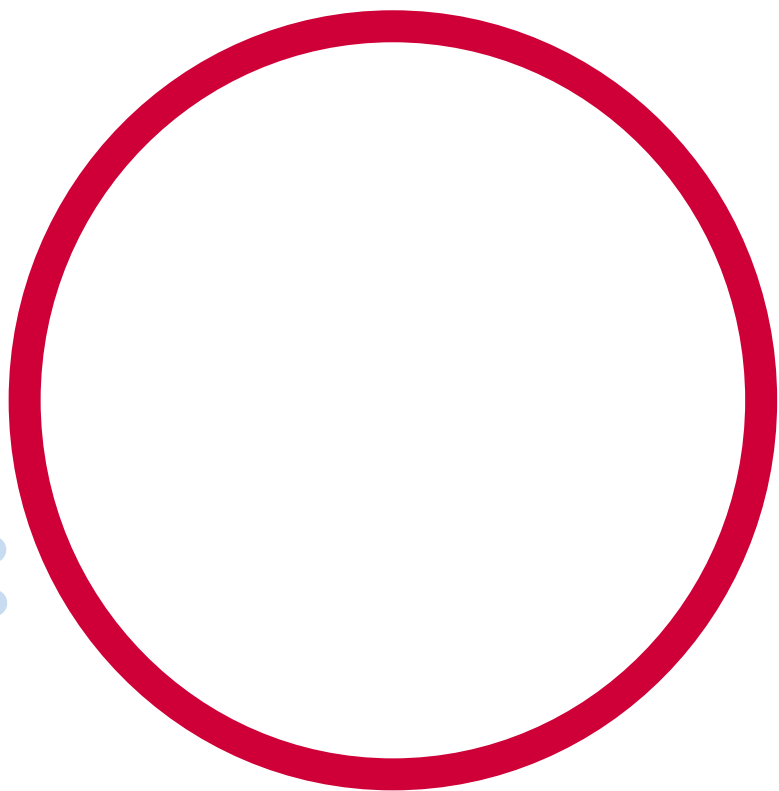
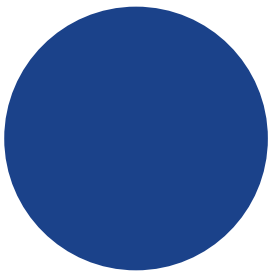


Information Sharing with External Agencies Policy

Early Childhood Education Quality Assurance and Regulatory Services Directorate



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1. Purpose

This policy outlines how the NSW Regulatory Authority (RA) shares information with external agencies.

The NSW RA for early childhood education and care (ECEC) services sees the lawful exchange of information with relevant external agencies as an essential component of effective risk-based regulation.

This policy is intended to clarify:

- the legislative and regulatory framework that allows the NSW RA to share information,
- what we mean by information sharing,
- why information sharing is necessary and under what circumstances, and
- how we facilitate the information sharing between the NSW RA and external agencies, including information requests, and the use and retention of sensitive information.

Where relevant, information sharing activities will be handled by the Delegated Authorities pursuant to the Department's Delegation Schedule derived under the *National Law and Children (Education and Care Services) Supplementary Provisions Act 2011*.

2. Context

The Secretary of the NSW Department of Education is the Regulatory Authority responsible for the regulation of NSW Early Childhood Education and Care (including Outside School Hours Care) (ECEC) services. The NSW Regulatory Authority administers and enforces the National Quality Framework (NQF) in NSW. The functions of the Secretary as the RA are lawfully delegated to appropriate officers within the Department and are carried out in accordance with the NQF. In addition to the NQF, our regulatory functions also apply to services that are regulated under State Law and Regulations. Section 4 of this policy details a full list of legislation that applies to the NSW RA function and information sharing practices.

The Quality Assurance and Regulatory Services (QARS) Directorate within the NSW Department of Education acts under delegation as the NSW RA in the exercise of its functions and powers in relation to the regulation of ECEC services.

The NSW RA has a range of powers and tools to facilitate continuous improvement in the provision of ECEC services and to ensure compliance with the NQF. The NSW RA will

exercise its functions and powers in a manner that is fair, consistent, objective, and in line with:

- the National Quality Framework, which includes:
 - National Law and Regulations
 - National Quality Standard
 - assessment and quality rating process
 - national learning frameworks
- the department's [Guiding Principles](#)
- the Ethical Framework for the government sector as provided by the *Government Sector Employment Act 2013 (NSW)*
- internal policies and procedures, and
- the Code of Conduct

The regulatory functions exercised by the NSW RA include:

- assessment of applications for new providers and services
- assessment and rating of education and care services
- monitoring services for compliance with the National Law and the National Regulations, and State Law and Regulations
- enforcement functions.

The types of services regulated include:

- long day care
- family day care
- pre-schools
- mobile pre-schools
- outside school hours care, and
- occasional care.

In-scope services are regulated under the National Quality Framework (NQF) which consists of the National Law, National Regulations and the National Quality Standards. In scope services include centre-based services, such as long day care, out of school hours care, preschools and family day care services.

Out-of-scope services (or State regulated services) are regulated under the *Children (Education and Care Services) Supplementary Provisions Act 2011* (the State Law) and *Children (Education and Care Services) Supplementary Provisions Regulation 2019* (referred to as 'State Regulations').

Mobile and occasional care services are the only service types regulated under the State Law.

3. Scope

This policy applies to staff within the NSW Regulatory Authority, in particular, those who perform information sharing activities with external agencies.

The key external stakeholders for the purposes of this policy include:

State-based

- NSW Department of Communities and Justice (DCJ)
- The NSW Office of the Children's Guardian (OCG)
- NSW Police Force
- NSW Health

Nationally

- Australian Children's Education and Care Quality Authority (ACECQA)
- Australian Federal Police
- The Australian Government
- Australian Skills Quality Authority (ASQA)
- Other State and Territory NQF regulatory authorities

This policy is supplemented by internal staff procedures that guide the information sharing process, including safe storage and retention of relevant information in accordance with the *State Records Act 1998* (NSW).

4. Relevant legislation and other instruments

The legislative, regulatory and government requirements that apply to this Policy include:

Legislation

- *Children (Education and Care Services) National Law* (NSW) 2010
- *Children (Education and Care Services) Supplementary Provisions Act 2011* (referred to as 'State Law')
- *Children and Young Persons (Care and Protection) Act 1998* (namely, Ch 16A)
- *Children (Criminal Proceedings) Act 1987* (NSW)

- *Child Protection (Working with Children) Act 2012* (NSW)
- *Privacy and Personal Information Protection Act 1998* (NSW)
- *Children’s Guardian Act 2019* (NSW)
- *Government Information (Public Access) Act 2009* (NSW)
- *State Records Act 1998* (NSW)
- *Health Records and Information Privacy Act 2002* (NSW)
- *Crimes Act 1900* (NSW) (e.g. s 316A)
- *Freedom of Information Act 1989* (NSW)
- *Work Health and Safety Act 2011* (Cth)
- *Privacy Act 1988* (Cth)
- *Young Offenders Act 1997* (NSW) (particularly, section 66)
- *Teaching Service Act 1980* (NSW)
- *Inclosed Lands Protection Act 1901* (NSW)

Regulations

- *Education and Care Services National Regulations 2011*
- *Children (Education and Care Services) Supplementary Provisions Regulation 2019* (referred to as ‘State Regulations’)
- *State Records Regulations 2010* (NSW)

Government Instruments

- NSW Department of Education and Training Privacy Code of Practice
- NSW Department of Education Code of Conduct
- Memorandum of Understanding between NSW Police Force and the Department

Examples of how the NSW Regulatory Authority applies legislation, regulations or government instruments for the purposes of information sharing can include:

- Receiving and requesting information pursuant to Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW).
- Undertaking information collection, review and reporting under s 260(g)(iii) of the National Law.
- Receiving or providing information in relation to ‘reportable conduct’ with the Office of the Children’s Guardian (“OCG”).
- Mandatory reporting to, and receiving from, the NSW Department of Communities and Justice (“DCJ”), Risk of Significant Harm (ROSH) reports.
- Providing information to support a prosecution or investigation, with NSW Courts and Tribunals.
- Sharing information in relation to education and care services with ACECQA, Regulatory Authorities in other states and territories, and the Australian Government.

Where information is shared with other agencies, the processes that safeguard sensitive information from improper use are upheld by stringent internal procedures. Relevant training is also provided to ensure consistency and compliance.

5. Guiding principles

The NSW Regulatory Authority’s overarching principles for implementing its functions are set out in the Guiding Principles Policy. The specific principles that apply to how and why we share information with external agencies include the following:

Relevant Guiding Principle	Application	Example
Outcomes focussed	The NSW Regulatory Authority will lawfully share information to achieve the outcome of upholding the safety, health and wellbeing of children attending education and care services.	All information sharing activities will be focused on upholding the safety, health and wellbeing of children so that only relevant information is sought/provided.
Risk-based	Lawful information sharing with external agencies supports effective risk-based regulation.	Sharing information with the NSW Office of the Children’s Guardian to protect children from harm.
Collaborative	The NSW Regulatory Authority engages with external agencies for the purposes of lawful information sharing and in accordance with the relevant legislation.	Engaging in information sharing activities with other Australian regulatory jurisdictions to support regulatory decisions, including controlling risks.

6. What do we mean by information sharing?

For the purposes of this policy, information sharing relates to information about incidents, events, individuals, or related parties that work in, or operate an ECEC service, or who access ECEC services.

Some examples of the type of information we may exchange with external agencies in accordance with relevant legislation might include but is not limited to:

- child-level data or information to inform an investigation of an incident that has occurred at an ECEC service

- information on individuals seeking to operate an ECEC service, for example a Working With Children Check (WWCC) status
- a serious allegation that may involve reportable conduct
- sensitive information to inform tactical compliance campaigns or joint operations with NSW Police.

At all times, each information sharing activity will align with the guiding principles and adhere to the relevant legislation.

7. Information sharing as a key component of effective regulation

The community places a high level of trust in the NSW RA to effectively regulate the ECEC sector, so that services are operating in accordance with the legislative requirements.

As at 31 March 2021, the NSW RA had responsibility for regulating 5672 in-scope services across NSW¹. Information sharing is a key component to the effective regulation of the large and diverse NSW ECEC sector.

ECEC services are expected to adhere to best practice principles, observe compliance standards, and maintain high-quality services. As with any regulatory regime, cases of wrongdoing or non-compliance are identified through standard monitoring and compliance activities. More serious events, behaviours or incidents may require further investigation to inform a proportionate regulatory response. As investigations are undertaken, the NSW RA needs to obtain reliable information and relevant evidence to make the best possible decision, given the circumstances.

At times, the NSW RA may need to approach external agencies to obtain critically relevant information in the course of the investigation. Ultimately, the information sharing is an essential ingredient to good investigative activity which in turn contributes to the safety, health and wellbeing of children and ensures the integrity and reputation of the ECEC sector.

The consequences of poor information sharing practices can lead to serious unmanaged risks that may endanger the safety, health or wellbeing of children, and may also diminish public trust and confidence in the ECEC sector.

Information sharing between agencies contributes to ensuring the safety, health and wellbeing of children. The benefits of information sharing build public trust and confidence

¹ [Australian Children's Education and Care Quality Authority, NQF Snapshot Q1 2021](#)

in the sector and enhance access to high-quality early childhood services that give children a strong start to life.

8. How do we uphold privacy and confidentiality?

The NSW Regulatory Authority complies with applicable privacy laws.

Staff that conduct information sharing with external agencies will be accountable for the lawful storage and retention of any sensitive information in accordance with the *State Records Act 1998*. Any personal information obtained shall only be used for the purpose intended in accordance with the *Privacy and Personal Information Protection Act 1998 (NSW)* and the *Commonwealth Privacy Act 1988*.

The key legislation in respect of privacy of personal information include:

- *Privacy Act 1988*
- *Privacy and Personal Information Protection Act 1998*
- *Health Records and Information Privacy Act 2002*
- *Government Information (Public Access) Act 2009*

The IPC is an independent statutory authority that administers legislation dealing with privacy and access to government held information in NSW.

For further information about how privacy laws are applied, contact the Information and Privacy Commission (IPC) on 1800 472 679 or ipcinfo@ipc.nsw.gov.au.

9. Contact us

If you have any questions about how information is shared with external agencies or the content of this policy, we would like to hear from you. Please write to us by emailing ececd@det.nsw.edu.au.

10. Monitoring

This policy will be reviewed for effectiveness and legislative compliance every two years or earlier, in accordance with any legislative changes or changes to other relevant instruments.

11. Version Control

Policy Owner	Version	Approved by	Date last reviewed
Director, Regulatory Strategy, Policy and Practice	1.0	Executive Director, Quality Assurance and Regulatory Services	11/05/2021