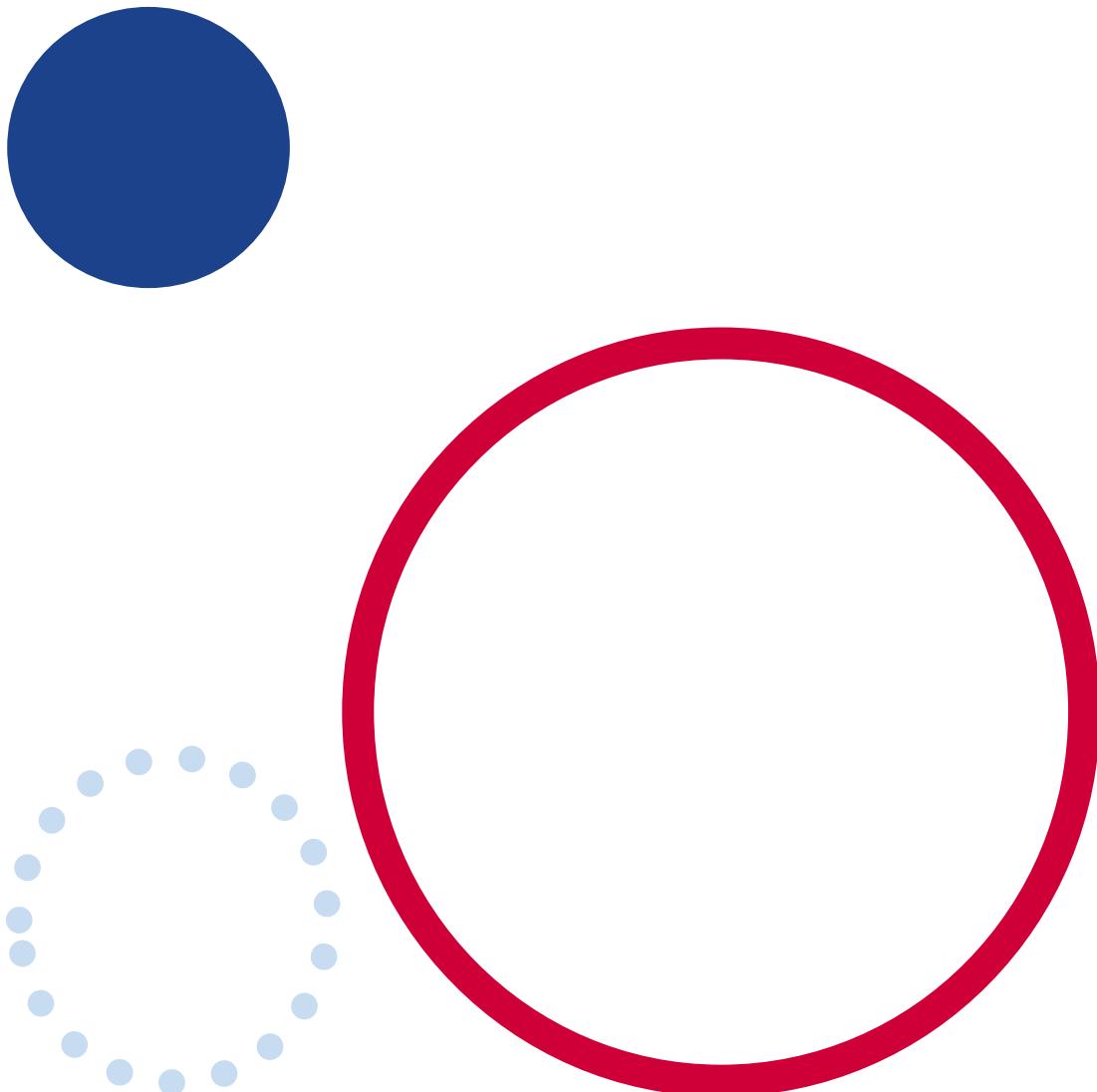


# The NSW Regulatory Approach to Services Rated ‘Significant Improvement Required’

**Early Childhood Education  
Quality Assurance and Regulatory  
Services Directorate**



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# 1. Purpose

This policy outlines the approach of the NSW Regulatory Authority in addressing risks associated with services rated ‘Significant Improvement Required’.

## 2. Context

The NSW Department of Education is the NSW Regulatory Authority for Education and Care services in NSW. The NSW Regulatory Authority exercises its regulatory functions under the following legislation:

- *Children (Education and Care Services National Law) (NSW)* No 104a (National Law)
- *Education and Care Services National Regulations (NSW)* (National Regulations)
- *Children (Education and Care Services) Supplementary Provisions Act 2011* (State Law)
- *Children (Education and Care Services) Supplementary Provisions Regulation 2019* (State Regulations)

The National Quality Framework (NQF) sets a national benchmark for the quality of education and care services and aims to raise their quality and drive continuous improvement. This enables families to make informed decisions about their choice of service. The NQF also includes the national approved learning frameworks and the National Quality Standard, against which education and care services are assessed and rated. One of the functions of the Department, as the Regulatory Authority in NSW, is to administer the NQF, including:

- The assessment of approved education and care services against the National Quality Standard and to determine the rating of those services; and
- To monitor and enforce compliance with the National Law and Regulations.

To determine the rating of a service, assessment and rating visits are undertaken by authorised officers. At the visit, authorised officers observe, discuss and sight practices. Consideration of each service’s history against the NQF and the service’s strengths and goals identified in the service’s Quality Improvement Plan or self-assessment tool are also taken into account.

The NSW Regulatory Authority will then determine the rating for each of the seven quality areas, and the overall rating of the service through the development of a comprehensive report of visit findings.

The quality rating levels are (from highest to lowest):

- Excellent (as assessed by ACECQA)
- Exceeding the National Quality Standard
- Meeting the National Quality Standard
- Working Towards the National Quality Standard
- Significant Improvement Required

## 3. Scope

This policy applies to education and care services regulated under the NQF and the State Law that have been assessed and rated at the level of 'Significant Improvement Required' in NSW. This includes centre-based, family day care, mobile and occasional care services.

## 4. Guiding Principles

The NSW Regulatory Authority's over-arching principles for implementing its functions are set out in the [Guiding Principles policy](#). The NSW Regulatory Authority will apply the Guiding Principles in its approach to services rated Significant Improvement Required.

The NSW Regulatory Authority aims to be a modern and effective regulator that exercises its statutory authority fairly and reliably.

The Directorate applies a responsive and risk-based approach to its regulatory functions.

Applying a risk-based approach helps the Directorate make informed decisions about the best use of resources to ensure compliance and enforcement activities focus on the biggest risks to children and target the operators who are least likely to comply with the legislation. As children, and particularly very young children, are vulnerable members of the community, their rights and best interests are paramount.

For more information, see [Guiding Principles Policy](#).

## 5. What is a Significant Improvement Required rating?

Where a service is rated at Significant Improvement Required, this indicates that there is an unacceptable risk to the safety, health and wellbeing of children being educated and cared for by the service. Regulation 59 of the National Regulations states;

1. *A Significant Improvement Required rating may be given for a quality area stated in the National Quality Standard if the education and care service does not meet that quality area or a relevant regulation for that quality area in a way that the Regulatory Authority is satisfied constitutes a significant risk to the safety, health or wellbeing of any child or children being educated and cared for by the service.*
2. *If an education and care service has a Significant Improvement Required rating for any quality area stated in the National Quality Standard, the overall rating of the service is to be Significant Improvement Required.*

The Significant Improvement Required rating applies to a service where:

- it does not meet one of the 7 quality areas or a section of the legislation and;
- it does not meet that quality area in a way that constitutes a significant risk to the safety, health and wellbeing of children.

Services rated as Significant Improvement Required carry a high level of risk based on the quality assessment or compliance level of the service.

Families have an expectation that the Department of Education will actively promote compliance with relevant legislation to ensure the health, safety and wellbeing of children attending education and care services, in line with the objectives and guiding principles of the National Law.

## 6. A service has received a draft Significant Improvement Required rating

Following an assessment and rating visit, the NSW Regulatory Authority will issue a draft report to the approved provider. The draft report will conclude that a ‘Significant Improvement Required’ rating outcome is pending.

As outlined in the Guide to the National Quality Framework, an approved provider can provide feedback and evidence on any factual inaccuracies in an assessment and rating report. The approved provider has 10 business days to supply feedback from the date the draft report is issued.

Following review of any feedback and evidence supplied by the approved provider, or where the approved provider does not supply any feedback, the NSW Regulatory Authority will make a determination regarding the final rating outcome, and issue a final rating certificate and report.

Approved providers have the right to lodge a review if they disagree with the final rating. For more information, refer to the Department's [Review a Decision policy](#) and [ACECQA's guidance](#). Once the assessment and rating process is finalised, the final rating will be published on the National Register located on the ACECQA website and the Australian Government Childcare Finder.

It is important for a service to communicate their rating of Significant Improvement Required and its intended response to the families and communities using the service. This approach will ensure transparency and open communication with families of children attending the service.

Where a service receives a rating of Significant Improvement Required, the approved provider should take immediate action to address the identified risks.

## 7. What services can expect following a final Significant Improvement Required rating

Once a service has been rated as Significant Improvement Required, the NSW Regulatory Authority may take appropriate compliance action to ensure a service addresses the risks impacting on the safety, health and wellbeing of children at the service.

Where compliance action is taken, the NSW Regulatory Authority will expect the approved provider to respond to all requests for information and action in a timely manner, and in accordance with specified statutory timeframes.

The NSW Regulatory Authority will require the approved provider, or relevant persons, to provide a response to the compliance action and to submit evidence of actions within a specified timeframe. The requirements regarding a response and the relevant timeframes will depend on the nature of the compliance actions taken.

The NSW Regulatory Authority will review the service's response to the compliance action and make a determination regarding whether any further action is required. For example, if the provider fails to provide a response, or the response is inadequate, the Regulatory Authority may escalate its regulatory response, which may include the initiation of more serious compliance action such as the suspension or cancellation of an approval. Further information on compliance action can be found [here](#).

In determining the adequacy of the response provided, the NSW Regulatory Authority may also consider an approved provider's fitness and propriety and whether a commitment to resolve compliance issues and improve service quality has been clearly demonstrated.

The NSW Regulatory Authority may conduct subsequent visits to determine the service's capacity to operate in the future, address non-compliance and make quality improvements, and to consider whether the service will be able to achieve a quality rating of at least Working Towards National Quality Standard.

An approved provider may elect to apply for a voluntary suspension of the service impacted by the Significant Improvement Required rating. More information about how to apply for a voluntary suspension can be found [here](#).

Where a service is required to cease operations due to the cancellation or suspension of an approval, the NSW Regulatory Authority will require the approved provider to give written notice of the suspension or cancellation and its effect to the parents or carers of children enrolled at the education and care service to which the approval relates and any associated children's service. (Section 36 and Section 84 of the National Law).

An approved provider may apply for an internal and/or external review of some compliance actions. For more information, see sections 190 and 192 of the National Law, and the [Review of Decisions policy](#).

The NSW Regulatory Authority may exchange information with other agencies where the disclosure of that information is:

- reasonably necessary to promote the objectives of the national education and care services quality framework; or
- for the purposes of enabling or assisting the other entity to perform or exercise any of its functions or powers under this Law; or
- for the purposes of research or the development of National, State or Territory policy with respect to education and care services; or
- for a purpose relating to the funding of education and care services; or
- for a purpose relating to the payment of benefits or allowances to persons using education and care services, provided the disclosure of information is not otherwise prohibited by law.

The NSW Regulatory Authority may also investigate any other services that the approved provider, or its persons with management or control, are involved with at any time.

## **8. Concurrent compliance action alongside first and second tier reviews**

Whilst the NSW Regulatory Authority is committed to promoting continuous improvement in the provision of quality education and care services and will work with services to achieve this goal, where any service is rated at Significant Improvement Required, the NSW Regulatory Authority will take timely action to ensure that any significant risks impacting on the safety, health and wellbeing of children are managed appropriately. The level of action that the NSW Regulatory Authority will take and the relevant timeframes involved will be determined by the findings of the assessment and rating process and the immediacy and severity of the risks to children at the service.

The NSW Regulatory Authority will continue with compliance action irrespective of any first or second tier review process. Once a review decision has been finalised, the NSW Regulatory Authority may adjust some or all compliance action to align with the determination of the review.

## **9. Relevant Legislation**

- Children (Education and Care Services National Law) (NSW) No 104a (National Law)
- Education and Care Services National Regulations (NSW) (National Regulations)
- Children (Education and Care Services) Supplementary Provisions Act 2011 (State Law)
- Children (Education and Care Services) Supplementary Provisions Regulation 2019 (State Regulations)
- The Privacy Act 1988 (Cth)

## 10. Version Control

Policy Owner	Version	Approved by	Date last reviewed
Director, Statewide Operations Network	1.0	Executive Director, Quality Assurance and Regulatory Services, Early Childhood Education	3 December 2020