

Regulating
for Quality



Regulating for Quality

Queensland's risk-based approach to regulating
early childhood education and care



Queensland
Government

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Introduction

The Department of Education has a significant role to play in ensuring all Queensland children have a great start in life, one of the key commitments of the Queensland Government's [Our Future State: Advancing Queensland's Priorities](#).

The department, through the division of Early Childhood and Community Engagement, is committed to making sure all Queensland children have the opportunity to benefit from quality early years services and successfully transition to school. We are connecting with families to give all children a great start to their learning journey.

Quality early childhood education and care services lay the foundation for a great start in life for Queensland's children. Research shows that quality education and care contributes to better social, educational and employment outcomes across the life span.

As the Regulatory Authority responsible for regulating approved early childhood education and care services in Queensland, the department plays a vital role in ensuring children and families receive safe, high quality services.

The department regulates a range of early childhood education and care services under the National Quality Framework (NQF), including family day care (FDC), kindergarten, long day care (LDC) and outside school hours care (OSHC) services. The department also regulates a smaller number of services operating under the *Education and Care Services Act 2013* (QLD) (ECS Act).

In line with the key objectives of the NQF, the department regulates services in order to:

- ensure the safety, health and well-being of children attending education and care services
- improve educational and developmental outcomes for children attending education and care services
- promote continuous improvement in the provision of quality education and care services.

This document sets out how the department undertakes its regulatory role, using the Regulating for Quality (R4Q) risk-based framework, to drive continuous quality improvement in early childhood education and care services.

The R4Q risk-based approach is designed to effectively identify and assess risks to the quality of education and care services and ensure that the department focuses its regulatory efforts effectively on areas that present the greatest risk to the health, safety and wellbeing of children.

This is consistent with the department's [Enterprise Risk Management Framework](#), which makes clear that the department's lowest appetite is for risks associated with the safety of children and students.

Under R4Q, the department is committed to maximising transparency in regulatory practice, and this document aims to provide clarity to the regulated sector and the wider community about what we do and how we do it. It also sets out a framework for engaging with the sector and other key partners, as well as how we will be accountable for our regulatory work through annual reporting.

Roles and responsibilities

Ensuring early childhood education and care services in Queensland provide safe, high quality learning environments is a shared responsibility between the approved providers of those services and the department as Regulatory Authority.



Approved providers are responsible for the health, safety and wellbeing of children attending their services, and for providing quality learning environments for those children. Approved providers must comply with relevant legislative requirements and ensure they have appropriate controls in place to manage risks within their services. Under the NQF, approved providers are expected to work closely with families to ensure the services they provide meet the individual needs of all children in their care.

The Regulatory Authority supports approved providers to meet their responsibilities by providing information and advice, and by taking action as necessary when regulatory requirements are not met.

Families have a vital role to play as consumers of early childhood education and care services, working with approved providers to ensure the individual needs of their children are understood and met, and letting approved providers (and where necessary, the department) know when standards of care fall short.

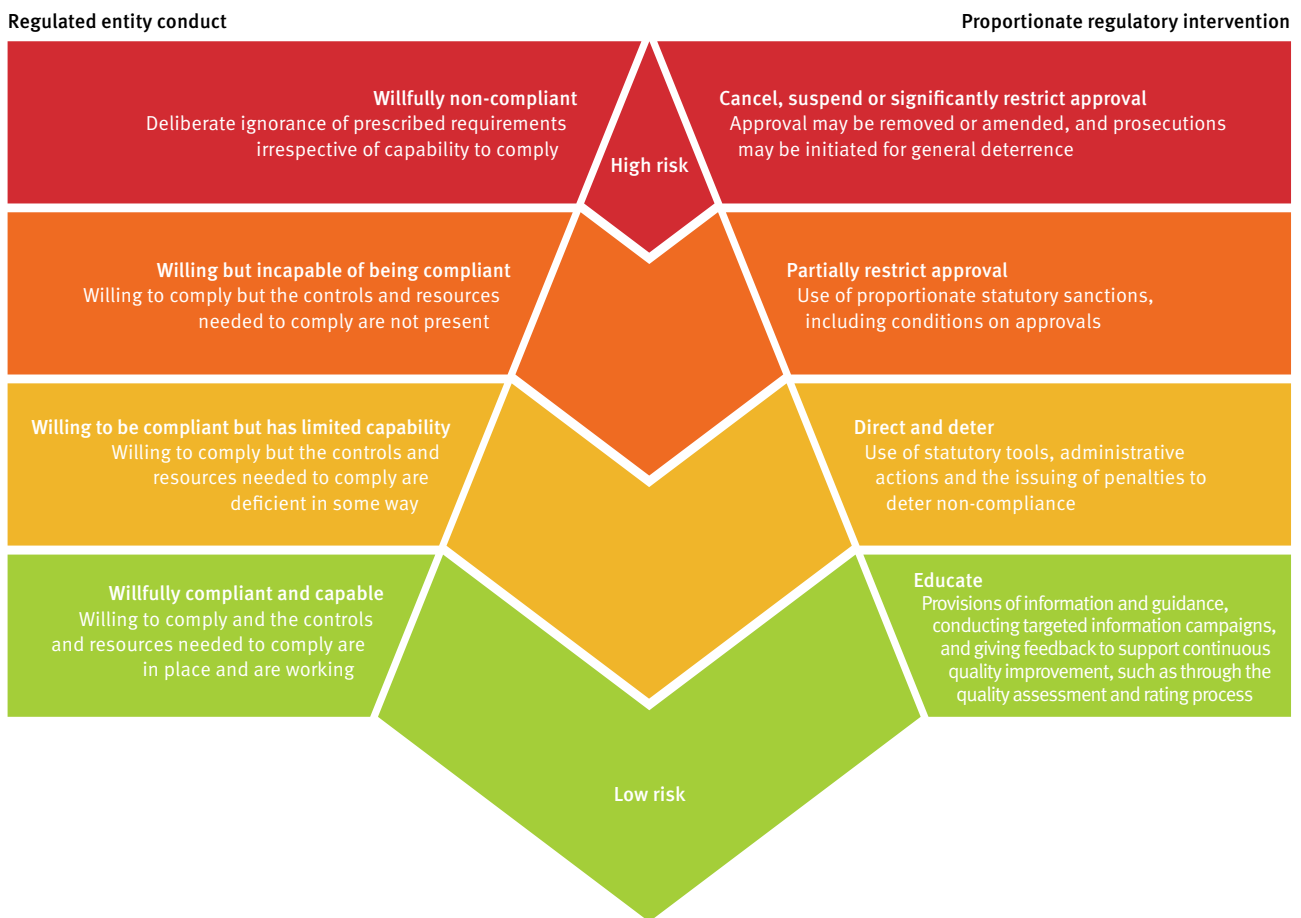
The department values its relationships with a range of stakeholders that also have an important role to play in supporting the development of quality early childhood education and care (ECEC) services, such as **sector peaks** and other representative and professional bodies.

The regulatory relationship

The department works closely with the regulated early childhood education and care sector to achieve quality outcomes for children. The R4Q risk-based approach guides the nature of the relationship between the department and individual services. Services that are willing and able to comply receive less contact from the department, and the relationship is generally one of information, advice and support, whereas non-compliant services will be actively monitored and enforcement action will be taken when needed.

Similarly, the action taken by the department when non-compliance is identified will be dependent on risk, and a number of risk factors will be considered to determine the risk level. The response will be proportionate to the level of risk, and can range from giving verbal advice and guidance right through to suspension of service approval or prosecution.

Regulatory pyramid



In carrying out their regulatory activities, departmental staff must act with absolute integrity and in accordance with the Code of Conduct for the Queensland Public Service and the Department of Education’s Standard of Practice. The roles, powers and responsibilities of the department’s authorised officers are set out in the National Law and Regulations and in the ECS Act. Authorised officers are provided with particular powers to conduct activities such as assessing and rating, monitoring and investigating early childhood education and care services. Authorised officers are expected to carry out their activities at all times in a manner which is lawful, procedurally fair, professional, transparent and consistent with the R4Q risk-based approach.

If you are unhappy with the conduct of a departmental officer at any time, you may make a complaint to the department – please see the Reviews, complaints and feedback section at the end of this document for more information.



Legislative framework

The Chief Executive of the Department of Education as the Queensland Regulatory Authority is responsible for administering and enforcing the NQF and ECS Act in Queensland.

The Chief Executive's powers under the NQF and the ECS Act are delegated to appropriately qualified officers within the department as detailed in the relevant [instruments of delegation](#).

The NQF consists of the Education and Care Services National Law, the Education and Care Services National Regulations and the National Quality Standard (NQS).

The ECS Act and Regulations apply in Queensland only, and regulate the following:

- services funded by the Queensland Government to provide limited hours care
- occasional care services
- budget-based funded services that do not receive Australian Government Child Care Subsidy
- early childhood education and care services that are also disability services funded under the Disability Services Act 2006.

The ECS Act covers many of the same compliance matters as the National Law and to the extent possible the department regulates providers approved under the ECS Act using the same risk-based approach.

The term 'early childhood education and care services' is used throughout this document to refer to all approved services, including those regulated under the NQF and those regulated under the ECS Act. When a particular function relates to only one group of services, this is noted.

[The Australian Children's Education and Care Quality Authority \(ACECQA\)](#) is the national body that monitors consistency with the NQF. ACECQA works with all governments to provide guidance, resources and services to support the sector to improve outcomes for children. The ACECQA website is a valuable source of information for services about the requirements of the NQF, including guides and factsheets as well as forms and templates.

Guiding principles of R4Q

Under R4Q, the department's approach to regulation is underpinned by the following guiding principles, which are based on best practice principles of modern regulation:

Proportionality: regulatory action is taken in response to the level of risk or harm to children attending ECEC services, and at a cost (i.e. financial time, resources) justified by that risk.

Transparency: regulatory action is taken in a way that demonstrates operational consistency, unbiased decision-making and the public provision of regulatory information.

Defined outcomes and priorities: our regulatory priorities, objectives, actions and indicators of effectiveness are clear for all stakeholders and our culture and leadership are infused with a common goal.

Risk-based approach embedded: risk identification and management is integrated into strategy, planning decision-making, communication and processes, supporting an agile and problem-centric approach to regulation.

Effective stakeholder relationships: our regulatory philosophy promotes and values reciprocal engagement and communication with all stakeholders, incorporating their voices in decisions that affect them.

Effective information management: data is collected, retained and analysed in a way that helps identify, manage and communicate risk through all regulatory actions.

Measure, review, continually improve risk management: our learning, evaluation and performance framework supports our leaders to use review findings to continually improve R4Q.

Risk-based approach

Under R4Q, the department organises its regulatory activities into three categories:

- application-based activities:
 - assessing and approving applications from individuals and organisations who wish to provide early childhood education and care services
- proactive activities:
 - monitoring services to ensure compliance with regulatory requirements
 - assessing and rating services against the NQS
 - providing information, support and advice to encourage voluntary compliance and continual quality improvement
- reactive activities
 - investigating and responding to non-compliance, which can be identified through notifications, complaints, service visits or other intelligence

The following sections set out the department's approach to each of these areas of activity.

Application-based activities

The department operates robust approval processes to ensure that those who provide early childhood education and care services are fit and capable to do so. As part of these processes, the department carefully considers applicants' ability to provide safe, high quality early childhood education and care services that are fully compliant with the requirements of the NQF or the ECS Act.

Provider approval: individuals or organisations wishing to provide one or more early childhood education and care service must first apply for provider approval. The department assesses the fitness and propriety of applicants for provider approval, which may include their management capability.

Service approval: an approved provider must obtain service approval for each individual education and care service they operate. The department assesses a range of factors in deciding service approvals, including the suitability of the proposed premises, the adequacy of policies and procedures, and the capability of the approved provider to operate the proposed service in a way that meets the requirements of the NQF.



The department works closely with applicants throughout the assessment process. Applications are only determined after all prescribed information is provided by the applicant, and the department strives to ensure each applicant is provided procedural fairness before a decision is made. Further information may be sought, and applicants may be invited to attend an interview as part of the assessment process.

Decisions must be made within legislative timeframes, and accurate records of all applications and decisions must be kept.

Once an application has been decided, the applicant will be informed of the decision, and of their avenues for review.

The department also determines applications for temporary and service waivers, amendments and full merit internal reviews of original decisions made by the department under the relevant legislation, including licensing, compliance and assessment and rating decisions.

Each assessment process includes an assessment of risk that informs the level of scrutiny given to the application, as well as the outcome for final decision. Relevant factors may include an approved provider's past compliance history, the type and size of the service, the age of children in care, and – in the case of waivers – the nature of the provision to be waived and the potential impact on children's health, safety and wellbeing.

Proactive activities

The department works proactively with approved providers to ensure they understand and are able to meet regulatory requirements, and to support them to continually improve the quality of the services they provide to children and families.



Monitoring

Authorised officers of the department conduct regular monitoring visits to services to assess their compliance. Visits may be announced or unannounced, and may consider a broad range of compliance requirements or be targeted to a particular area of concern or risk. Under R4Q, the department determines how frequently a service is monitored by considering a range of risk factors including the service type, its quality rating and history of non-compliance.

Services are provided with the findings of any monitoring visit to enable them to rectify any non-compliance identified and to support continuous quality improvement.

Assessment and rating

Services approved under the National Law are assessed and rated against the NQS. The rating report provides the service with a detailed assessment of its quality – including strengths and areas for improvement – against each of the 15 standards within the NQS, as well as providing a

rating for each quality area and an overall rating for the service as a whole. Publication of service ratings provides families with reliable information about service quality to inform their decisions about their children's education and care.

Services can receive one of five possible ratings:

- Excellent (awarded by ACECQA)
- Exceeding
- Meeting
- Working Towards
- Significant Improvement Required

Services are provided with notice of the date of their assessment and rating visit, and must submit their Quality Improvement Plan. During the visit, the authorised officer collects evidence against all elements of the NQS, by observing practice, discussing their observations with staff, and sighting relevant documentation. Following the visit, a draft report is provided and services have an opportunity to provide feedback. This feedback is considered before the final report is issued.

As with monitoring visits, decisions about when to assess and rate a service are based on a number of risk factors, including current rating, time since last assessment, any changes to the approved provider or key personnel, and compliance history. If a service receives a rating of Significant Improvement Required, the department will take enforcement action when needed to ensure the issues identified are quickly and effectively addressed.

Information, advice and support

The department is committed to supporting voluntary compliance and continuous quality improvement by ensuring approved providers have access to the information they need to understand their legislative requirements. Most services are willing and able to comply with their requirements, and for these services – in line with the regulatory pyramid approach – most interactions with the department will be in the area of information, advice and support.

As well as helping services to understand their obligations through the monitoring and assessment and rating processes, the department provides a range of information resources in the form of web content, fact sheets, newsletters and e-bulletins.

Meetings with approved providers, local networks and forums provide important opportunities for the department to support approved providers to maximise compliance but also enable departmental staff to hear from the sector about emerging issues and risks that may require a regulatory response.

All community education and sector engagement activities are informed by detailed analysis of regulatory data, so that trends or patterns can be identified and to ensure that timely information is provided that effectively targets emerging risks.

Tailored interventions

When a particular risk is identified within the sector, the department will assess the scope and impact of that risk, and may develop tailored interventions to ensure that risk is addressed in a targeted and comprehensive manner. Tailored interventions will often include a mix of multiple strategies – from service monitoring and high level compliance to sector engagement and communications – depending on the specific nature of the risk concerned.



Reactive activities

Reactive activities are those that the department undertake when it receives information about non-compliance – assessing the information, investigating the non-compliance when necessary, and taking appropriate action including enforcement action.

The department receives information about non-compliance through a variety of means, including notifications, complaints, and other intelligence. Under the R4Q framework, this information is assessed to identify what risk, if any, may be posed to children. The amount of regulatory effort expended on any individual matter is proportionate to its level of risk, and the use of a consistent framework to assess risk ensures that similar matters receive a consistent response.

Notifications

Approved providers are required to notify the department of a number of specific matters, including serious incidents, complaints and any circumstances that pose a risk to the health, safety or wellbeing of children attending the service.

When the department receives a notification, a risk assessment is undertaken to determine what, if any, level of risk the matter may present. If the

matter does not meet the threshold for notification, it will be returned to the approved provider with an explanation as to why it is considered non-regulatory. If it does meet the threshold, the risk assessment will inform what happens next – is more information required, or can action be taken on the basis of the information provided?

Complaints

The department's response to complaints submitted about early childhood education and care services is guided by its Early Childhood Education and Care Complaints Management Policy. In line with the policy, complainants are encouraged to raise the matter first with the approved provider, before making a complaint to the department. Where a complaint is not within the department's responsibility, the complainant will be referred to either the approved provider or other relevant organisations. Where the complaint does fall within the responsibility of the department, a risk assessment will be undertaken to determine the most appropriate and proportionate course of action.

Other intelligence

Intelligence about non-compliance can come from a range of sources – information may be shared by other regulators (such as Blue Card Services), or





non-compliance may be directly observed by authorised officers in the course of a monitoring or assessment and rating visit. In some cases this information may be sufficient to substantiate a breach and take immediate action, but in others further enquiries may be needed.

Many matters can be resolved at an early stage, as a result of initial enquiries with the approved provider, educators, families or complainants. However, in some instances where a significant risk of harm to children is involved, and where the department needs more evidence to determine what has occurred and who is responsible, the department will conduct an investigation.

Investigations

An investigation is a process by which relevant and reliable evidence is gathered to enable a decision to be made about whether there has been a breach of a compliance obligation. Investigations are undertaken to determine what happened and who is responsible, as well as how to prevent recurrence and strengthen controls. An investigation may include:

- asking questions of witnesses, which may include staff, parents or community members and recording notes of those discussion or making witness statements
- asking questions of the person who may have committed the breach

- reviewing documents and taking copies/ photographs of relevant documents and discussing these with witnesses or the person who may have committed the breach
- making observations and taking photos of relevant evidence
- receiving intelligence from other government agencies such as Queensland Police Service, Blue Card Services, Department of Child Safety, Youth and Women etc.

The principles of fairness and natural justice are applied to each investigation, with the rights and best interests of children at the forefront of all investigative processes. Some investigations may involve limited enquiries and assessment of evidence, while others may be protracted depending on the volume and complexity of the evidence to be assessed and the potential involvement of other agencies.

Compliance and enforcement action

When non-compliance is identified and substantiated, whether at a monitoring visit, following a notification, or as a result of a complex investigation, a risk assessment is undertaken to determine an appropriate and proportionate regulatory response.

As the regulatory pyramid shows, this action can range from providing information and advice where

non-compliance is low-risk and the approved provider is willing and able to address the non-compliance, to high level statutory sanctions when the non-compliance involves serious harm to children and/or significant negligence on the part of the approved provider.

A range of mitigating and aggravating factors are considered when determining appropriate action, including the impact of the non-compliance on children's health, safety and wellbeing, the service's compliance history, the presence or absence of appropriate controls, and the attitude of the approved provider to correcting non-compliance or preventing recurrence.

When determining the appropriate response, particularly in the case of high level enforcement actions, the department will also consider:

- whether the proposed response will have the effect of deterring the person engaging in the conduct again
- whether the alleged offence is of considerable public concern
- the availability and efficacy of any alternatives to the proposed response
- whether or not the proposed response would be perceived as counterproductive to the interests of justice
- the likely expense and time the proposed response will take
- the likely outcome of the proposed response, including if the proposed response is prosecution, the penalties and sentencing options available to the court
- the necessity to maintain public confidence and to uphold the law
- the youth, age, physical or mental health or special infirmity of an individual, their past conduct and background.

The range of possible responses available when a breach has been established includes:

- additional monitoring of the service
- provision of information or guidance
- Compliance Caution Letters
- amendment to approvals/certificates
- suspension of approvals/certificates
- cancellation of approvals/certificates (Section 92)



- revocation of service or temporary waivers (Section 99)
- Compliance Directions (Section 176)
- Compliance Notices (Section 177)
- Notices to suspend education and care by a family day care educator (Section 178)
- Emergency Action Notices (Section 179)
- Enforceable Undertakings (Section 180)
- Prohibition Notices (Section 182)
- Emergency Removal of Children (Section 189)
- Directions requiring an Approved Provider, Nominated Supervisor or family day care educator to exclude an inappropriate person from an education and care service premises (Section 171)
- Prosecution of offences (Section 283).

Annual planning and reporting

The Regulatory Authority produces an Annual Statement identifying current harms, emerging risks and areas of regulatory focus for the year ahead. Publication of the statement ensures the Regulatory Authority's regulatory work is transparent, and encourages voluntary compliance by the regulated sector.

The Statement is informed by:

- regular analysis of regulatory data
- an annual environmental scanning (e-scan) process, gathering feedback and risk intelligence from partners and stakeholder.

The data analysis process provides a solid evidence base regarding current trends or patterns of risk across the sector. The aim of the e-scan process is to ensure that the department is proactively identifying emerging issues and risks, by seeking risk intelligence from Queensland's regulated sector, regulatory authorities in other states and territories, and other relevant regulatory agencies.

The e-scan process also provides an opportunity for regulated entities to give feedback on the Queensland Regulatory Authority's regulatory performance, in line with the R4Q commitment to effective stakeholder relationships and continued quality improvement.

Reviews, complaints and feedback

Reviews

Many decisions made by the department are subject to internal review procedures, and/or to external review, including certain statutory sanctions, service and provider approval decisions, and quality ratings. Whenever a right to review applies, the department will advise the approved provider of this in writing.

Internal reviews are always undertaken by a new decision maker, and in line with any relevant legislative timeframes. Applicants for review will receive acknowledgement of their request, and will be informed of the outcome of the review in writing (including, where relevant, avenues for further review). The department will at all times ensure that applicants for internal review are provided procedural fairness before a decision is made.

Complaints

As noted above, complaints about early childhood education and care services are covered by the department's Early Childhood Education and Care Complaints Management Policy. To make a complaint about an early childhood education and care service:

- Phone or email your nearest regional office. Authorised officers have the power to investigate complaints and will answer your questions or concerns about the delivery of early childhood education and care.
- Download a complaint form (PDF, 126KB) (DOCX, 16KB) to fill in and email to your nearest regional office: <https://earlychildhood.qld.gov.au/contact-us/complaints>. If you do not know your regional office, email your form to central office at regulation@qed.qld.gov.au.

Complaints about the conduct of departmental staff are called customer complaints and are covered by the department's Customer Complaints Management Framework: <https://qed.qld.gov.au/contact/customer-compliments-complaints>.

You can make a customer complaint by:

- completing the form on the Queensland Government – [complaints and compliments](#) webpage
- calling 13QGOV (13 74 68) within Australia
- visiting a QGov counter.

Feedback

The department welcomes feedback on this paper, and on our performance as a regulator.

To provide feedback, please email us at ecec@qed.qld.gov.au



Your regional office support team

The Department of Education’s authorised officers are here to help all services meet their legislative requirements. Contact your nearest regional office for assistance.

Far North Queensland

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cairns.ecec@qed.qld.gov.au

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Useful links

Our Future State: Advancing Queensland’s Priorities:
www.ourfuture.qld.gov.au

Enterprise Risk Management Framework:
www.qed.qld.gov.au/publications/management-and-frameworks/enterprise-risk-management-framework

Legislative Delegations and Authorisations Register:
www.ppr.det.qld.gov.au/pif/authorities/Pages/default.aspx

Australian Children’s Education and Care Quality Authority:
www.acecqa.gov.au

Compliments, suggestions and customer complaints:
www.qed.qld.gov.au/contact/customer-compliments-complaints