

Regulatory Framework

in relation to Education and Care Services in Victoria



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Overview – Regulating education and care services in Victoria

The Department of Education and Training is the authority responsible for regulating education and care services in Victoria.

The role of the regulator

The Department of Education and Training (the Department) is Victoria's regulator responsible for the approval and regulation of around 4,500 early childhood education and care 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 Department's role as 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 Department's role as the regulator of children's services is set out in the *Children's Services Act 1996* (Children's Services Act).

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

The National Law's aspiration for continuous quality improvement within education and care services creates a distinct regulatory role for the Department; 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 it is the needs and best interests of children that form the guiding and paramount concern for every activity, decision and action taken by the Department.

Consistent with the Betrayal of Trust inquiry's recommendations, when undertaking its regulatory functions the Department aims to continue to improve the way education and care services prevent and respond to child abuse that may occur in, or be detected by, those services.

This framework explains how the Department undertakes its regulatory role, including how it drives continuous quality improvement in education and care services. It seeks to provide clarity to those regulated by the Department so they are aware of 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.

The Department has a strong commitment to transparency and accountability as well as to ongoing reflection and learning. We welcome feedback from the regulated community and the general public about this framework, including the manner in which our staff deliver the activities it describes.

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). *What's Changed?* Available at: www.acecqa.gov.au/whats-changed

The national system

Prior to 2012, regulatory responsibility for education and care services was shared by the Commonwealth and state governments. In Victoria, the Department was responsible for licensing and setting the minimum standards of operation. Quality assurance for these services was the responsibility of the National Childcare Accreditation Council (NCAC).

In July 2009, the Council of Australian Governments (COAG) released an initiative titled *Investing in the Early Years—A National Early Childhood Development Strategy*. Contained within this strategy was the National Quality Agenda for Early Childhood Education and Care – which comprised stronger standards, a streamlined regulatory approach, a rating system and an Early Years Learning Framework.

In December 2009, the National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care was signed by the Commonwealth and all states and territories. This agreement resulted in the introduction of the National Quality Framework (NQF), with effect from 1 January 2012.

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

The introduction of the NQF included creating an independent, national body – the Australian Children’s Education and Care Quality Authority (ACECQA) – to oversee the implementation of the NQF nationally, and to work with state and territory regulatory authorities to implement and administer the NQF.

Victorian children’s services

The majority (approximately 4,000) of education and care services in Victoria transitioned to operate under the NQF. Around 400 services in Victoria do not fall within the scope of the NQF and they continue to operate under the *Victorian Children’s Services Act 1996* and *Children’s Services Regulations 2009* (collectively the Children’s Services legislation).

The types of services that remain regulated under the Children’s Services legislation include all limited hours and short-term licence services, budget-based services not funded for the child care benefit, occasional care services, sports and leisure services, early childhood intervention services and mobile services.

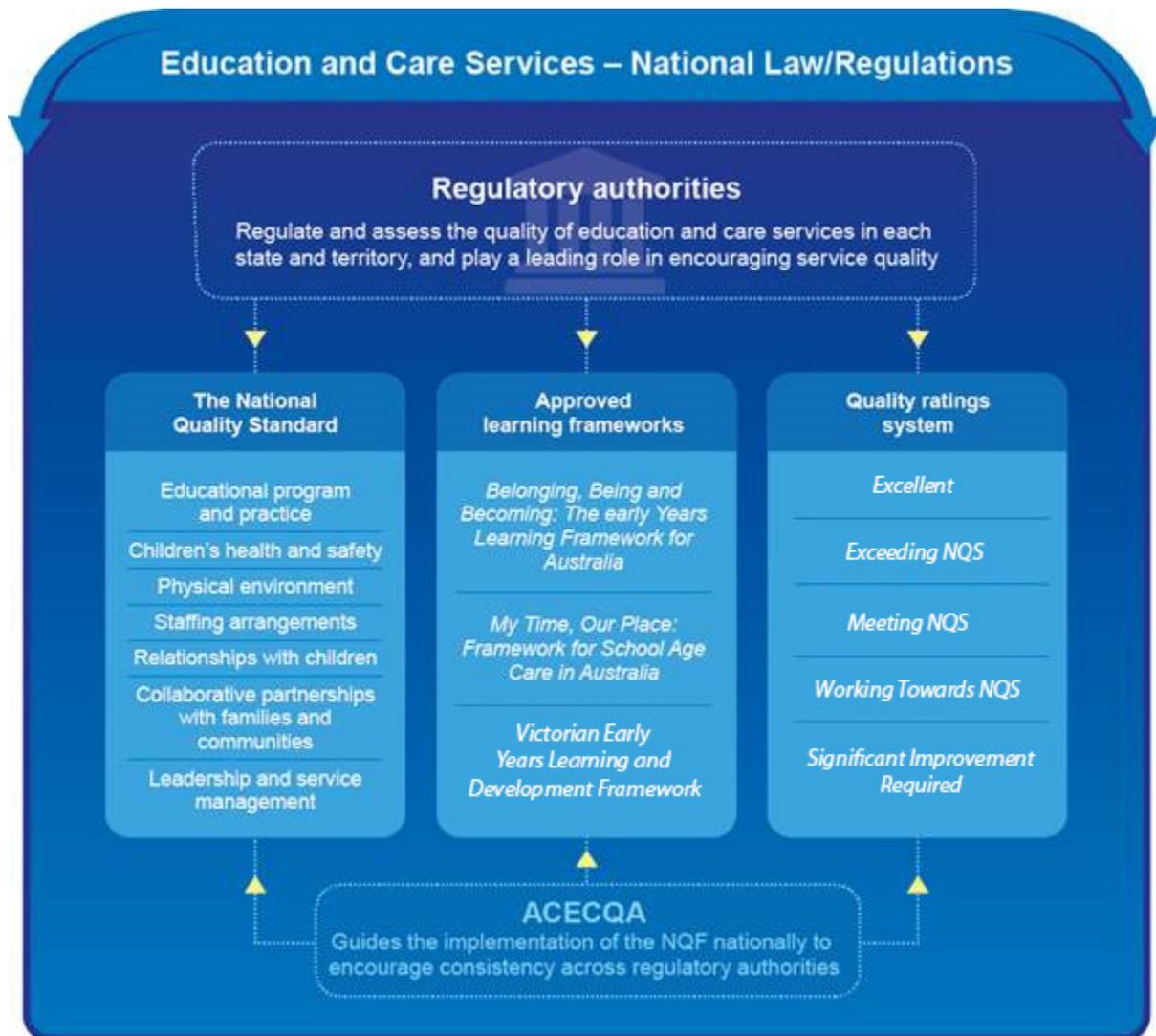
As such, when this document refers to the term ‘education and care services’, this is used to refer generally to both NQF services and those operating under the Children’s Services legislation.

However, this document focuses on the actual requirements and systems of the NQF. The Department regulates both types of services in a consistent manner and, for the most part, the regulatory framework is substantially the same, making the information in this document relevant to all education and care services operating in Victoria. Where the legislative regimes differ significantly in substance, we identify this in the text or in footnotes.

The regulatory landscape

Components of the National Quality Framework (NQF)

There are approximately 4,000 education and care services in Victoria that operate under the NQF. The diagram below displays the various components of the NQF, including ACECQA and the regulatory authorities.



Stakeholders in the regulatory environment

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

Other than the children who attend education and care services, the key stakeholders in the regulatory environment in Victoria are broadly divided into the following categories:

- government and law enforcement bodies, such as:
 - ACECQA
 - State and territory regulatory authorities
 - The Department of Education and Training (Commonwealth)
 - The Department of Health and Human Services (Victoria)
 - The Department of Justice (Victoria)
 - Victorian Institute of Teaching
 - Victorian Registration and Qualifications Authority
 - Commission for Children and Young People
 - Victoria Police
 - The Australian Federal Police
- parents and guardians
- approved providers, services and their representatives
- educators and their representatives
- the community of Victoria and their representatives.

The community of Victoria is a critical part of the regulatory environment. They have a general interest in knowing that education and care services are adequately monitored so that they operate in a safe and lawful way. Members of the community may also notify the Department of their concerns in relation to an education and care service. By doing so, they form an important part of the Department's monitoring processes.

The Department continually engages with stakeholders in both formal and informal ways. Stakeholder interaction and engagement is a critical aspect of the regulatory work of the Department. Such activities help the Department to maintain a contemporary understanding of the regulatory community and to tailor activities accordingly.

Good engagement is important for building the relationships that can become partnerships – partnerships that support compliance and allow any detected non-compliance to be positively addressed. Engagement with stakeholders also helps the Department to meet key objectives such as reducing the regulatory burden through information sharing.

The Department's approach to regulating

Objectives and principles

The aim of government regulation is economic or social improvement. In the Department's case as Victoria's regulatory authority, 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 every child's future, and lays the foundation for their development and learning.³ 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.⁴

The Department 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 Department's efforts and actions are therefore, targeted to meet the following objectives:

- 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.⁵

These objectives reflect the various aspects of the Department's distinct regulatory role, which includes driving quality education and care. To further support these objectives and guide Department officers every day – whether in their numerous and sometimes complex interactions with education and care services, or through development of policy or resourcing decisions – the Department operates 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.⁶

Risk-based and responsive regulation

In striving to meet its objectives, the Department makes decisions continuously about how to undertake its regulatory activities. This includes determining priorities and deciding how to address identified problems in specific education and care services or the industry more broadly. Consistent with the principles outlined above, the Department uses a risk-based approach to focus its attention on areas or problems that present the greatest risk to the safety, health and wellbeing of children.

³ Australian Children's Education and Care Quality Authority (ACECQA). Available at: www.acecqa.gov.au/whats-changed

⁴ Australian Children's Education and Care Quality Authority (ACECQA). Available at: www.acecqa.gov.au/whats-changed

⁵ Section 3 of the *Education and Care Services National Law Act 2010*

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

Additionally, when determining the action to take and resources to allocate, the Department considers where its activity can have the greatest impact on ensuring safety, health and wellbeing of children and/or driving quality improvement in education and care services.

Our regulatory activity reflects the principle of 'earned autonomy' and is tailored to the compliance levels and history of each provider. Providers who want to comply and demonstrate their ability to do so are supported by the Department. These providers receive less contact from the Department for example, and they can publicise and promote their assessed rating, which reflects their compliance and delivery of quality education and care. Conversely, the Department actively monitors providers and services who are not compliant and takes enforcement action where necessary.

The National Law equips the Department with a range of regulatory tools to use to address non-compliance. These tools range from providing information and guidance through to prosecution before a court or cancelling a provider's approval to operate. To achieve compliance within the regulated community, the Department focuses on selecting regulatory responses that match the seriousness of the issues and the behaviour of those involved.

In other words, the Department's use of the regulatory tools is responsive and proportionate to the problem being addressed. Doing so recognises the critical and ongoing relationships that the Department as the regulatory authority has with education and care services.

Given that a large proportion of the regulated community are willing and able to comply, much of the Department's regulatory activity is support-based and educational. Guidance and strong direction may be appropriate and is given by the Department where needed. An increasingly strong response from the Department is necessary in a small number of cases where deliberate or ongoing and repeated non-compliance is evident.

Our conduct

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

Authorised officers are Department staff who have been deemed by the Department as appropriate people to

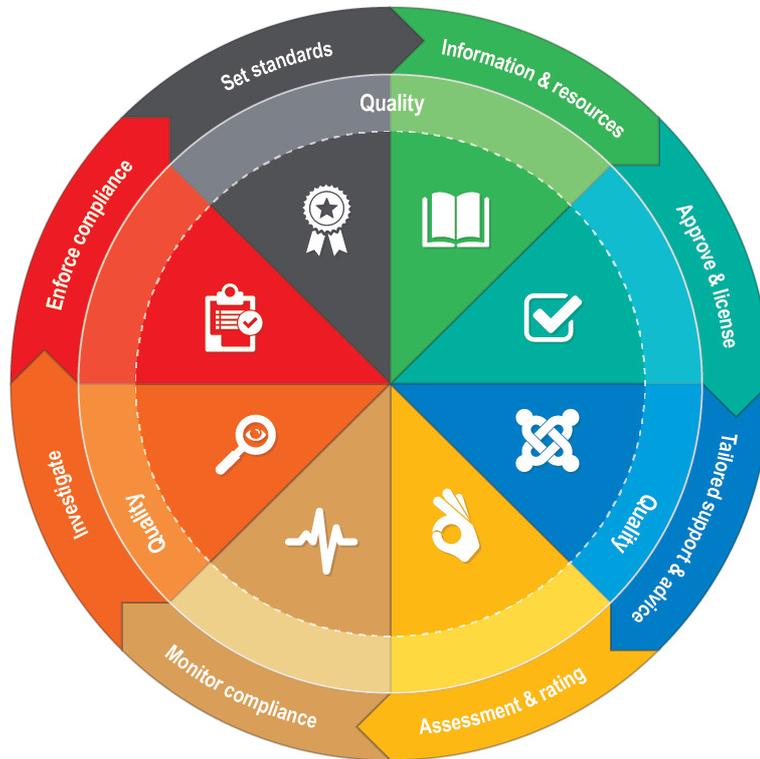


hold that title and to use their powers with the utmost integrity. Authorised officers conduct most public-facing Department activities and work directly with education and care services, educators, parents and members of the community. It is a privilege to be granted this authority and as such the Department sets high expectations of the behaviour and conduct of authorised officers.

The roles, powers and responsibilities of an authorised officer form part of the National Law and National Regulations. Authorised officers are provided with particular powers to conduct activities such as to assess and rate, monitor and investigate education and care services. When undertaking these activities the Department expects authorised officers and all Department staff to:

- make fair and lawful decisions
- be appropriate and consistent in responding to non-compliance
- be timely and consistent when taking action
- follow administrative law requirements, including providing procedural fairness
- act professionally.

The regulatory model



	<p>Quality</p> <p>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.</p>	
	<p>Set standards</p> <p>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.</p>	<p>Assessment and rating</p> <p>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.</p>
	<p>Information and resources</p> <p>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.</p>	<p>Monitor compliance</p> <p>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.</p>
	<p>Approve and licence</p> <p>Approval processes and assessment allow appropriate individuals and organisations to provide education and care services. See page 12.</p>	<p>Investigate</p> <p>Investigation of reported and alleged non-compliance with the NQF. See page 20.</p>
	<p>Tailored support and advice</p> <p>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.</p>	<p>Enforce compliance</p> <p>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.</p>

Set standards

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

The Department sets standards and expectations for the regulatory community that are all founded on these components of the NQF:⁷

- 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.

The Department regulates education and care services based on the requirements of the NQF 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?

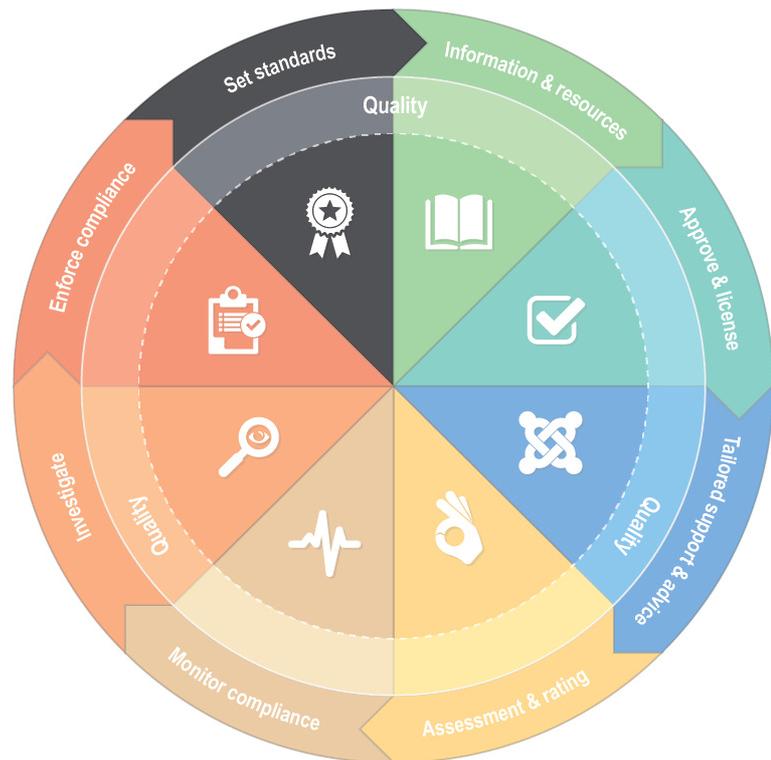
All states and territories work with the Commonwealth Government under COAG to develop NQF-related legislation. Specifically, the Education Council of COAG is responsible for developing and coordinating legislative changes.

Who develops 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. The Department communicates policy to education and care services in a transparent and accessible manner.

ACECQA is responsible for developing and publishing policy to ensure there is consistent implementation of the NQF across all states and territories. At times, the Department may also develop and publish policy about legislative or operational information that require interpretation or additional guidance, to give certainty to providers of education and care services.

The Department is responsible for developing and reviewing legislation and policy in relation to the Children's Services legislation.



⁷ 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 that are the foundation of all standards and expectations set by the Department.

Information and resources

The Department informs the community, parents/guardians, educators, current and aspiring education and care services, and other government and law enforcement bodies about the requirements and aspirations of the NQF, including the benefits for children.

A key role of the Department is informing stakeholders, including the general community, about legislative requirements in education and care services as well as the role and jurisdiction of the Department.

The Department's information and resources focus on raising awareness of the requirement for services to ensure the safety, health and wellbeing of children in their services and the requirement for continuous improvement to provide quality education and care to our next generations.

The Department, 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 education and care services. The Department delivers information and resources through a range of mechanisms including online and printable materials, newsletters and emails, an information telephone line, forums, seminars and stakeholder meetings.

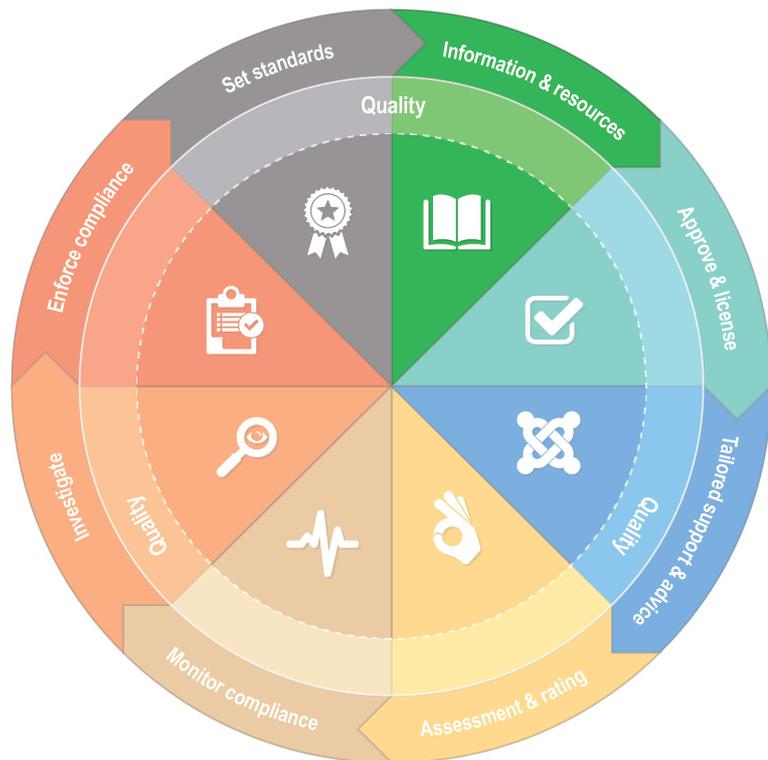
Through information and resources, the Department promotes the aspirations and benefits of the NQF.⁸ Where appropriate, the Department highlights the importance and centrality of the child in everything services do and the role of continuous improvement in providing quality education and care. This helps education and care services to deliver quality programs and helps those using these services to identify quality education and care.

The Department also engages with stakeholders on a regular basis, particularly in relation to legislative change. This engagement informs and assists the Department 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 education and care service or not, through:

- calling the Department on **1300 307 415**
- emailing the Department at licensed.childrens.services@edumail.vic.gov.au
- writing to the Quality Assessment and Regulation Division, GPO Box 4367, Melbourne, VIC 3001.



⁸ Information and resources are also developed in relation to the Children's Services legislation for those services operating under that system.

Resources

The following free resources are available for download from the Department's and ACECQA's websites:

- web content and fact sheets; topics include:
 - how to comply with particular aspects of the NQF
 - enforcement activity managed by the Department
 - how to report an incident to the Department or make a complaint
 - how to become licensed or approved
- frequently asked questions about a range of issues
- 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 license

The Department is responsible for approving those wishing to enter the industry and operate an education and care service.

The Department plays a critical role in monitoring and approving entry into the education and care service market.

To advertise and operate an education and care service, the Department 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.⁹

Approving education and care services is a critical aspect of the regulatory functions managed by the Department.

Through this process, the Department carefully considers the proposed education and care service's ability to comply with the requirements of the NQF,¹⁰ including their ability to meet the developmental and educational needs of the children they intend to enrol in their service.

In doing so, the Department also places limitations on certain aspects of the education and care service such as the number of children that may be educated and cared for in the space provided by the service. Rigorous approval processes assist the Department in ensuring quality and compliant education and care services are established.

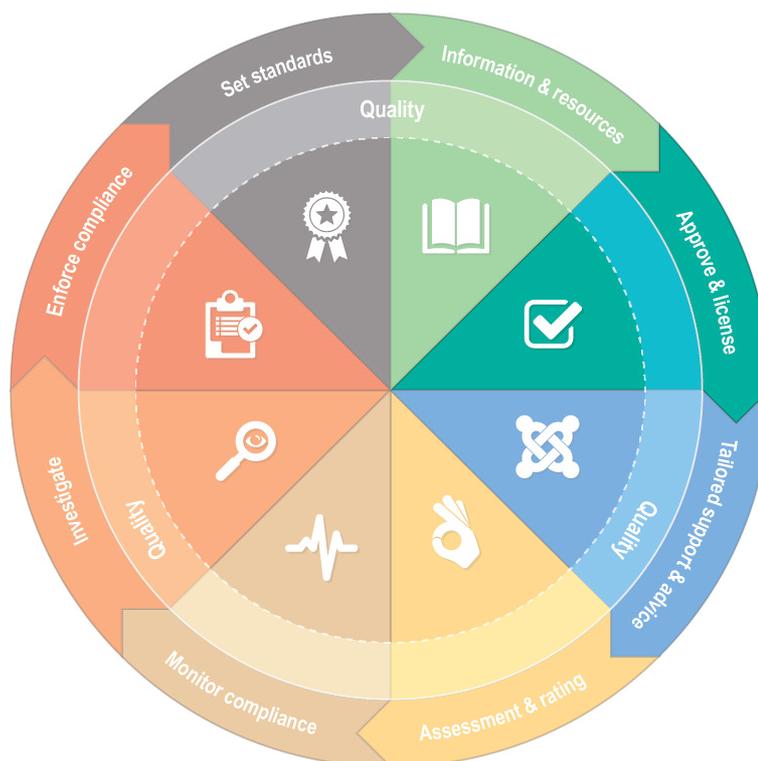
The approval process is also an opportunity for the Department to establish early, positive professional relationships with new operators and to set clear expectations about the seriousness and importance of their role, before children are educated and cared for.

Granting approvals

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

Service approval: A provider must obtain service approval to operate an education and care service.¹¹ There are two types of approvals under the NQF:

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



⁹ Under the Children's Services legislation, there are slight differences in this process, including in the terminology used. For example, the Department grants a 'licence' to those approved to operate under the Children's Services legislation rather than an 'approval' which is granted under the NQF. Additionally, while renewals of approvals are not required under the NQF, services operating under the Children's Services legislation are required to renew their licence on a regular basis.

¹⁰ In the case of Victorian Children's services, service providers will be assessed against the Children's Services legislation.

¹¹ In the case of Victorian Children's services, rather than provider and service approval, applications are made for premises approval and a licence to operate the education and care service.

The process for obtaining approval to operate an education and care service includes:

- an application by the proposed operator for the appropriate approval (first the provider and then the service)
- the assessment of that application by the Department where that assessment takes account of any and all matters required by the National Law and National Regulations
- liaison between the Department and the applicant
- decision by the Department about whether or not to grant the approval
- communication by the Department to the applicant of the decision.

The Department grants approvals where it is demonstrated that the education and care service will:

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



Tailored support and advice

An important aspect of the Department's role is to provide tailored support and advice to education and care 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 Department advises and supports education and care services, and anyone with an obligation under the NQF to comply with the requirements of the NQF.

At all times, the Department's advice and support is targeted to services ensuring 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 education and care services by the Department through reactive and proactive interactions with services. For example, authorised officer visits to services and associated follow up communications, contact through the Department's 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 education and care 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.

Tailored support and advice is a critical aspect of the Department's regulatory role.¹² In most cases, it allows the Department to build positive relationships with the regulated community:

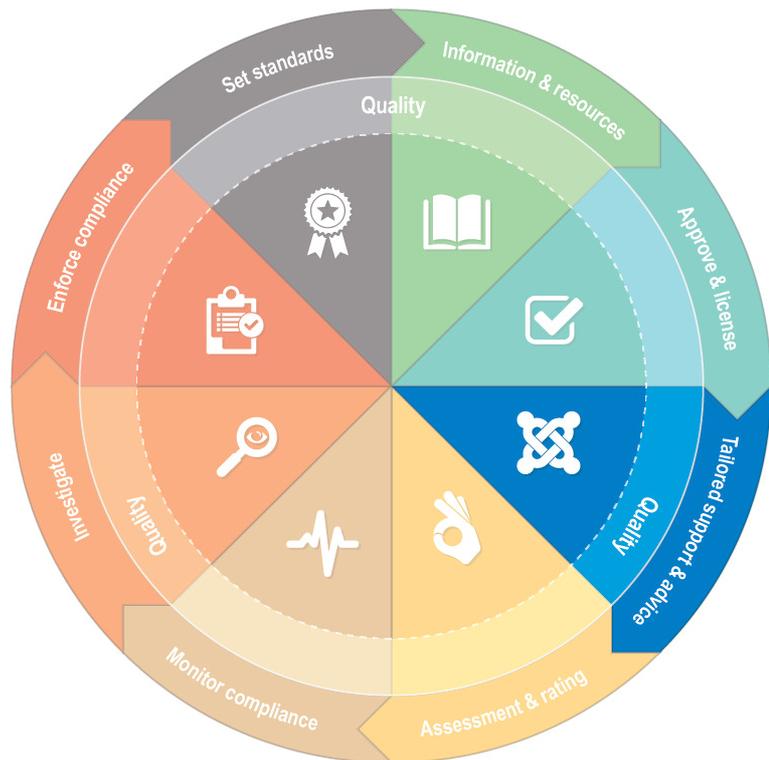
- so services proactively seek support to prevent or quickly rectify problems, before children are seriously impacted
- to reduce the need for further compliance or enforcement activity from the Department.

Tailored advice and support for education and care services

Advice: Education and care services can receive tailored support and advice:

- by calling **1300 307 415** or the service's nearest regional office (details at www.education.vic.gov.au/childhood/providers/regulation/Pages/complaints.aspx)
- by emailing licensed.childrens.services@edumail.vic.gov.au
- by contacting authorised officers from their nearest regional office
- through a visit by authorised officers including for assessment and rating.

¹² Tailored support and advice does not extend to legal advice.



Activities: Education and care services 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
- multi-service provider engagement meetings
- ad hoc, as needed, meetings to support education and care services.

Assessment and rating

Authorised officers assess the quality and compliance of education and care services against the National Quality Standard (NQS) and National Regulations.

Assessment and rating of education and care services forms a critical and unique part of the regulatory framework. All Victorian education and care services approved under the NQF are assessed and rated by the Department.¹³

Assessment and rating of education and care 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.

Education and care 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

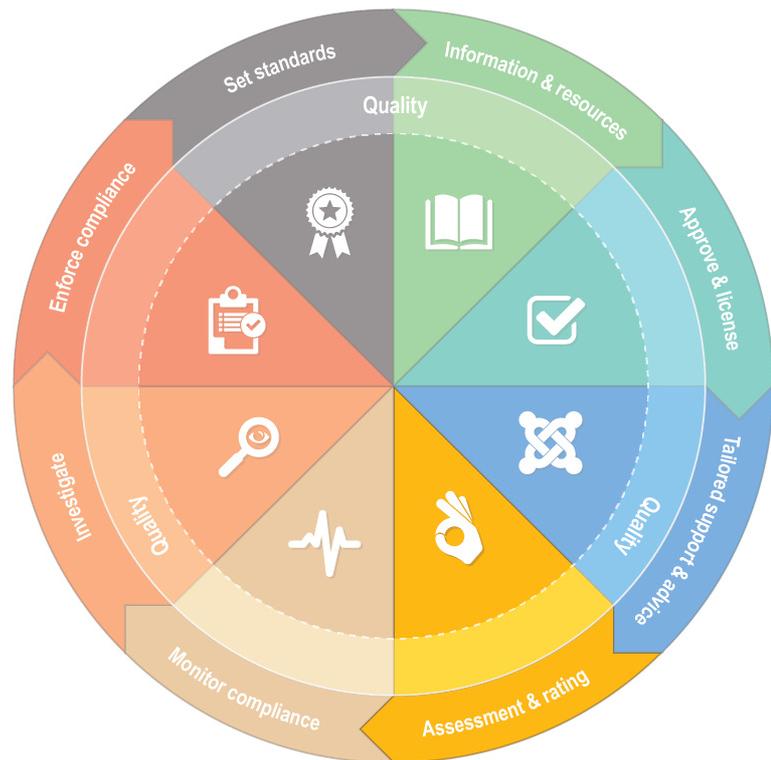
The NQS

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



¹³ The Children's Services legislation does not provide an assessment and rating process.

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 education and care services and is required by the NQF. Education and care 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. Education and care services are required to provide their QIP to the Department before the assessment and rating visit, allowing authorised officers to view the service's reflections and current areas of focus and their commitment to ongoing quality improvement.

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. Education and care 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.

Education and care service ratings can be found at www.acecqa.gov.au/national-registers.

Monitor compliance

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

The Department monitors compliance with the NQF to detect whether education and care services are ensuring the safety, health and wellbeing of children in their service and that quality education and care is being provided.

Monitoring also allows the Department to prevent problems occurring in certain situations, or to react to problems before they escalate. The Department 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 services as required by the National Law
- engaging with stakeholders
- receiving observations by authorised officers
- receiving observations or notifications from other agencies or regulatory or enforcement bodies
- collecting and analysing information, such as reports, data and business records.

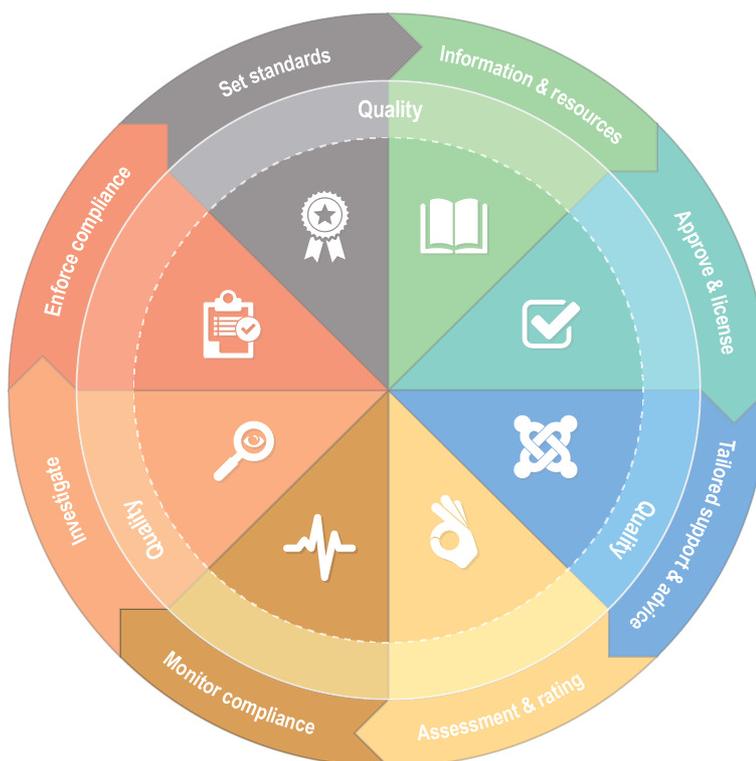
These varied monitoring methods help the Department to detect, respond to and prevent problems. Monitoring assists the Department to annually review and determine priorities such as the cycle for assessing and rating services, to plan their presence in services over a particular period of time and to determine if targeted approaches are necessary.

The Department prefers prevention over responding to a problem and allocates substantial resources to preventative processes – such as being rigorous in approval and licensing processes, providing timely and practical information and resources, and tailoring advice and support to help services comply.

Visits by the Department

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

Authorised officers conduct service visits to assess compliance with the NQF, including the quality of the program and environment provided by the education and care service. Education and care services are provided with written findings of the visit to assist them to rectify any non-compliance quickly and accurately.



The Department undertakes to visit in the following circumstances:

- before granting approval for an education and care service to start operating
- within twelve months of the education and care service commencing to operate
- for assessment and rating of education and care services
- to monitor an education and care service where non-compliance has been detected previously or something has changed since the last visit
- to monitor an education and care service at least every three years
- as often as needed in relation to investigations.

The Department determines the frequency of visits based on the level of risk or potential risk to the safety, health and wellbeing of children. The Department also considers whether more regular compliance visits can assist in bringing an education and care service into compliance. In certain situations, the Department conducts visits based on a predetermined timeframe, such as for assessment and rating.

After an authorised officer conducts a visit to an education and care service, the Department requires that the authorised officer and their manager assess the level of risk or potential risk to the safety, health and wellbeing of children at that service.

Where that assessment identifies a moderate or high risk, additional monitoring is applied to those education and care services, including more frequent visits by authorised officers until the Department is satisfied that the provider of the service is ensuring the safety, health and wellbeing of children. If this cannot be achieved in a reasonable timeframe and with reasonable support from the Department, enforcement action is initiated.

Investigate

The Department assesses all reported and detected alleged non-compliance with the NQF, including the quality of the education and care service and the program delivered to children in that service, to determine appropriate investigative activities and proportionate enforcement action.

The Department 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 Department assesses the notification 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 Department determines the next steps to take, including whether it meets the threshold for investigation and, if so, the priority for that 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 Department treats this as a first 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 Department uses.

Notifications

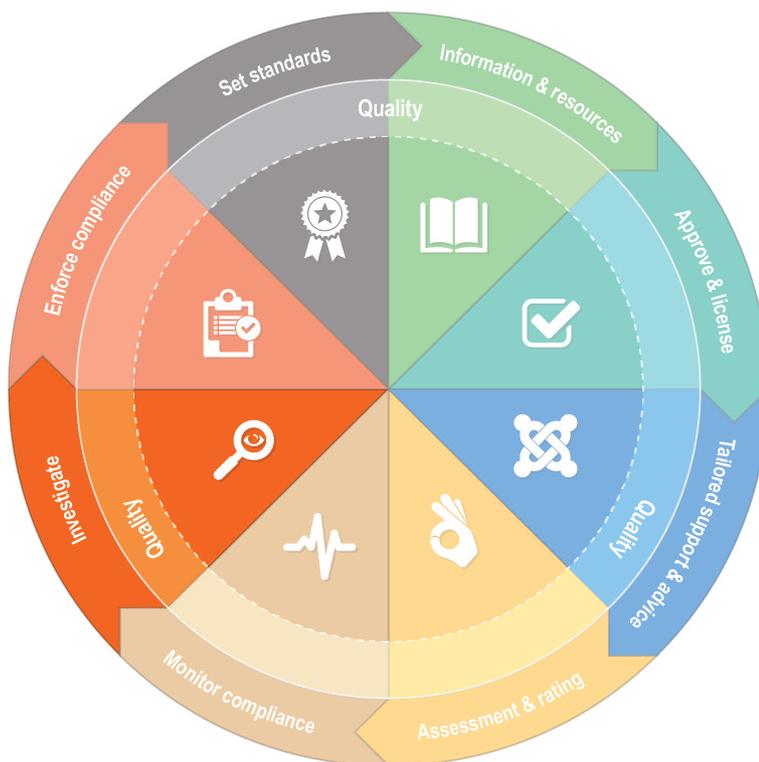
Notifications or reports may be made to the Department from any member of the community. For example, a complaint may be made from a parent about an education and care service their child attends, an educator may report something they saw, or a non-government or government organisation may pass on information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

Many of the Department's investigations are initiated following a notification from an education and care service as required under the National Law. An education and care service must notify the Department of:

- 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 Department's website has a fact sheet setting out notification requirements in detail. Examples of circumstances that an education and care service must report 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 education and care service's premises pose a risk to children. For example, the premises may be in a state of disrepair, or may be damaged by a natural disaster 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 Department's investigation process

Investigations by the Department 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 NQF. Investigations also seek to determine the impact of what occurred, the likelihood of recurrence and how the education and care service responded.

Depending on the prioritisation level, an investigation may include any or all of the following activities:

- review or audit the compliance history of the education and care service
- research public and non-public sources of information about the education and care service, for example the services' website, online advertising and data submitted to the Commonwealth Department of Education and Training about care provided
- inspecting the education and care service
- collecting relevant documents from the education and care service
- liaising with other government or law enforcement organisations if relevant to the details raised in the notification, such as Victoria Police, Child Protection and WorkSafe Victoria
- taking witness statements from relevant parties including educators, parents and other involved persons
- recorded interview with the approved provider and persons responsible for the alleged non-compliance
- collecting any other evidence that is considered relevant, for example medical records.

Where warranted, the Department collects evidence that is permissible to use in prosecutions or that will assist in taking other enforcement action. The Department's investigations also seek to identify ways for education and care 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 the non-compliances being investigated. The Department aims to achieve appropriate outcomes within reasonable timeframes and to minimise service disruption. In any investigation, as with any other regulatory activity of the Department, the safety, health and wellbeing of children is paramount.

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

Taking action after an investigation

When the Department finalises an investigation it makes determinations as to whether or not the evidence collected has substantiated each allegation or is insufficient to make a determination. The Department informs the approved provider of the education and care service of the outcome of the investigation including whether enforcement action, such as sanctions, are appropriate (see the next section).

The Department also communicates with parents or other notifiers about the nature of the investigation and outcomes including key actions taken by the Department. In doing so, the Department must not provide information that is protected by privacy legislation or that is not permitted under the National Law to be shared. For example, the details of certain statutory sanctions such as prohibitions are not provided because the National Law does not allow those actions to be publicly communicated.

Enforce compliance

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

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

Enforcement action can influence the attitude or behaviour of those with obligations under the National Law and National Regulations and has three key elements:

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

A sanction deters future non-compliance and may also be used as a punishment to reflect the seriousness of the non-compliance. Most statutory sanctions are permitted by the National Law to be published to inform the public and users of services and to deter other education and care services from non-compliance. The Department publishes enforcement actions on its website on a regular basis.

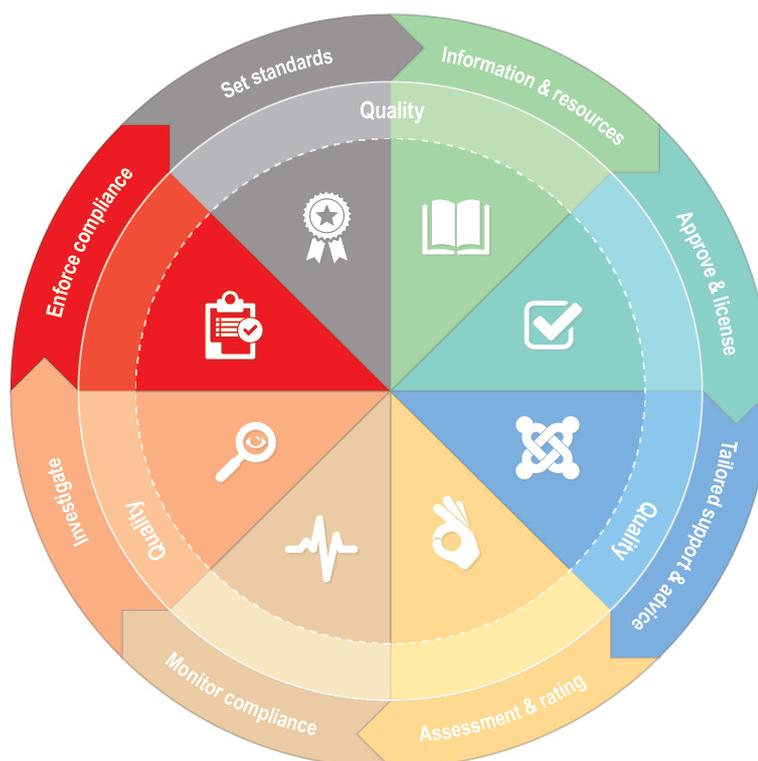
How the Department enforces compliance

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

Authorised officers of the Department support education and care services to rectify non-compliance as soon as it is identified. Tailored advice and support is nearly always successful and sufficient in ensuring education and care services address minor, one-off non-compliances. However, even if rectified, enforcement action may still be appropriate in certain situations.

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

- the service's compliance history
- an assessment of its current level of compliance
- the risk mitigation strategies the service implemented to respond to the incident or allegations
- the actual or potential risk posed by the incident or allegation 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 allegation occurring.



The Department assesses these factors to determine not only whether enforcement action is required but also the proportionality of that action. The Department uses a number of administrative sanctions to address and deter non-compliance. The National Law also provides a wide range of statutory sanctions that the Department may use as well as an ability for the Department to prosecute the most serious non-compliances.

Administrative and statutory sanctions

Administrative sanctions include:

- increased monitoring of the education and care service
- attendance of the approved provider at a formal interview
- a notice of caution issued to the approved provider, and in some circumstances to a staff member or educator.

The Department uses administrative sanctions 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 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, including:

- systemic and ongoing non-compliance
- immediate or potential risk to the safety, health or wellbeing of children, and/or
- where key tenets of the National Law and/or National Regulations have not been complied with.

The table below outlines the statutory sanctions available to the Department:

Statutory sanctions	
Amendment of service approval by varying or imposing a condition (section 55)	A written notice amending a service approval at any time without an application from the approved provider by: <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)	A written notice amending a provider approval at any time without an application from the approved provider by: <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)	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: <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.

Statutory sanctions	
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)	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: <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)	A written notice directing the approved provider to suspend a family day care educator if satisfied that: <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.
Direction to exclude inappropriate persons from service premises (section 171)	A direction to an approved provider, nominated supervisor and/or family day care educator to exclude an inappropriate person from a service premises). An inappropriate person includes a person: <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)	A written notice given to a person prohibiting them from: <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)	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.
Suspension of service approval (section 70)	A written notice to the approved provider suspending a service approval for any of the reasons set out in section 70.
Suspension of provider approval (section 25)	A written notice to the approved provider suspending a service approval for any of the reasons set out in section 25.
Emergency removal of children (section 189)	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.
Cancellation of service approval (section 77)	A written notice to the approved provider cancelling a service approval for any of the reasons set out in section 77.
Cancellation of provider approval (section 31)	A written notice to the approved provide cancelling a provider approval for any of the reasons set out in section 31.

Continuous quality improvement

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

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

The Department 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 Department assesses the fitness and propriety of new applicants and their ability to:

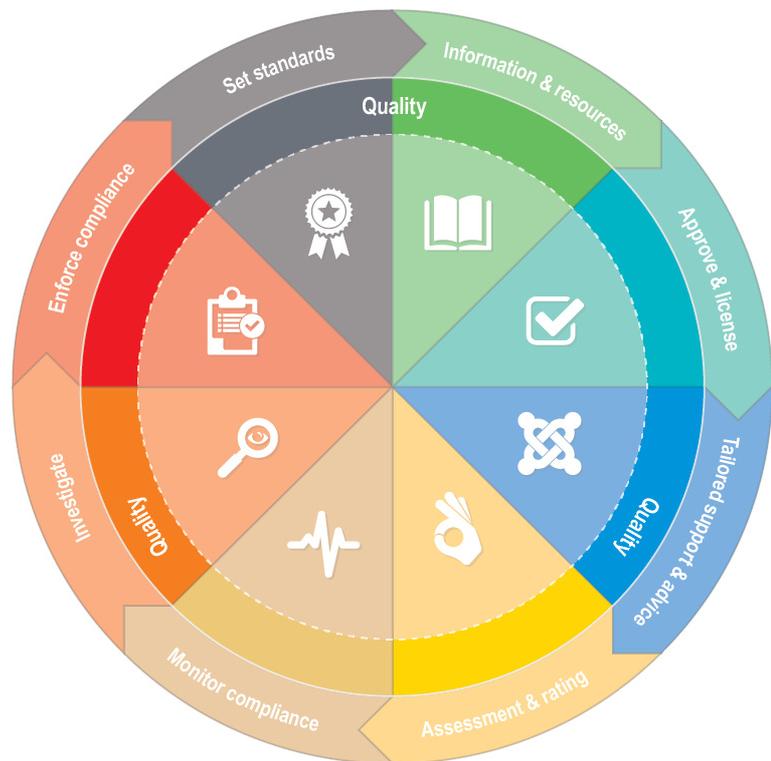
- provide an education and care service that meets developmental and educational needs of the children
- understand their obligations to assess and improve the quality of their service on an ongoing basis.

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

Continuous quality improvement is also driven by the Department by requiring and viewing an education and care 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 – at least annually.

All aspects of the Department's regulatory framework incorporate quality. This is entirely appropriate and necessary as the Department 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, Complaints & Feedback

Reviews

Many decisions by the Department to impose a statutory sanction are subject to an internal review procedure and/or an option to seek an external review conducted by the relevant court or tribunal. Assessment and rating decisions are also subject to internal and external review procedures. Review rights and processes are set out in writing by the Department to the approved provider or other obligated people at all times they apply.

The Department treats review processes seriously and ensures that internal 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 Department 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 Department welcomes feedback about its processes or practice including staff performance, and invites that information verbally or in writing directly to the Department staff member by:

- emailing quality.assessment.regulation@edumail.vic.gov.au
- calling the Department on 03 8392 5002.

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 Department. These types of complaints are an important aspect of the Department's monitoring and detection process. The investigations section in this document explains the type of matters that will be investigated and how the Department carries out its investigations.

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

About the Department – staff or actions

Anyone wishing to make a complaint about a Department staff member or their experience with the Department is encouraged to contact their nearest regional office in the first instance. Those contact details are on the Department's website at www.education.vic.gov.au/childhood/providers/regulation/Pages/complaints.aspx.

If your complaint cannot be resolved by the regional office, download a complaint form available from the Department's website then complete and email it to quality.assessment.regulation@edumail.vic.gov.au or call 03 8392 5002.

The Department is committed to responding to complaints effectively and requires all staff to be committed to effective dispute resolution. Our complaints procedure framework is available on the Department's website.

If a person is not satisfied with the Department's actions they can also contact the Victorian Ombudsman (www.ombudsman.vic.gov.au).

Glossary

Term	Definition
Approved learning frameworks	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: <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 NQF Act.
Australian Children's Education & Care Quality Authority (ACECQA)	ACECQA is the independent national authority responsible for: <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	A term used in this document to describe the: <ul style="list-style-type: none"> • <i>Children's Services Act 1996</i>, and • <i>Children's Services Regulations 2009.</i>
Department of Education and Training (the Department)	Victoria's regulatory authority responsible for the approval and regulation of education and care services operating in Victoria.
Education and care services	A term used in this document that refers to services in Victoria who provide approved or licensed education and care to children.
Licensee	A person who holds a licence to operate a children's service under the <i>Children Services Act 1996</i> .
National Law	<i>Education and Care Services National Law Act 2010</i>
National Quality Framework (NQF)	The NQF includes the: <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> • National Quality Standard • Approved learning frameworks.
National Quality Standard (NQS)	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: <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	<i>Education and Care Services National Regulations 2011</i>