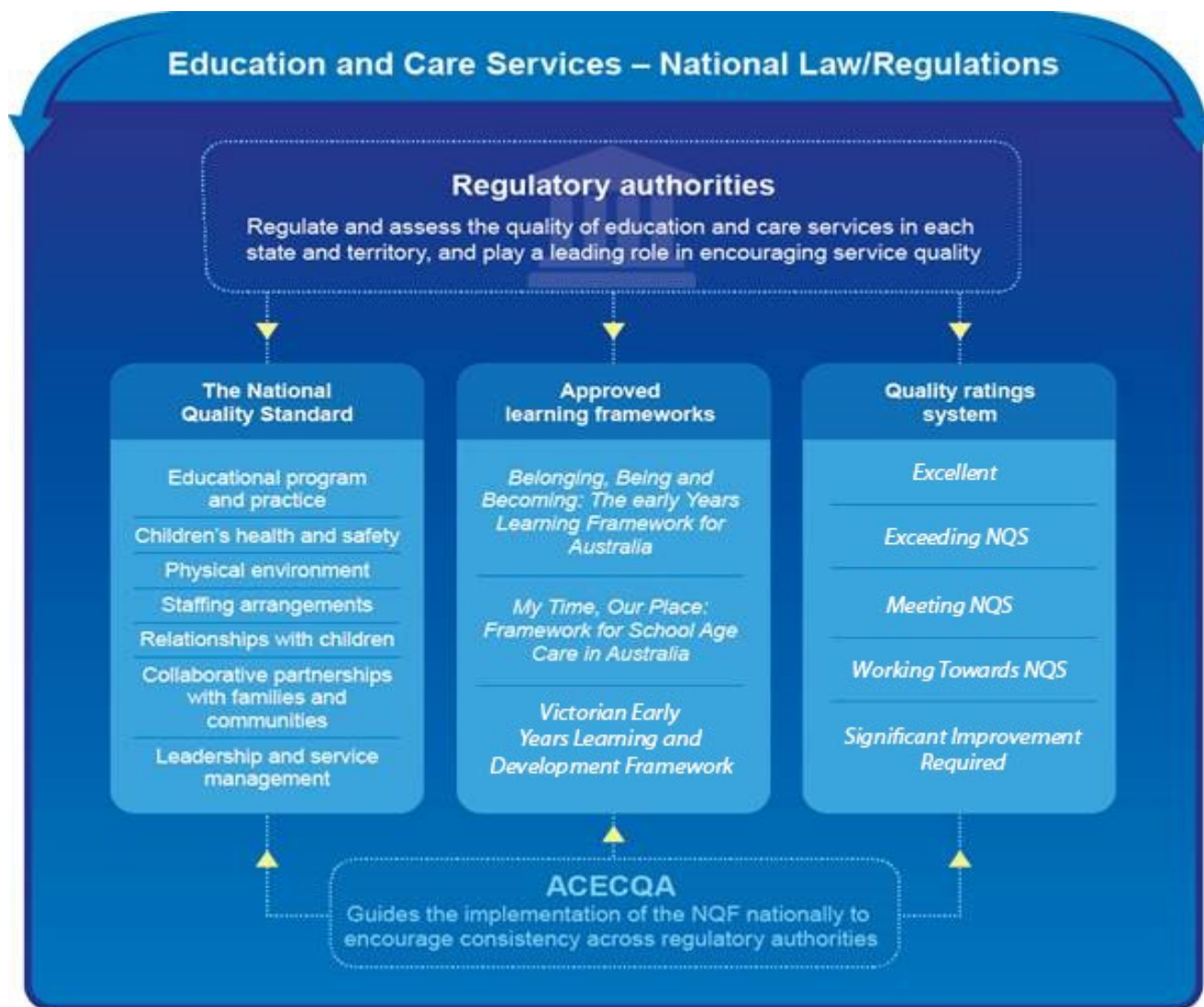
The majority of education and care services in Victoria operate under the NQF. However, around 280 services in Victoria do not fall within the scope of the NQF and operate under the Children's Services Act and Children's Services Regulations 2009 (referred to collectively in this Framework as the Children's Services legislation).

The types of services that remain regulated under the Children's Services legislation include limited hours services, former budget-based services not funded for the child care subsidy, occasional care services, early childhood intervention services, mobile services and school holiday care programs that operate for up to 28 days a year.

Whilst this document focuses on the requirements and systems of the NQF, the information in this document is relevant to all ECEC services operating in Victoria as the Regulatory Authority approaches its role under both legislative regimes in a consistent manner. Where the legislative regimes differ in substance, this is identified in text boxes or footnotes of this document.

THE REGULATORY LANDSCAPE AND STAKEHOLDERS

There are approximately 4,300 ECEC services in Victoria operating under the NQF. The diagram below displays the various components of the NQF, including ACECQA and the regulatory authorities.



Stakeholders

The child is at the centre of the regulatory environment in which ECEC services operate. In everything that is done within this regulatory environment, by the services themselves, by the Regulatory Authority or by any other stakeholder, the child's safety, health and wellbeing are paramount.

The other key stakeholders in the regulatory environment are:

- government and law enforcement bodies, such as:
 - ACECQA
 - The equivalent regulatory authorities in other states/territories

- Other Divisions of the Department of Education and Training in Victoria, such as in relation to funding
- The Department of Education, Skills and Employment (Commonwealth)
- The Department of Health (Victoria)
- The Department of Justice (Victoria)
- The Department of Families, Fairness and Housing (Victoria)
- The Victorian Institute of Teaching (VIT)
- The Victorian Registration and Qualifications Authority (VRQA)
- The Commission for Children and Young People (CCYP)
- Victoria Police
- The Australian Federal Police (AFP)
- Worksafe Victoria
- parents and guardians
- approved providers, services, educators and their representatives and peak bodies
- the community of Victoria and their representatives.

The community of Victoria is a critical part of the regulatory environment. The community has a general interest in knowing that ECEC services are adequately regulated so that they operate in a safe and lawful way. Members of the community also play a role in notifying the Regulatory Authority of direct concerns in relation to an ECEC service. By doing so, they form an important part of the Regulatory Authority's monitoring and intelligence gathering processes.

The Regulatory Authority regularly engages with stakeholders in both formal and informal ways and this is a critical aspect of our regulatory work. Such activities assist the Regulatory Authority to maintain a contemporary understanding of the regulatory community and in turn, to tailor our activities accordingly.

Strong engagement is important for building the relationships that can become partnerships – partnerships that support compliance and allow detected non-compliance to be positively addressed. Engagement with stakeholders also helps the Regulatory Authority meet key objectives such as reducing regulatory burden through information sharing and coordinated targeting of resources with other organisations.

As part of our strong commitment to uphold the rights of children and also to reduce regulatory burden, the Regulatory Authority also shares information with State or Commonwealth Government bodies where this is permitted by the National Law.³ This includes 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 ECEC services
- compliance, monitoring and enforcement.

³ Section 271 of the National Law (and section 166 of the Children's Services Act) sets out when this can occur.

THE REGULATORY AUTHORITY'S APPROACH TO REGULATING

Objectives and principles

The aim of government regulation is economic or social improvement. In the Regulatory Authority case, the rights and needs of children to access safe and high-quality education and care are vital social and economic aims.

Quality education and care shapes a child's future, and lays the foundation for their development and learning.⁴ Research shows that quality education and care early in life leads to better social and economic outcomes, including improved health, education and employment later in life.⁵ The Regulatory Authority plays a crucial role in ensuring the regulated community meets the NQF requirements and, in doing so, provides the platform for these higher order aims to be met.

The Regulatory Authority's objectives are:

- ensuring the safety, health and wellbeing of children attending education and care services
- ensuring children's developmental needs are met through providing quality education and care services
- improving the educational and developmental outcomes for children attending education and care services
- promoting continuous improvement in providing quality education and care services
- improving public knowledge about the quality of education and care services, including how to access and interpret the latest quality ratings
- reducing the regulatory and administrative burden for education and care services by facilitating information sharing between participating jurisdictions and the Commonwealth.⁶

To further support these objectives and guide Regulatory Authority staff on a daily basis; whether in their numerous and sometimes complex interactions with ECEC services, or through development of policy or resourcing decisions; the Regulatory Authority conducts its efforts and actions in line with these principles:

- the rights and best interests of the child are paramount
- children are successful, competent and capable learners
- principles of equity, inclusion and diversity underlie the Act and Regulations
- Australia's Aboriginal and Torres Strait Islander cultures are valued
- the role of parents and families is respected and supported
- best practice is expected in providing education and care services.⁷

Additionally, the Regulatory Authority plays a key role in supporting ECEC services' implementation of the Child Safe Standards.

⁴ Australian Children's Education and Care Quality Authority (ACECQA) various research and reports available at: www.acecqa.gov.au/resources/research

⁵ For example see: [Investing in the Early Years](#) (2009) COAG – A National Early Childhood Development Strategy and other research available from ACECQA at: www.acecqa.gov.au/resources/research

⁶ Section 3 of the *Education and Care Services National Law Act 2010*

⁷ Section 3 of the *Education and Care Services National Law Act 2010*

Risk-based and responsive regulation

In striving to meet its objectives, the Regulatory Authority is continuously making and reviewing decisions about how to undertake its regulatory activities and where to focus effort and resources. This includes determining priorities and deciding how to address identified problems in specific ECEC services as well as the industry more broadly.

This work starts when the Regulatory Authority approves entrants to the ECEC market. Providers receive approval upon demonstration that they are an entity who is capable of operating an ECEC service in compliance with the National Law and National Regulations, including to provide quality education and care. They are then granted service approval to operate a particular service (if they meet the requirements) on the condition that they will ensure the safety, health and wellbeing of children. The Regulatory Authority implements both risk-based and responsive regulatory activity when those providers fail to meet these obligations.

Consistent with the objectives and principles outlined above, the Regulatory Authority seeks to focus attention on problems that present the greatest risk to the safety, health and wellbeing of children, including the risk of young children missing out on the benefits of quality education and care. Priority is given to activities determined to have the greatest impact towards meeting these objectives.

These determinations also reflect the principle of ‘earned autonomy’; providers who demonstrate their ability and willingness to voluntarily comply over time receive less regulatory oversight. Providers can also publicise and promote their assessed rating for each ECEC service they operate thereby highlighting their compliance and delivery of quality education and care. Conversely, the Regulatory Authority increases regulatory activity in relation to services with unsatisfactory compliance and this can include enforcement action if necessary to influence the provider to achieve compliance.

The National Law equips the Regulatory Authority with various regulatory powers and tools in order to address non-compliance. These tools range from approving market entrants and providing information and guidance to support approved providers, through to prosecution before a court or cancelling a provider’s approval to operate where serious failings exist.

The Regulatory Authority is responsive and proportionate in its use of these regulatory powers and tools. Identified non-compliance is responded to with a regulatory response aligned to the seriousness of the issues and the behaviour of those involved (before and after the occurrence of the non-compliance). Compliance history is also a relevant consideration to the Regulatory Authority and regulatory action is escalated if initial steps prove unsuccessful. This approach to enforcement action recognises the important and ongoing relationships that the Regulatory Authority has with ECEC services and their providers. Given that the majority of the regulated community are willing and able to comply, much of the Regulatory Authority’s activity is support-based, educational and/or part of the assessment and rating process.

Our conduct

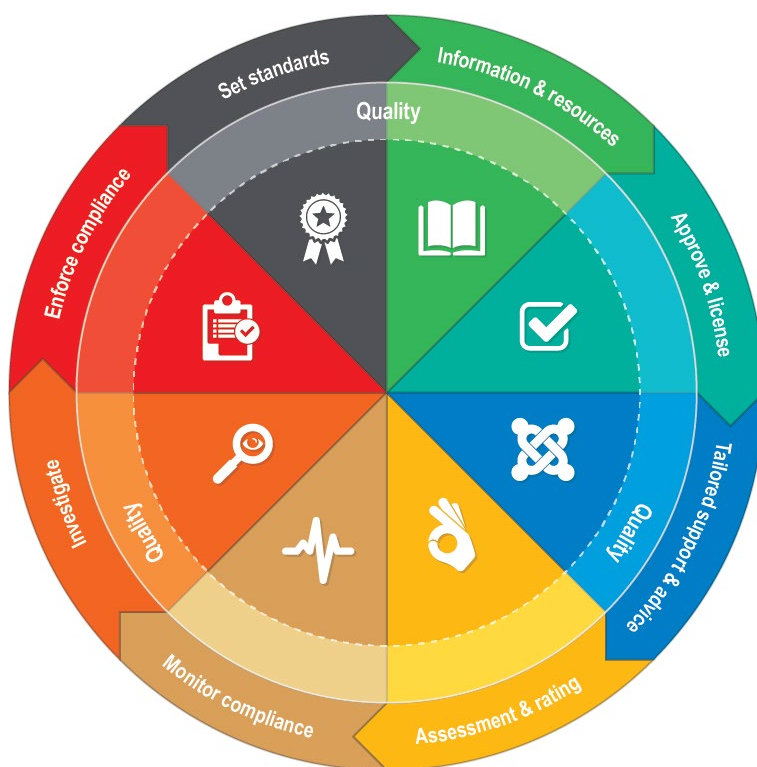
In carrying out our important regulatory responsibilities, Regulatory Authority staff must act with professionalism and integrity in line with certain standards and expectations. Staff of the Regulatory Authority, regardless of their position or functions, must abide by the Code of Conduct for the Victorian Public Sector and conduct themselves in a manner that is consistent with the Department values.

In addition, the Regulatory Authority expects all staff of the Regulatory Authority to:

- be guided at all times by the Regulatory Authority's objectives and principles and the content of this Framework
- make fair, unbiased and lawful decisions
- be proportionate, timely, responsive and consistent
- follow administrative law requirements, including providing procedural fairness
- be accountable and transparent, including managing conflicts of interest appropriately and in accordance with Department guidelines
- act and make decisions in a way that is consistent with the Charter of Human Rights
- comply with confidentiality and privacy obligations.

Authorised Officers are Regulatory Authority staff who have been deemed by the Regulatory Authority as appropriate people to hold that title and to use their powers with the utmost integrity. Authorised Officers conduct most public-facing Regulatory Authority activity and work directly with ECEC services, educators, parents and members of the community. It is a privilege to be granted this authority and as such the Regulatory Authority has high expectations of the behaviour and conduct of these staff members.

THE REGULATORY MODEL



	Quality Continuous quality improvement exists to support children in receiving the best possible education and care so that educational and developmental needs of children are met or exceeded. Each component of the education and care services regulatory model contributes to continuous quality improvement of an education and care service as well as supporting the safety, health and wellbeing of children when they attend an education and care service. See page 25.
	Set standards Clear, authoritative standards give certainty about what is expected of education and care services and what they are required to do to comply with the NQF. See page 9.
	Information and resources Information and resources provided to the community, parents/guardians, educators, current and aspiring education and care services, and to other government and law enforcement bodies about the NQF and to assist with compliance with the NQF. See page 10.
	Approve and licence Approval processes and assessment allow appropriate individuals and organisations to provide education and care services. See page 12.
	Tailored support and advice Provision of tailored support and advice to assist and guide approved education and care services to understand and comply with the NQF and to check for and remedy non-compliance. See page 14.
	Assessment and rating Assessment and rating of education and care services by authorised officers to determine quality and compliance against the detailed National Quality Standard and National Regulations. See page 16.
	Monitor compliance Various activities undertaken to detect and assess non-compliance with the NQF – supported through notifications from various members of the community and other government/non-government organisations. See page 18.
	Investigate Investigation of reported and alleged non-compliance with the NQF. See page 20.
	Enforce compliance Application of proportionate enforcement action, including administrative and statutory sanctions in order to ensure safety, health and wellbeing of children attending education and care services and compliance with the NQF. See page 22.

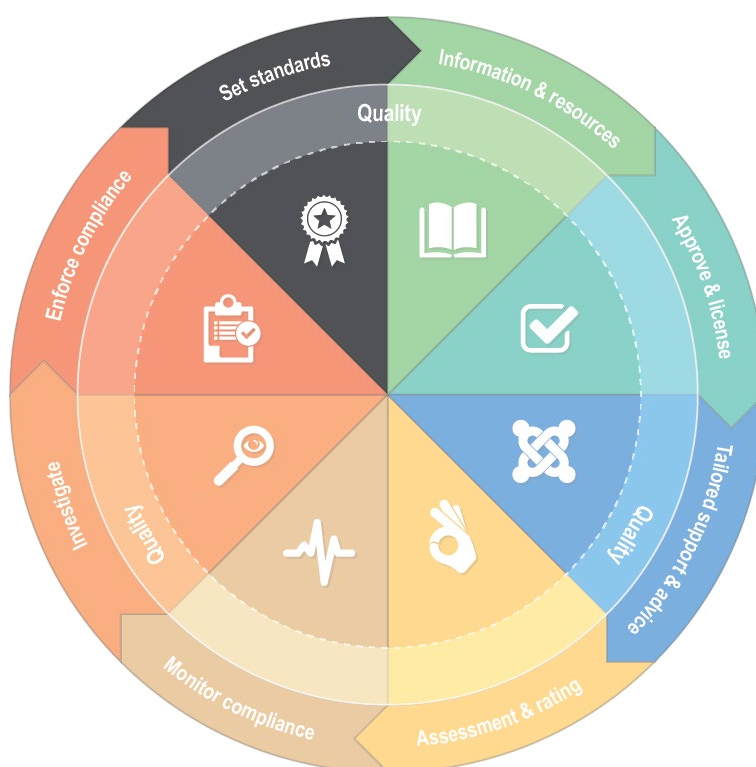
SET STANDARDS

Clear and authoritative standards give ECEC services certainty about what is expected of them and what they are required to do to comply with the NQF.

The Regulatory Authority's standards and expectations for the regulatory community are founded on the components of the NQF:

- the *Education and Care Services National Law Act 2010*
- the *Education and Care Services National Regulations 2011*
- the NQS and quality rating system
- approved Learning Frameworks.⁸

The Regulatory Authority regulates ECEC services based on these requirements and also plays a key role in supporting the review of, and improvements to, the NQF to ensure it achieves its purpose.



Who develops legislation and policy?

Policy is informed by the legislative requirements, and is developed from evidence-based research, informal and formal stakeholder feedback where appropriate, and the consideration of community expectations. At times, legislation may also be updated or varied and this will be informed by these same sources of information as well as strict requirements in relation to community consultation. Such a process is communicated by ACECQA and the Regulatory Authority in various ways including through our websites and importantly, is overseen by the Education Ministers' Meeting (which brings together the various Education Ministers across the country and nationally).

ACECQA and the various state/territory Regulatory Authorities develop and publish policy to support consistent implementation of the NQF across states and territories as well as about legislative or operational information to further assist those seeking to understand or apply the NQF.

The Regulatory Authority seeks to communicate policy to ECEC services in a transparent and accessible manner through online channels such as the website and email communications as well as through our direct interactions with services and stakeholders.

VICTORIAN CHILDREN'S SERVICES

The Regulatory Authority has specific responsibility for developing and reviewing legislation and policy in relation to the Children's Services legislation.

⁸ In the case of services operating under the Children's Services legislation it is the *Children's Services Act 1996* and the *Children's Services Regulations 2009*.

INFORMATION AND RESOURCES

The Regulatory Authority informs the community, parents/guardians, educators, current and aspiring ECEC services and other government and law enforcement bodies about the requirements and aspirations of the NQF, especially relating to the benefits for children.

A key role of the Regulatory Authority is informing stakeholders about legislative requirements in ECEC services as well as the role and jurisdiction of the Regulatory Authority.

The Regulatory Authority's information and resources focus on the safety, health and wellbeing of children in ECEC services and the requirement for continuous improvement

to provide quality education and care to our next generations.

The Regulatory Authority, along with ACECQA, provides information and resources and makes it accessible to all members of the community, with much of it targeted to current and aspiring ECEC providers and services. The Regulatory Authority delivers information and resources through a range of mechanisms including online and printable materials, newsletters, emails, an information telephone line, forums, seminars and stakeholder meetings.

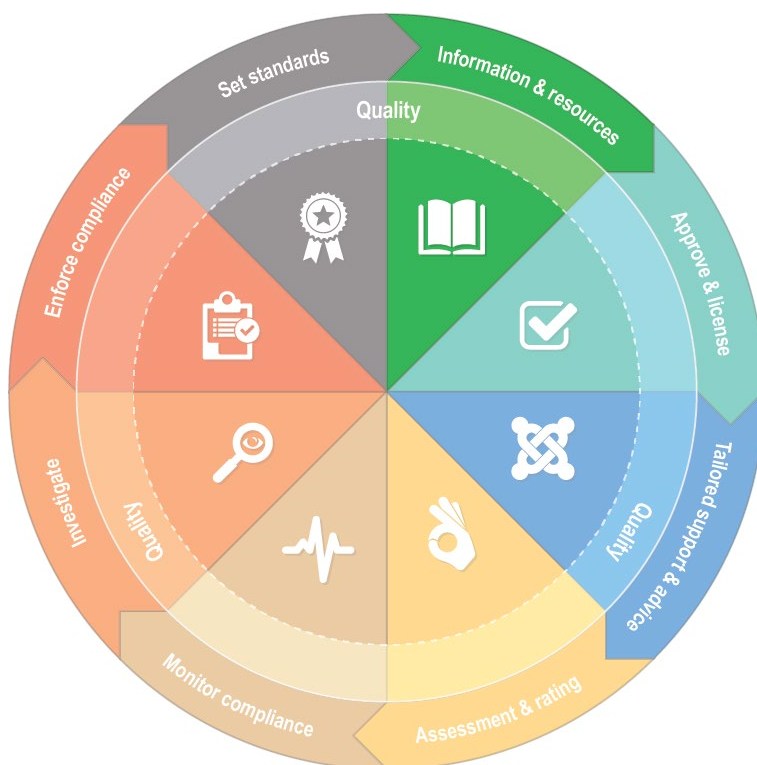
Through information and resources, the Regulatory Authority promotes the aspirations and benefits of the NQF.⁹ Where appropriate, the Regulatory Authority highlights the importance and centrality of the child in everything services do and the role of continuous improvement in providing quality education and care. This helps education and care services deliver quality programs and helps those using these services to identify quality education and care.

The Regulatory Authority also engages with stakeholders on a regular basis, particularly in relation to legislative change. This engagement informs and assists the Regulatory Authority in providing future information and resources that reflect the needs and concerns of the sector.

Information

Information can be sought by any member of the community whether they are part of an ECEC service or not, through:

- calling the Regulatory Authority on **1300 307 415**
- emailing the Regulatory Authority at licensed.childrens.services@education.vic.gov.au
- writing to the Regulatory Authority, GPO Box 4367, Melbourne, VIC 3001.



⁹ Information and resources are also developed in relation to the Children's Services legislation for those services operating under that system.

Resources

Free resources are available from the Regulatory Authority's and ACECQA's websites such as:

- information on various regulatory topics such as:
 - how to comply with particular aspects of the NQF
 - enforcement activity managed by the Regulatory Authority
 - how to make a report or complaint to the Regulatory Authority
 - how to become approved
- frequently asked questions about a range of often technical issues facing ECEC services
- guides and manuals including detailed information about compliance with the NQF
- tools such as a ratio calculator to help services comply with the NQF requirements
- sector newsletters.

Approve and licence

The Regulatory Authority is responsible for approving those wishing to enter the industry and operate an ECEC service.

One of the Regulatory Authority's most influential and critical role's is in monitoring and approving entry into the ECEC service market.

To advertise and operate an ECEC service, the Regulatory Authority must have first granted provider approval to the entity who will operate the service as well as service approval in relation to the particular service.¹⁰

The Regulatory Authority carefully considers applications to be a provider and then again when application is made for a proposed service. The Regulatory Authority focuses on the applicant's ability to comply with the requirements of the NQF, including to meet the developmental and educational needs of the children they intend to enrol in their service.

In doing so, the Regulatory Authority also places limitations on certain aspects of the ECEC service such as the number of children that may be educated and cared for in the space provided. Rigorous approval processes assist in ensuring quality and compliant ECEC services are being established. The obligation to ensure the safety, health and wellbeing of children in the ECEC service is always a condition of granting service approval.

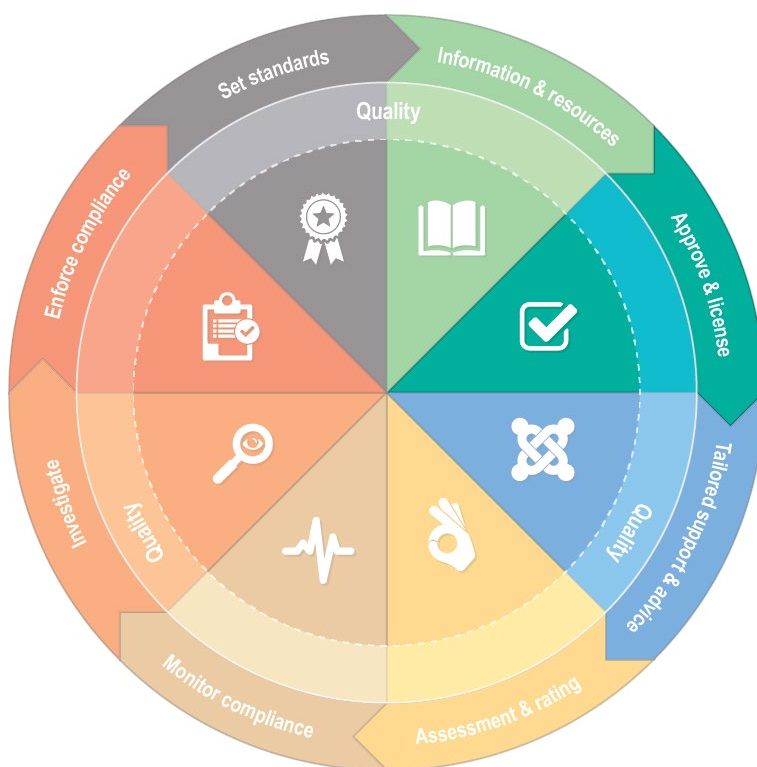
The approval process is also an opportunity for the Regulatory Authority to form early, positive professional relationships with new operators and set clear expectations about the seriousness and importance of their role, before children are educated and cared for.

Granting approvals

Provider approval: Obtaining provider approval is a prerequisite for operating one or more ECEC service under the NQF. The Regulatory Authority assesses the applicant's suitability and capability to provide education and care to children as an NQF service provider.

Service approval: Once a provider gains provider approval, they must then obtain service approval to operate a particular ECEC service or services. There are two types of approvals under the NQF:

- centre-based service approval
- family day care service approval.



¹⁰ Under the Children's Services legislation, there may be slight differences in this process and specific guidance is provided on the Regulatory Authority website to guide these services and their operators.,.

The process for obtaining approval to operate an ECEC service includes:

- an application by the proposed operator for the appropriate approvals (first the provider and then the service) made to the Regulatory Authority
- the assessment of the applications by the Regulatory Authority in accordance with the National Law and National Regulations
- liaison between the Regulatory Authority and the applicant
- decision by the Regulatory Authority about whether or not to grant the approval
- communication by the Regulatory Authority to the applicant of the decision.

The Regulatory Authority grants approvals where it is demonstrated that the ECEC service will:

- ensure the safety, health and wellbeing of the children being educated and cared for
- meet the educational and developmental needs of the children being educated and cared for by the service including through continuous quality improvement.



Tailored support and advice

An important aspect of the Regulatory Authority's role is to provide tailored support and advice to approved ECEC services to help them comply with the NQF or remedy non-compliance, in order to ensure continuous quality improvement and the safety, health and wellbeing of children in their service.

The Regulatory Authority advises and supports approved ECEC services, and anyone with an obligation under the NQF, to comply with the requirements of the NQF.

At all times, the Regulatory Authority's advice and support is targeted to the safety, health and wellbeing of children and continuously improving the quality of the education and care delivered to those children.

Practical and tailored advice and support is provided to ECEC services by the Regulatory Authority through both reactive and proactive interactions. For example, Authorised Officer visits to services and associated follow up communications, contact through telephone and email services, attendance at meetings and forums.

In particular, the assessment and rating process provides detailed guidance to each education and care service about their compliance and practice with clear, specific advice about the strengths and weaknesses identified. Authorised Officers also interact regularly with ECEC services in monitoring and investigating non-compliance. Part of this work involves the Authorised Officer providing guidance and support about how to comply or how to rectify detected non-compliance. These processes are explained in more detail on the following pages.

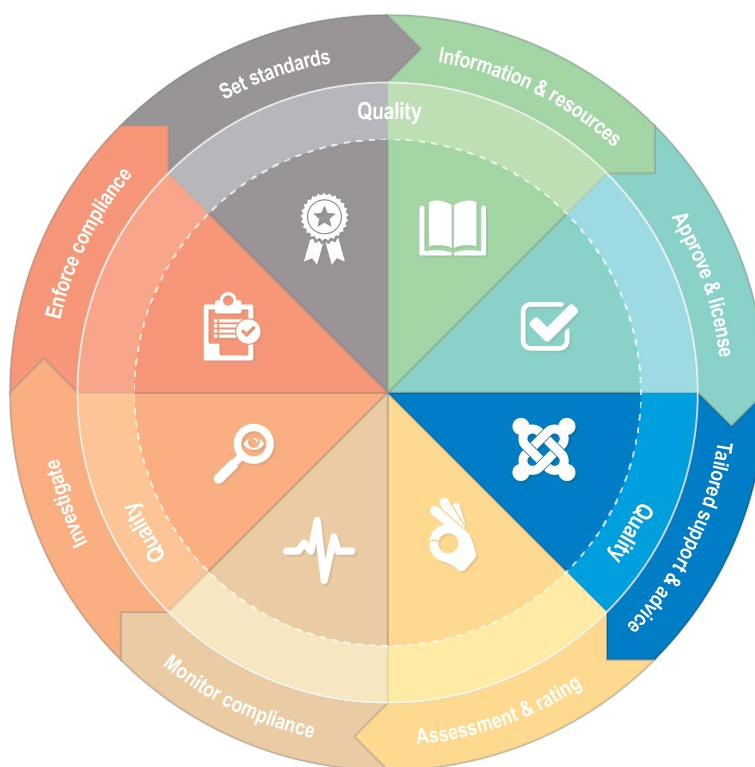
Tailored support and advice is a critical aspect of the Regulatory Authority's role.¹¹ In most cases, it also supports the Regulatory Authority to build positive relationships with the regulated community so services proactively seek assistance to prevent or quickly rectify problems, before children are seriously impacted. In turn this reduces the need for further compliance or enforcement activity from the Regulatory Authority.

Tailored advice and support for services

Advice: ECEC services can receive tailored support and advice:

- by calling **1300 307 415** or the service's nearest regional office (details at <https://www.education.vic.gov.au/childhood/providers/regulation/Pages/which.aspx>)
- by emailing licensed.childrens.services@education.vic.gov.au

¹¹ Tailored support and advice does not extend to legal advice.



- by contacting Authorised Officers from their nearest regional office or whom they have had recent contact with
- through a visit by Authorised Officers.

Activities: ECEC services or providers can participate in activities that contribute to their knowledge of the sector, field of expertise and the legal requirements they are bound to comply with through:

- presentations made by peak bodies and sector stakeholders, including regional and stakeholder forums
- information sessions about compliance with legal requirements run by the Regulatory Authority or others
- multi-service provider engagement meetings run by the Regulatory Authority
- ad hoc (as needed) meetings with the Regulatory Authority to support ECEC services with their compliance.

Assessment and rating

Authorised Officers assess the quality and compliance of an ECEC service against the National Quality Standard (NQS) and National Regulations.

Assessment and rating of ECEC services forms a critical and unique part of the regulatory framework. All ECEC services in Victoria approved under the NQF are assessed and rated by the Regulatory Authority.¹²

Assessment and rating of ECEC services occurs during a scheduled visit and on a regular basis. The frequency of such a process reflects the earned autonomy model where those with higher ratings have longer between assessments.

ECEC services are assessed against seven quality areas of the NQS and are given a rating based on these results. There are five possible ratings that an education and care service can achieve:

- Excellent (awarded by ACECQA)
- Exceeding National Quality Standard
- Meeting National Quality Standard
- Working Towards National Quality Standard
- Significant Improvement Required.

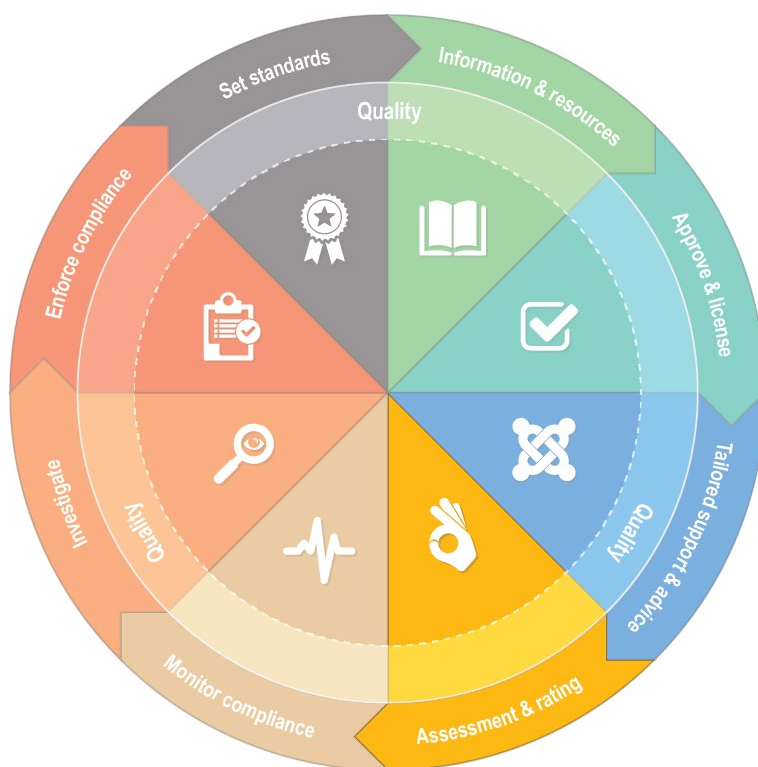
The NQS

The NQS aims to promote:

- the safety, health and wellbeing of children
- a focus on achieving outcomes for children through high-quality educational programs
- a greater understanding for families, educators, service providers and stakeholders of what distinguishes a quality service and how this is determined.

The seven quality areas that services are rated against are:

1. Educational program and practice
2. Children's health and safety
3. Physical environment
4. Staffing arrangements



¹² The Children's Services legislation does not provide an assessment and rating process.

5. Relationships with children
6. Collaborative partnerships with families and communities
7. Leadership and service management.

A full list of quality areas, standards and elements is available on ACECQA's website at www.acecqa.gov.au/national-quality-framework/the-national-quality-standard.

The Quality Improvement Plan (QIP) and Final Rating

The QIP is a self-assessment tool for ECEC services and is required by the NQF. ECEC services must have processes in place that enable them to continuously identify areas for improvement. This may involve reviewing the practices of educators and staff and assessing if their service meets or exceeds the NQS. It is important that consultation and discussion with families, educators and co-ordinators inform the QIP.

The assessment and rating process ensures that education and care services have a QIP. ECEC services are required to provide their QIP to the Regulatory Authority before the assessment and rating visit. This allows Authorised Officers to view the service's reflections on their strengths, areas for improvement, self-assessment of their programs and practices and information about their service philosophy.

After an assessment and rating visit, every service receives a written report with a rating for each quality area and an overall rating. The written report provides education and care services with guidance about areas of non-compliance, how well they have met the NQS, issues that must be addressed and observed strengths and opportunities. ECEC services are also encouraged to review and update their QIP after reflecting on the assessment and rating results.

Public rating

A service's overall rating is published on the ACECQA and MyChild websites and the service must display the rating at their premises. The public nature of the rating provides information to parents, guardians and any other interested persons, about a service's performance.

ECEC service ratings can be found at www.acecqa.gov.au/national-registers.

Monitor compliance

The Regulatory Authority monitors ECEC services in various ways in order to assess compliance. The Regulatory Authority is supported in detecting problems through reports from parents, educators, members of the community and government/non-government organisations.

The Regulatory Authority monitors compliance with the NQF to detect whether ECEC services are ensuring the safety, health and wellbeing of children in their service (including the service's implementation of the Child Safe Standards) and that quality education and care is being provided.

Monitoring also allows the Regulatory Authority to prevent problems occurring or react to problems before they escalate. The Regulatory Authority conducts monitoring activities using proactive and responsive methods such as:

- visiting services
- undertaking the assessment and rating process
- receiving reports from parents or any member of the community
- receiving notifications from providers and services as required by the National Law
- engaging with stakeholders
- receiving observations or notifications from other agencies or regulatory or enforcement bodies
- collecting and analysing information, such as reports, data and business records.

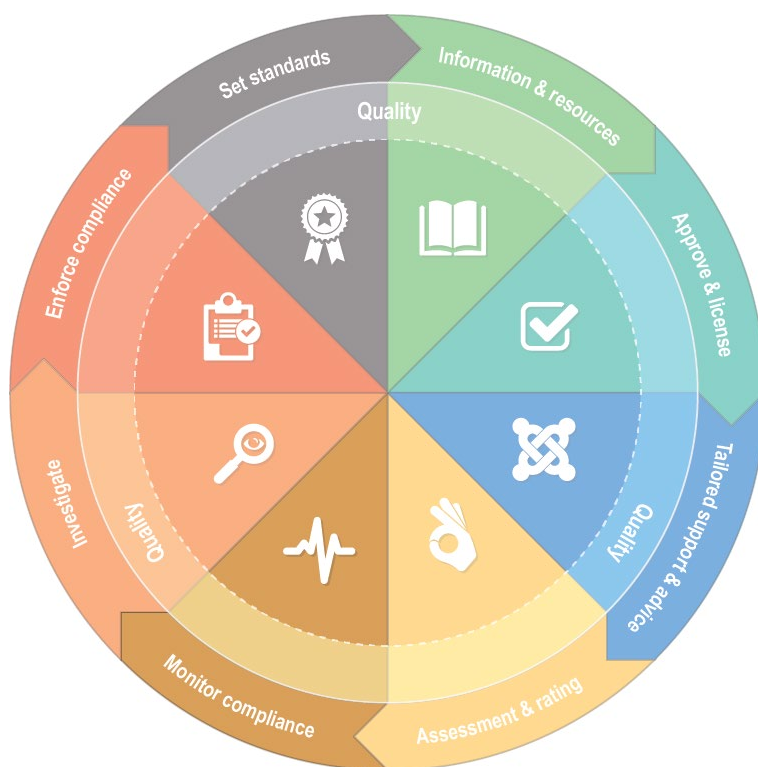
These varied monitoring methods help the Regulatory Authority to detect, respond to and prevent problems as well as assisting the Regulatory Authority to determine priorities and resource allocation. The Regulatory Authority prefers prevention over responding to a problem and allocates substantial resources to preventative processes – such as being rigorous in approval processes, providing timely and practical information and resources, tailoring advice and support to help services comply and conducting rigorous assessment and rating.

The Regulatory Authority's Monitoring Compliance Policy contains more details about monitoring and is available online at

<https://www.education.vic.gov.au/childhood/providers/regulation/Pages/which.aspx>.

Visits by the Regulatory Authority

A significant aspect of monitoring is achieved through the assessment and rating process and by conducting monitoring visits to ECEC service premises.



Authorised Officers conduct service visits to assess compliance with the NQF, including the quality of the program and environment as well as implementation of the Child Safe Standards. ECEC services are provided with written findings of the visit to assist them to rectify any non-compliance quickly and accurately.

As set out in the Regulatory Authority's Monitoring Compliance Policy visits are conducted in the following circumstances:

- before granting approval for an ECEC service to start operating
- during the first year of operation (or a change of approved provider)
- for assessment and rating
- to monitor an education and care service at least every three years
- as often as needed in relation to investigations, data analysis or in response to previously detected non-compliance as part of additional monitoring activities.

For further details about the Regulatory Authority's monitoring activities, what happens at a visit and how 'additional monitoring' is determined and undertaken, please see the Regulatory Authority's Monitoring Compliance Policy available at <https://www.education.vic.gov.au/childhood/providers/regulation/Pages/which.aspx>.

Investigate

The Regulatory Authority assesses complaints and notifications about potential non-compliance with the NQF, including in relation to quality and the program delivered to children, to determine appropriate investigative activities and make findings about whether non-compliance occurred.

The Regulatory Authority conducts investigations where alleged non-compliance poses a risk to the safety, health and wellbeing of a child or children and/or there is a contravention of the NQF.

When becoming aware of alleged non-compliance with the National Law and/or National Regulations, the Regulatory Authority assesses the information (usually received in a notification or complaint) to determine the level of risk to the safety, health or wellbeing of a child or children if it were to be true.

Based on this assessment, the Regulatory Authority determines next steps, including whether the matter is within the scope of the NQF and meets the threshold for investigation. Where the alleged incident has or is likely to have a significant impact on the safety, health and wellbeing of a child or children being educated and cared for by a service, the Regulatory Authority treats this as a priority and initiates risk management strategies immediately. Prioritisation in this way ensures effective use of resources and is part of the risk-based regulatory model the Regulatory Authority relies on.

Notifications

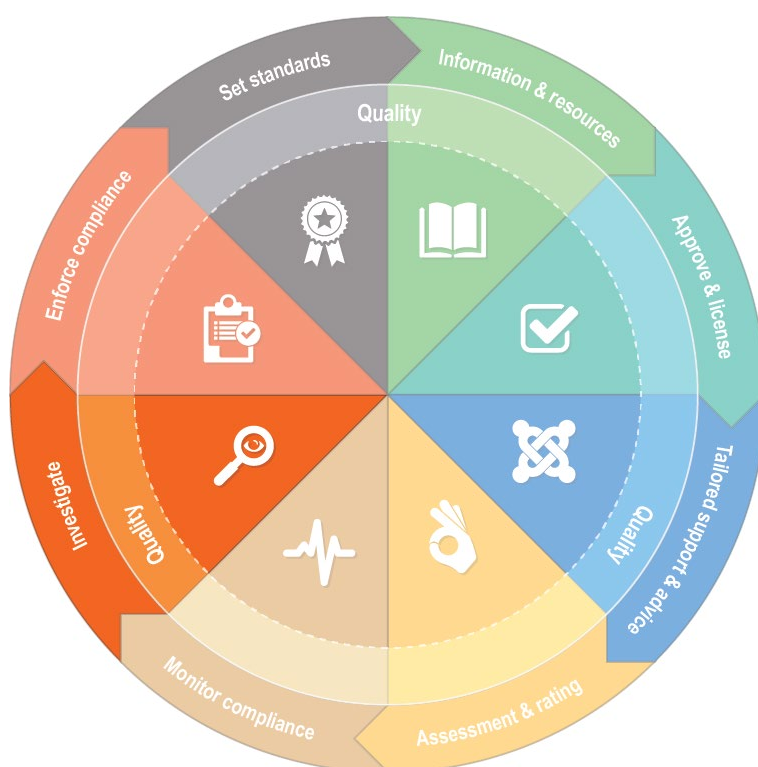
Notifications or complaints may be made to the Regulatory Authority from any member of the community. For example, a complaint may be made from a parent about an ECEC service their child attends, an educator may report something they saw, or a non-government or government organisation may pass on information.

ECEC providers are required by the National Law to notify the Regulatory Authority of the following things which may also prompt an investigation:

- serious incidents or complaints in relation to an education and care service
- any circumstances arising at an education and care service that posed a risk to the safety, health or wellbeing of a child or children attending the service.

The Regulatory Authority website has information setting out notification requirements in detail. Examples of circumstances that must be reported include:

- a child being locked in or out of a service or leaving the service alone
- a child being injured where immediate medical attention was required (or reasonably should have been)



- instances where the service's premises pose a risk to children, for example the premises in a state of disrepair, or damaged by a natural event like flooding
- observations of children who display concerning behaviour that may indicate they are or may be at risk of physical, emotional or sexual abuse.

The Regulatory Authority's investigation process

Investigations by the Regulatory Authority seek to find the truth about what occurred by collecting evidence so that a determination can be made as to whether there has been non-compliance with the National Law or National Regulations.

An investigation may include any or all of the following activities:

- talking to parties involved in the matter
- researching public and non-public information, for example the services' website and advertising and data held by the Commonwealth Department of Education and Training about care provided
- inspecting the service
- collecting relevant documents from the service
- liaising with other government or law enforcement organisations if relevant to the matters raised, such as CCYP, VIT, Victoria Police, Child Protection and WorkSafe Victoria
- taking witness statements from relevant parties
- interviewing the approved provider and/or persons responsible for the alleged non-compliance
- collecting any other evidence that is considered relevant, for example medical records.

Where warranted, the Regulatory Authority collects evidence that is permissible to use in prosecutions or that will assist in taking other enforcement action. At the conclusion of the Regulatory Authority's investigations, Authorised Officers also seek to identify ways for ECEC services to improve controls that prevent non-compliance.

The nature and timeframes of an investigation vary depending on issues such as complexity, cooperation levels and the extent of alleged non-compliances being investigated. The Regulatory Authority aims to achieve appropriate outcomes within reasonable timeframes and to minimise service disruption and red-tape. In any investigation, as with any other regulatory activity of the Regulatory Authority, the safety, health and wellbeing of children is paramount.

Procedurally fair, ethical and transparent investigations are critically important to the Regulatory Authority. The public and regulated entities must be able to have confidence in the integrity of our investigations and the regulatory system that those investigations form part of.

Taking action after an investigation

To finalise an investigation, the Regulatory Authority makes determinations as to whether or not the evidence collected has substantiated any areas of non-compliance. The Regulatory Authority informs the approved provider of the outcome of the investigation including whether enforcement action, such as sanctions, are appropriate (see the next section for further information).

The Regulatory Authority also communicates with parents or other notifiers/complainants about the nature of the investigation and outcomes. In doing so, the Regulatory Authority must not provide information that is protected by privacy or other confidentiality requirements.

Enforce compliance

Enforcement means the use of influence, including through administrative and statutory methods, to compel an approved provider to operate an ECEC service in compliance with the NQF – so that they ensure the safety, health and wellbeing of children in the service.

Enforcement action by the Regulatory Authority is taken for the purpose of ensuring that those providing ECEC services are ensuring the safety, health and wellbeing of children in the service.

Enforcement action can influence the attitude and behaviour of everyone with obligations under the National Law and National Regulations, including someone that the Regulatory Authority has determined has breached their obligations, and has three key elements:

- to rectify or fix the non-compliance
- to apply a sanction (a penalty or punishment)
- to provide deterrence against future non-compliance (both specifically to those involved and also generally to others with the same obligations).

Some statutory sanctions used by the Regulatory Authority are permitted by the National Law to be published to inform the public and users of services as well as to deter other ECEC services from non-compliance. The Regulatory Authority publishes enforcement actions on its website on a regular basis.

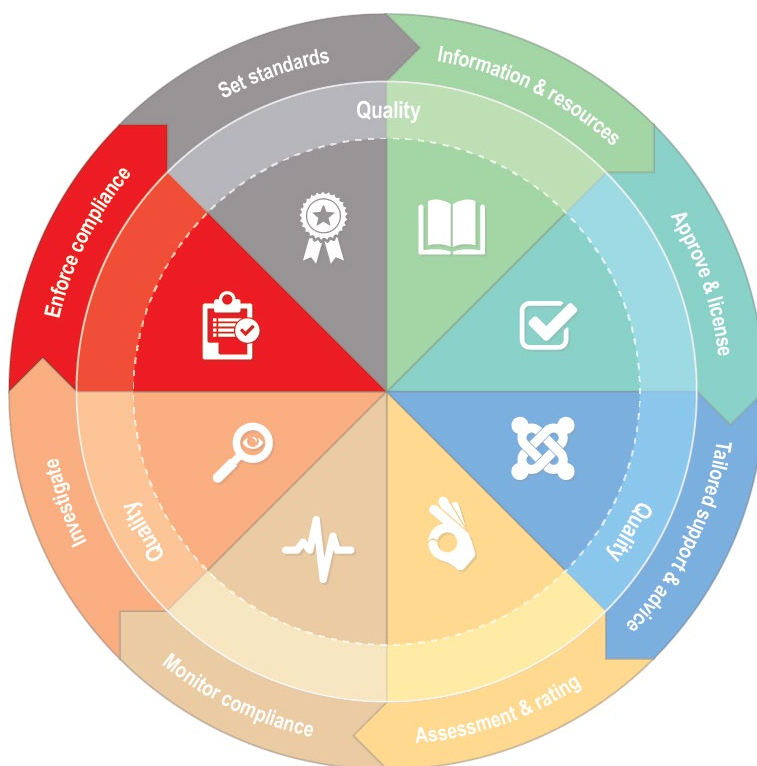
How the Regulatory Authority enforces compliance

The Regulatory Authority takes an escalating approach to enforcement so that it can respond appropriately and proportionately to detected non-compliance. Rectified lower-order non-compliance is met with lower-order intervention, and increased intervention applies in line with increased seriousness, culpability, recidivism and apathy.

Authorised Officers of the Regulatory Authority support ECEC services to rectify non-compliance as soon as it is identified. Tailored advice and support is nearly always successful and sufficient in ensuring ECEC services address minor, one-off non-compliances. However, even if rectified, enforcement action may still be appropriate in certain situations if they are sufficiently serious or risky to children's safety, health and wellbeing.

The action the Regulatory Authority takes depends on a number of factors including:

- the service's ability to comply with their obligation to ensure the safety, health and wellbeing of children



- the service's compliance history and current compliance levels
- the risk mitigation strategies the service implemented to respond to the incident/issues
- the actual or potential risk posed by the incident or issues to the health, safety or wellbeing of children
- the willingness and ability of the service to rectify the behaviour or the environment that led to the incident or issues occurring
- public interest factors.

The Regulatory Authority assesses these factors to determine not only whether enforcement action is required but also the proportionality of that action. The Regulatory Authority addresses and deters non-compliance using various administrative activity as well as a range of statutory sanctions available under the National Law and on occasion, will prosecute the most serious non-compliance.

Administrative actions and statutory sanctions

Administrative actions that the Regulatory Authority utilises to influence compliance by an ECEC service include:

- additional monitoring of the service (see the Regulatory Authority's Monitoring Compliance Policy for further information)
- attendance of the approved provider at a formal meeting
- a Warning Notice issued to the approved provider, and in some circumstances to an individual such as a staff member or educator.

The Regulatory Authority uses administrative actions where:

- there is a moderate-to-significant impact on the safety, health and wellbeing of children, or there is systemic and ongoing low-to-moderate non-compliance, and
- the service has taken action to address the non-compliance.

Statutory sanctions used by the Regulatory Authority to influence compliance by an ECEC service include:

- issuing compliance notices or directions
- amending a service or provider approval to impose limitations on their operation
- prohibiting an individual from being involved in an education and care service
- taking emergency action to prevent an activity from continuing
- suspending or cancelling a service or provider approval.

Statutory sanctions escalate in severity and some are suited to particular non-compliance. The most serious statutory sanctions, such as suspensions, emergency actions, prohibitions and cancellations, are reserved for the most serious cases of non-compliance.

The table below outlines the statutory sanctions available to the Regulatory Authority:

Statutory sanctions	
Amendment of service approval by varying or imposing a condition (section 55)	<p>A written notice amending a service approval at any time without an application from the approved provider by:</p> <ul style="list-style-type: none"> • varying a condition of the service approval, or • imposing a new condition on the service approval.
Amendment of provider approval by varying or imposing a condition (section 23)	<p>A written notice amending a provider approval at any time without an application from the approved provider by:</p> <ul style="list-style-type: none"> • varying a condition of the provider approval, or • imposing a new condition on the provider approval.
Reassessment of fitness and propriety (section 21)	<p>Reassessment (at any time) of approved provider's fitness and propriety to be involved with the provision of an education and care service. This includes:</p> <ul style="list-style-type: none"> • the reassessment of a person with management or control • the assessment of an individual who becomes a person with management or control after the grant of provider approval.
Compliance direction (section 176)	A written direction requiring an approved provider to take steps set out in the direction to comply with a specific provision of the National Regulations.
Compliance notice (section 177)	A written notice requiring the approved provider to take the steps set out in the notice to comply with any provision of the National Law or National Regulations.
Suspension or cancellation of a supervisor certificate (section 123)	<p>A written notice suspending or cancelling a supervisor certificate to prevent the person from being placed in charge of a service either temporarily (suspension) or permanently (cancellation). This includes a person who:</p> <ul style="list-style-type: none"> • is no longer fit and proper to supervise a service, and/or • has failed to comply with a condition of their certificate or the National Law and National Regulations.
Notice to suspend education and care by family day care educator (section 178)	<p>A written notice directing the approved provider to suspend a family day care educator if satisfied that:</p> <ul style="list-style-type: none"> • the approved provider or nominated supervisor is not complying with the National Law or National Regulations, or • there is a risk to the safety, health or wellbeing of the children being educated by the family day care educator.
Emergency action notice (section 179)	A written notice directing the approved provider to take certain steps to remove or reduce an immediate risk to the safety, health or wellbeing of children being educated and cared for by the service.

Statutory sanctions	
Direction to exclude inappropriate persons from service premises (section 171)	<p>A direction to an approved provider, nominated supervisor and/or family day care educator to exclude an inappropriate person from a service premises).</p> <p>An inappropriate person includes a person:</p> <ul style="list-style-type: none"> • who may pose a risk to the safety, health or wellbeing of any children being educated and cared for by the service, or • whose behaviour or state of mind is such that it would be inappropriate for him or her to be on the premises.
Prohibition notice (section 182)	<p>A written notice given to a person prohibiting them from:</p> <ul style="list-style-type: none"> • providing education and care to children for a service • being engaged as a supervisor, educator, family day care educator, contractor, staff member or a volunteer at an approved service • carrying out any other activity relating to services.
Enforceable undertaking (sections 180 and 181)	<p>A written undertaking from a person who has allegedly breached the National Law or National Regulations setting out what they will do or refrain from doing to comply with the National Law and National Regulations.</p>
Suspension of service approval (section 70)	<p>A written notice to the approved provider suspending a service approval for any of the reasons set out in section 70.</p>
Suspension of provider approval (section 25)	<p>A written notice to the approved provider suspending a service approval for any of the reasons set out in section 25.</p>
Emergency removal of children (section 189)	<p>Emergency removal of children by the Regulatory Authority where it considers on reasonable grounds that there is immediate danger to the safety, health or wellbeing of children being educate and cared for by the service.</p>
Cancellation of service approval (section 77)	<p>A written notice to the approved provider cancelling a service approval for any of the reasons set out in section 77.</p>
Cancellation of provider approval (section 31)	<p>A written notice to the approved provide cancelling a provider approval for any of the reasons set out in section 31.</p>

Continuous quality improvement

The purpose of continuous quality improvement is that children receive the best possible education and care that ensures their educational and developmental needs are met or exceeded.

Driving the provision of quality education and care is central to the Regulatory Authority's role and objectives. Continuous quality improvement of education and care services overlays and intersects with all aspects of the Regulatory Authority's regulatory model.

The Regulatory Authority places substantial importance on fostering a culture of continuous quality improvement so that it may lead to better educational and developmental outcomes for children.

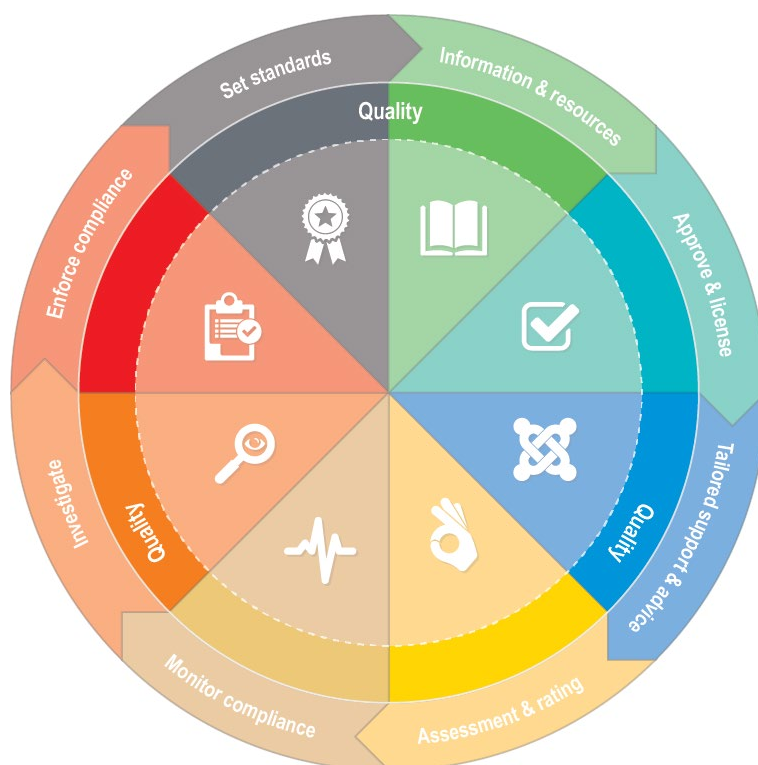
This starts at the point of approval, where the Regulatory Authority assesses the fitness and propriety of new applicants and their ability to:

- provide an ECEC service that meets developmental and educational needs of the children
- understand their obligations to assess and improve the quality of their service on an ongoing basis.

The quality of ECEC services is then specifically measured against detailed quality standards on a regular basis through the assessment and rating process. The Regulatory Authority also monitors ECEC services' ongoing compliance with the NQF throughout interactions with services, such as during compliance visits. Equally, tailored advice and support offered to ECEC services identifies and emphasises the need for quality improvement.

Continuous quality improvement is also driven by the Regulatory Authority by requiring and viewing an ECEC service's Quality Improvement Plan (QIP) during assessment and rating and other monitoring activities. The QIP is a requirement of the NQF. It must contain particular information and must be reviewed regularly by the provider – at least annually.

All aspects of the Regulatory Authority's regulatory model incorporate quality. This is entirely appropriate and necessary as the Regulatory Authority is regulating how education and care is provided to our next generations. The quality of this education and care is entwined with and regulated alongside the ability of providers to protect the safety, health and wellbeing of children in education and care services.



REVIEWS, FEEDBACK AND COMPLAINTS

Statutory Reviews

Decisions by the Regulatory Authority to impose statutory sanctions are subject to statutory review processes set out in the National Law. Assessment and rating decisions are subject to internal and external review procedures as established by the National Law. These legislative review rights and processes are set out in writing by the Regulatory Authority when they apply. Details can also be found in the National Law or on the Regulatory Authority's and/or ACECQA's website.

The Regulatory Authority treats review processes very seriously and ensures that required reviews are undertaken by a new decision maker and in line with any requirements such as timeframes, set out in the National Law. Those requesting a review will receive acknowledgement of receipt of their request and will be informed about the outcome of the review in writing.

Contact the Regulatory Authority on **1300 307 415** for more information about reviews.

Decisions made in a court or tribunal such as by a Judge or Magistrate in a prosecution, may also be reviewable through the court or tribunal's appeal processes. Queries about review processes related to a decision made by a court or tribunal should be directed to the court or tribunal that made the decision.

Feedback

The Regulatory Authority welcomes feedback about its processes or practice including staff performance, and invites that information verbally or in writing directly to the staff member or their manager by:

- emailing quality.assessment.regulation@education.vic.gov.au
- calling the Regulatory Authority on 03 7022 2149.

Complaints

About the safety, health and wellbeing of children

If you have concerns about the safety, health or wellbeing of children, or about the behaviours or practices of staff at an education and care service, you can make a complaint to the Regulatory Authority. These types of complaints are an important aspect of the Regulatory Authority's monitoring and detection process.

To make a complaint, write, email or telephone the regional office nearest you (details at: www.education.vic.gov.au/childhood/providers/regulation/Pages/complaints.aspx).

About the Regulatory Authority – staff or actions

Anyone wishing to make a complaint about a Regulatory Authority staff member or their experience with, or decision by, the Regulatory Authority is encouraged to contact the staff member first to discuss their concerns. If this is unsuccessful in resolving the complaint, please contact the nearest regional office in the first instance and speak to the Area Manager (or ask for another contact if that is the person being complained about). Regional office contact details are available at www.education.vic.gov.au/childhood/providers/regulation/Pages/complaints.aspx.

Complaint forms are also available from the Regulatory Authority website. Details can also be emailed or telephoned to quality.assessment.regulation@education.vic.gov.au or 03 7022 2149.

The Regulatory Authority is committed to responding to complaints effectively and requires all staff to be committed to effective dispute resolution. Our complaints procedure framework is available online.

If a person is not satisfied with the Regulatory Authority's actions they can also contact the Victorian Ombudsman (www.ombudsman.vic.gov.au) **or**, in relation to privacy or an FOI decision, the National Education and Care Privacy Commissioner or National Education and Care FOI Commissioner (www.necsopic.edu.au).

GLOSSARY

Term	Definition
Approved learning frameworks	<p>The NQS is linked to national learning frameworks that recognise children learn from birth. Education and care services are required to base their educational program on an approved learning framework:</p> <ul style="list-style-type: none"> • <i>Victorian Early Years Learning and Development Framework</i> • <i>Belonging, Being and Becoming: the Early Years Learning Framework for Australia</i> • <i>My Time, Our Place: Framework for School Age Care in Australia.</i>
Approved provider	A person or corporate entity that holds a provider approval and is able to apply for a service approval under the National Law.
Australian Children's Education & Care Quality Authority (ACECQA)	<p>ACECQA is the independent national authority responsible for:</p> <ul style="list-style-type: none"> • overseeing the implementation of the NQF • working with the state and territory regulatory authorities to implement and administer the NQF.
Children's Services legislation	<p>A term used in this document to describe the:</p> <ul style="list-style-type: none"> • <i>Children's Services Act 1996</i>, and • <i>Children's Services Regulations 2009.</i>
Secretary of the Department of Education and Training (the Department)	Victoria's Regulatory Authority responsible for the approval and regulation of ECEC services operating in Victoria.
ECEC services	A term used in this document that refers to services in Victoria who provide approved education and care to children.
National Law	<i>Education and Care Services National Law Act 2010</i>
National Quality Framework (NQF)	<p>The NQF includes the:</p> <ul style="list-style-type: none"> • <i>Education and Care Services National Law Act 2010</i> • <i>Education and Care Services National Regulations 2011</i> • <i>National Quality Standard</i> • <i>Approved learning frameworks.</i>

Term	Definition
National Quality Standard (NQS)	<p>The NQS is part of the NQF and is the benchmark for quality education and care against which services are rated. The NQS consists of seven quality areas. Each quality area contains standards and elements against which education and care services are assessed and rated. The quality areas are:</p> <ul style="list-style-type: none"> • Educational program and practice • Children's health and safety • Physical environment • Staffing arrangements • Relationships with children • Collaborative partnership with families and communities • Leadership and service management <p>Visit www.acecqa.gov.au for full details of each of the quality areas and their applicable standards and elements.</p>
National Regulations	Education and Care Services National Regulations 2011
Regulatory Authority	In Victoria, the Regulatory Authority for Early Childhood Education and Care (ECEC) Services is the Secretary of the Department of Education and Training (the Department).