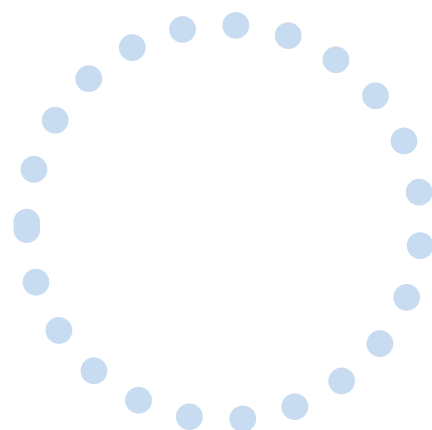
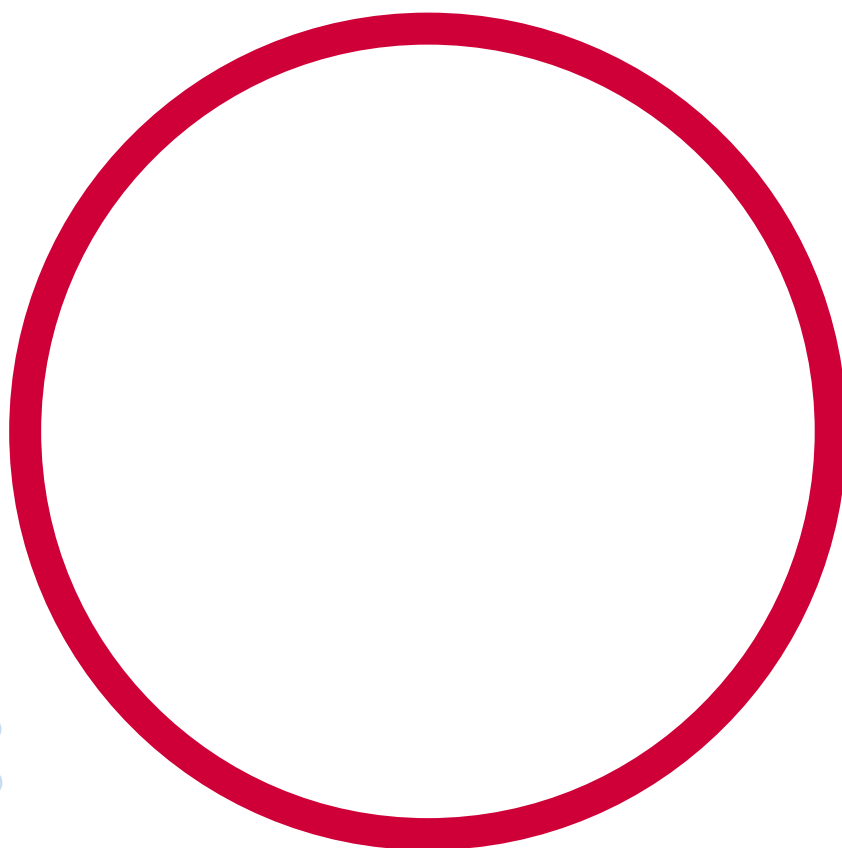
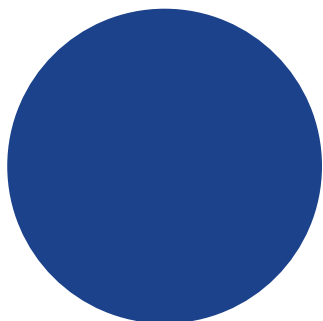


# NSW Regulatory Authority Approach to Visiting Early Childhood Education and Care Services Policy

Quality Assurance and Regulatory Services

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# 1 Purpose

The NSW Regulatory Authority regulates the provision of education and care services in NSW so that children attending those services receive safe, quality care. This policy outlines the NSW Regulatory Authority's approach to conducting visits to early childhood education and care (including Outside School Hours Care) (ECEC) services, including what services can expect, and what they are expected to do, when the NSW Regulatory Authority conducts a visit.

## 2 Context

The NSW Department of Education is the NSW Regulatory Authority for ECEC 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) consists of the National Law and Regulations, approved learning frameworks and the National Quality Standard (NQS). The NQF sets a national benchmark for the quality of ECEC services and aims to drive continuous improvement in the provision and quality of ECEC services. This seeks to enable families to make informed decisions about their choice of service.

One of the functions of the Department, as the NSW Regulatory Authority, is to administer the NQF, including the:

- approval of ECEC services in NSW;
- monitoring and enforcement of compliance with the National Law and Regulations; and
- assessment of approved ECEC services against the NQS, to determine the quality rating of those services.

These regulatory functions are conducted through a range of methods, including service visits undertaken by authorised officers.

## 3 Scope

This policy applies to regulatory visits conducted by the NSW Regulatory Authority to ECEC services regulated under both the National Law and the State Law.

Services that are regulated under the National Law include centre-based services, such as long day care, outside school hours care (including vacation care) and preschools, and family day care services.

Services that are regulated under the State Law include mobile, occasional care and multi-functional Aboriginal children's services. Following changes to the State Law, the provisions of the National Law largely apply to these services, with certain modifications.

## 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 conducting visits to early childhood education and care services. Specific principles that apply to conducting visits to ECEC services include:

- The NSW Regulatory Authority will conduct visits to ECEC services to achieve outcomes that promote the objectives of the National Law.
- ECEC service visits (including assessment and rating visits) will be prioritised according to the level of risk, the length of time since the previous visit and as a reactive response to reports, incidents, notifications and complaints.
- The NSW Regulatory Authority will use information and data to drive a proactive visits schedule for effective monitoring of all services and providers, with approaches tailored according to various factors including the performance and compliance of services and approved providers. Visits to ECEC services will be conducted in accordance with documented policies and procedures.
- The NSW Regulatory Authority is committed to ensuring that authorised officers that conduct a visit to an ECEC service have the necessary skills and are appropriately trained and supported.
- Authorised officers that conduct a visit to an ECEC service will conduct themselves in accordance with the NSW Department of Education Code of Conduct, the Guiding Principles, and any other relevant policies and guidelines.

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

# 5 Policy

## 5.1 Relevant Legislation regarding visits

The National Law provides the NSW Regulatory Authority with powers for the monitoring and enforcement of the National Law, including, but not limited to, the power to enter an ECEC service for a range of reasons. The relevant provisions are contained Part 9, Division 2 of the National Law.

Specifically, an authorised officer may exercise the power to enter an ECEC service to

- Monitor compliance with the National Law and Regulations;
- Conduct a quality assessment of an approved ECEC service to rate or re-rate it;
- Obtain information about the contact details of the parents of all children enrolled at the education and care service where the NSW Regulatory Authority has issued a show cause notice; and
- Investigate an approved ECEC service if the NSW Regulatory Authority reasonably suspects that an offence may have been or may be being committed against the National Law.

In entering an ECEC service, an authorised officer may do any of the following:

- Inspect and / or search the premises (or any part of the premises) and any plant, equipment, vehicle or other thing;
- Inspect, measure, test, photograph or film, or make audio recordings or make sketches of, any part of the premises or anything at the premises;
- Take a thing, or a sample of a thing, at the premises for analysis, measurement or testing;
- Inspect and make copies of, or take extracts from, any document kept at the premises;
- Take any document or any other thing at the premises;
- Take into or onto the premises any person, equipment and materials the authorised officer reasonably requires for exercising its power;
- Require the occupier of the premises, or a person at the premises, to give the authorised officer information to help the authorised officer in conducting the investigation; and
- Require the occupier of the premises or a person at the premises to answer a question to the best of that person's knowledge, information and belief or to take reasonable steps to provide information or produce a document.

**NOTE: A document includes any disc, tape or other article or any material from which sounds, images, writings, or messages are capable of being reproduced (with or without the aid of another article or device).**

## 5.2 Authorised Officers

All visits will be conducted by an authorised officer. Authorised officers may conduct visits individually or with a second authorised officer.

In NSW, authorised officers are persons who the Regulatory Authority is satisfied are appropriate persons to be an authorised officer for the purposes of the National Law. Authorised officers are employees of the NSW Department of Education. As such, an authorised officer in NSW will have:

- undergone relevant probity checks;
- completed mandatory training, for example in the Code of Conduct, and child protection;
- the relevant vaccination status required by the Department of Education;
- relevant qualifications and experience required for the role; and
- undertaken training relevant to obtaining and maintaining their authorised status.

## 5.3 Purpose of NSW Regulatory Authority Visits

As set out in the NSW Regulatory Authority's Approach to Compliance policy, visits to ECEC services are a core element of effective regulatory oversight that families expect and rely on to ensure children are safe and receiving high quality education and care. Regulatory visits enable opportunities to address and prevent risks to children's health, safety and wellbeing, recognise good practice, drive continuous improvement, educate the sector, and maintain positive working relationships.

There are various purposes for which the NSW Regulatory Authority will visit an ECEC service. These visits are essential in supporting the NSW Regulatory Authority carry out its functions under the National Law. Regulatory functions that generally require a visit to the service include, but are not limited to:

- making decisions on new service applications;
- making decisions in response to notifications where an aspect of the service operations may have changed;
- assessing and rating the service's quality under the National Quality Standards
- responding to and investigating complaints;
- determining the service's compliance with the National Law and the National Regulations; and
- undertaking formal investigations arising out of serious incidents, complaints or other events.

Decisions relating to the frequency, type of visits and the material that may be requested at these visits are centred around the NSW Regulatory Authority's risk-based approach and are influenced by several factors including, but not limited to:

- the compliance history of the service/and or service provider;

- patterns of behaviours or practices that compromise children’s safety;
- significant changes to how the service operates;
- the level and frequency of contact with the service, including a change of provider entity or new management structure of an existing provider;
- any complaints about the service and/or provider, including particular individuals;
- the ages of the children attending the service;
- the service model (e.g., single educator model);
- time elapsed since the last quality rating visit or/and any other regulatory visit;
- how long the service has been operating; and
- any other matters where risk may have been or is currently posed to children’s health, safety, and wellbeing.

The NSW Regulatory Authority will, as far as possible, endeavour to ensure that visits to services occur with minimal disruption to the service’s operations.

## 5.4 Unannounced and Announced Visits

The NSW Regulatory Authority conducts unannounced visits as an essential component of regulatory activity involving active monitoring to ensure harm prevention and safety of children in ECEC services. Unannounced visits represent standard practice across many other regulatory schemes.

As set out in the NSW Regulatory Authority’s Approach to Compliance policy, most visits are unannounced to allow for effective oversight of routine daily operations of ECEC services. Providers of ECEC services can expect unannounced visits as a result of a reported incident, as part of an investigation or in the context of regular proactive compliance monitoring.

In specific circumstances, the NSW Regulatory Authority may notify the service in advance of the visit occurring although this is not required. For instance, assessment and rating, a pre-approval visits or review of changes to the premises. In these cases, an authorised officer will contact the service.

Please refer to the [Assessment and Rating Scheduling Policy](#) for information on selection and postponement of Assessment & Rating visits.

## 5.5 Expectations of Conduct

### 5.5.1 Conduct of Authorised Officers

Authorised officers are required to conduct their regulatory functions in line with the National Law. Further, as NSW Department of Education employees, authorised officers are expected to comply with the Department’s [Code of Conduct Policy](#), as well as the Code of Ethics and Conduct for NSW government sector employees ([Public Service Commissioner Direction No 1 of 2015](#) under the [Government Sector Employment Act 2013](#)).

Authorised officers from the NSW Regulatory Authority have key legislated and procedural responsibilities when conducting a service visit. This includes:

- showing their identity card upon entry;
- introducing themselves and explaining the purpose of the visit;
- signing the visitors register, if applicable; and
- making reasonable requests and, where applicable, providing feedback, directions and regulatory guidance.

Additionally, in line with the Department's expectations under its Code of Conduct, authorised officers are expected to:

- be approachable, fair, respectful and timely in dealings;
- listen and communicate respectfully;
- clearly explain the purpose of the visit and be clear on what next steps are involved.

Additionally, officers are expected to:

- lead their discussions and communication in a culturally safe manner, including forming respectful relationships with Aboriginal peoples, communities and services; and
- acknowledge and respect cultural protocols.

To enable authorised officers to confirm a service's practice and level of compliance, they may exercise their powers under the National Law to:

- make notes of what they observe, discuss and sight;
- request a brief tour/walk around of the service and to be introduced to educators and staff during the visit;
- ask questions to management, staff, children and families to clarify practices;
- take photographs, film, make an audio recording or make a sketch of the service premises and documents;
- inspect and makes copies or take extracts from documents at the premises; and
- take a document or anything at the service premises.

The exercise of the above powers may include observing and/or taking webcam, CCTV or other audio/visual footage, and other documents in digital form. In NSW, many visits will involve authorised officers using a computer or other smart device to record information about the visit.

At the conclusion of a service visit, authorised officers will:

- provide summaries and explain the findings of the visit to the nominated responsible person of the service;



- advise of any matters where the service can rectify the issue/s and the timeframe to fix the issue/s;
- explain any likely further action, including the processes or expectations that may follow.

Information and resources on [how we regulate the sector](#) are available via the Department's early childhood education website pages.

### 5.5.2 Conduct of Providers and Services

The NSW Department of Education expects that all providers and services engaging with Departmental staff display respectful conduct and comply with lawful requests by an authorised officer. This includes:

- Supporting the officer to undertake their duties;
- Displaying professional courtesy and communicating respectfully with the officer.

Inappropriate behaviour may call into question a Provider or Nominated Supervisor's fitness and propriety. It may also indicate that a person may be an inappropriate person, as defined in Section 171 of the National Law. Section 171 of the National Law provides that an inappropriate person means a person who may pose a risk to the safety, health or wellbeing of any child or children being educated and cared for by the ECEC service; or whose behaviour or state of mind or whose pattern of behaviour or common state of mind is such that it would be inappropriate for him or her to be on the ECEC service premises while children are being cared for by the ECEC service.

It is also an offence for a person to:

- obstruct an authorised officer (Section 207);
- fail to assist an authorised officer (Section 208); and
- provide an authorised officer false or misleading information or documents (Section 295).

### 5.5.3 Complaints about Authorised Officers

The NSW Regulatory Authority staff are committed to excellence and professionalism in the delivery of their duties and in the exercise of their regulatory functions. Should a service, provider or a member of the public wish to raise a concern about the NSW Regulatory Authority or its staff, they can do so through several channels.

Complaints about the conduct of a staff member working in the NSW Regulatory Authority or the NSW Regulatory Authority's processes can be lodged via;

- direct communication to a Manager or any Department of Education staff member;
- email to [eced@det.nsw.edu.au](mailto:eced@det.nsw.edu.au); and/or
- the Information and Enquiries (I&E) line on 1800 619 113.

Complaints will be managed in accordance with the Regulatory Authority's [Complaints Handling Policy](#).

## 5.6 Crises and Unexpected Circumstances

During times of crises, the NSW Regulatory Authority may suspend non-urgent visits when necessary but may still conduct visits according to a risk-based approach.

An authorised officer may also use other strategies, such as the use of technology and virtual visits to support their work at this time. This will be undertaken in consultation with the service.

The NSW Regulatory Authority may also postpone a visit in the event of unforeseen circumstances, including but not limited to the following:

- illness or absence of the authorised officer;
- natural disasters, such as bushfires or floods, and;
- circumstances that may impact the health and safety of services and staff members, such as the COVID-19 pandemic.

The NSW Regulatory Authority remains responsive to local conditions and will reasonably work with the sector to enable the continuation of suitable regulatory functions and continue to ensure the safety and wellbeing of children, service staff and Department staff.

In relation to visits and the NSW Regulatory Authority's response to COVID-19, authorised officers are required to monitor the latest health advice and changes to restrictions as they emerge, and in consultation with their manager ensure that their work plans and practices continue to reflect the current situation.

## 6 Enquiries

If you have any enquiries about this policy, please contact:

Quality Assurance and Regulatory Services ECE  
Information and enquiries team 1800 619 113 (toll free)  
[ececd@det.nsw.edu.au](mailto:ececd@det.nsw.edu.au)

## 7 Document Version Control

Policy Owner	Version	Approved By	Date last reviewed
Director, Regulatory Strategy, Policy and Practice	1.1	Executive Director, Quality Assurance and Regulatory Services	10 Nov 2022