

# Investigations Fact Sheet

The [Queensland Early Childhood Regulatory Authority](#) (RA) regulates education and care services under the National Quality Framework and Queensland legislation. The RA is responsible for investigating allegations of breaches of the legislation and any risk of harm to children's health, safety and wellbeing. The RA investigates to find out what happened and who is responsible, as well as how to prevent recurrence and strengthen controls.

The RA's investigators are appointed as authorised officers under the legislation. They hold certain powers, including the power to enter a premises, and to obtain information and/or documents. They provide the information gathered to an unbiased decision-maker, who decides the outcome of the investigation.

The RA takes a risk-based approach to regulation. You can learn more on our [website](#).

## What can the RA investigate?

The RA only investigates matters that are within the scope of the [early childhood legislation](#). If matters that are out of scope are brought to the RA's attention, the RA will provide referrals to relevant agencies where possible.

## How does the RA investigate?

Authorised officers will gather evidence throughout the investigation, which may include:

- asking questions of witnesses, which may include staff, parents or community members and recording notes of those discussions or making witness statements
- asking questions of the person who may be responsible for the breach (the 'subject')
- gathering relevant documents and discussing these with witnesses or the subject
- making observations and taking photographs of relevant evidence
- receiving intelligence from other government agencies, including but not limited to the Queensland Police Service, Blue Card Services, and other government departments.

Investigators will analyse the evidence to determine whether, it is more likely than not that an offence has been committed, or that a person presents an unacceptable risk of harm to children.

The RA acts reasonably and fairly in each investigation, ensuring that any subject person is aware of the evidence gathered and has an opportunity to tell their version of events. The rights and best interests of children at the forefront of all investigative processes.



## How long does it take?

How long an investigation takes to complete depends on the amount and complexity of the evidence and the potential involvement of other agencies. Investigators will provide regular updates on progress to people involved in investigations.

## How does the RA decide what action to take?

The RA considers a range of factors when deciding what action to take. These include the impact on children's health, safety and wellbeing; the service's compliance history; the presence or absence of appropriate controls in place at the service; and the attitude of the approved provider to correcting non-compliance or preventing its recurrence.

These considerations ensure the RA's response is proportionate to the level of risk. Responses can range from giving verbal advice and guidance right through to suspension of service approval or prosecution.

## What can the RA tell me about the outcome of the investigation?

When providing information to complainants about the progress and outcome of their complaint, the RA must ensure it does so in compliance with the [privacy principles](#) and the *Human Rights Act 2019*. This means the RA may not disclose personal information about an individual who can be identified directly or indirectly from the information shared.

For investigations about a specific person (e.g. a nominated supervisor or educator), the RA is limited in providing information about findings against the person or details of any regulatory action taken against the person.

However, where the subject of the investigation is not an individual, the RA will usually be able to provide more detail on the investigation, including whether there was sufficient evidence to substantiate a breach of the legislation, and what compliance action the RA took against the entity.

To ensure the integrity and confidentiality of investigations, the RA will not usually disclose information about the investigation, including about any evidence or findings, until the investigation has been finalised.

# Investigating sexual misconduct

## Receipt and referral

### Significant matter referral (SMR)

- Received from regional office and allocated to a principal or senior regulatory officer within the Regulatory Response Team (RRT).
- Should include information outlined in the Protocol – Referral of Significant Matters (CM **17/336811**)

### Direct complaint to RRT

- Regulatory officer to complete RRT Intake record (CM **24/507457**) then determine if the matter will be retained by RRT for assessment, referred to Compliance or a regional office or whether no action is recommended. This recommendation requires manager endorsement.



## Risk assessment

- Regulatory officer to undertake an assessment of the matter using the RRT PART A: SMR assessment template (CM **24/104062**) and the Risk Assessment Tool (CM **17/362521**)
- Consideration given to any information gathered by the regional office
- Make/follow up on Child Protection Investigation Unit (CPIU) disclosures to ascertain any action taken and whether appropriate for the Regulatory Authority to proceed with making enquiries
- Make any necessary disclosures to Child Safety
- Make assessment with respect to immediate risk and non-compliance
- Recommend course of action and carriage of the matter
- This recommendation requires director endorsement

### Immediate risk

- Investigation required
- Engage with AP with respect to risk mitigation
- Disclosure of information to an external agency:
  - Disclosure to QPS (CPIU Referral) template (CM **24/121550**) – business practice manager to sign
  - Disclosure to QPS – cover letter template (CM **24/467287**)
  - File note – Disclosure to QPS template (CM **24/121545**)
- Immediate prohibition of an individual (notice template located at CM **24/494586**; fact sheet located at CM **24/824256**)
- Show cause before prohibition (notice template located at CM **24/494580**; fact sheet located at CM **23/873077**)
- Prohibition from being a nominated supervisor
- Reminder of obligations to an individual (template located at CM **24/415182**)
- No action

### Non-compliance

- Investigation required
- Compliance action:
  - Compliance Notice (template located at CM **23/1029538**)
  - Compliance Direction (template located at CM **23/1029529**)
- No action
- Reasons for recommended action must include response level from RAT



## Investigation

- Upon commencement of an investigation, Investigation Plan to be drafted by regulatory officer for manager endorsement to ensure scope identified and relevant investigative activities proposed (CM **24/408980**)
- Notice of Investigation correspondence signed by a manager is to be sent to the AP and subject educator (CM **24/415176**) along with the Investigations Fact Sheet (CM **24/139257**)

<ul style="list-style-type: none"> <li>Site visit to be conducted if required</li> <li>All investigative activity is to be documented within the Run Sheet (template located at CM <b>24/272074</b>)</li> <li>All evidence gathered is to be recorded within the Evidence List (template located at CM <b>24/272097</b>)</li> </ul>		
<b>Request for information</b> <ul style="list-style-type: none"> <li>Request for information from AP template (CM <b>24/415197</b>)</li> <li>s10.2 Request for information from QPS template (CM <b>24/415192</b>) – addressed to the QPS Commissioner and signed by a manager when seeking information in relation to criminal history/nature of charges/offences</li> <li>s215 Notice to provide information template (CM <b>24/415213</b>)</li> </ul>	<b>Request for written response</b> <p>If considered appropriate, for instance where the allegations are low-risk, the subject educator has made admissions of the conduct to the AP, and where only closed questions need to be asked, a request for written response to the allegations may be sent to the subject educator in lieu of conducting an interview (template located at CM <b>24/415204</b>).</p>	<b>Interviews</b> <p>Most investigations will proceed to interview/s. The following templates are to be used, as applicable:</p> <ul style="list-style-type: none"> <li>Invitation to interview letter (CM <b>24/415424</b>) and accompanying Interview Fact Sheet (CM <b>24/415434</b>) and Legal Representation Agreement (CM <b>24/662868</b>)</li> <li>s215 Notice to appear for interview (if compelling an individual to attend) (CM <b>24/415208</b>) – include Interview Fact Sheet and Legal Representation Agreement as above</li> <li>Interview plan – subject (CM <b>24/197873</b>)</li> <li>Interview plan – witness (CM <b>24/197877</b>)</li> <li>Interview plan – AP/NS (CM <b>24/250830</b>)</li> </ul> <p>*If any disability or capacity issues are identified with subject educators, managers to lead interviews.</p>



Investigation report
<ul style="list-style-type: none"> <li>Upon conclusion of an investigation, RRT PART B: Investigation report (CM <b>24/197881</b>) to be completed by regulatory officer for director endorsement.</li> <li>This report will summarise the investigation process and evidence gathered, provide an analysis of the evidence and present findings with respect to allegations against an individual and non-compliance if any.</li> <li>The regulatory officer is required to make a recommendation as to the appropriate enforcement response (informed by second risk-assessment – RAT).</li> </ul>



Enforcement	
<ul style="list-style-type: none"> <li>Outcome correspondence is to be issued (templates located at CM <b>23/1029499</b>).</li> </ul>	
<b>Individual</b> <ul style="list-style-type: none"> <li>Immediate prohibition (CM <b>24/494586</b>)</li> <li>Show cause before prohibition (CM <b>24/494580</b>)</li> <li>Prohibition from being a nominated supervisor</li> <li>Enforceable undertaking</li> <li>Reminder of obligations (CM <b>24/415182</b>)</li> <li>Disclosure of information to Blue Card Services for which ED ECRA is the delegate:</li> </ul>	<b>Non-compliance</b> <ul style="list-style-type: none"> <li>Prosecution</li> <li>Suspension/cancellation of provider approval</li> <li>Suspension/cancellation of service approval</li> <li>Condition on service approval</li> <li>Reminder of obligations (CM <b>23/1029518</b>)</li> <li>Compliance action: <ul style="list-style-type: none"> <li>Compliance Notice (CM <b>23/1029538</b>)</li> <li>Compliance Direction (CM <b>23/1029529</b>)</li> </ul> </li> </ul>

<ul style="list-style-type: none"> <li>○ s21(2) Notice of disciplinary action to Blue Card Services template (CM <b>24/494587</b>)</li> <li>○ s21(5) Notice of disciplinary action to Blue Card Services (in response to request for information) template (CM <b>24/495586</b>)</li> <li>● No action – outcome of investigation letter to subject educator and AP (CM <b>23/1029510</b>) and complainant if applicable (CM <b>24/139251</b>)</li> <li>● Allegation/s must be recorded in NQAITS</li> </ul>	<ul style="list-style-type: none"> <li>● Recommend re-assessment and rating</li> <li>● No action – issue outcome of investigation letter to AP (CM <b>23/1029510</b>) and complainant if applicable (CM <b>24/139251</b>)</li> <li>● Reasons for recommended action must include response level from RAT</li> <li>● Any non-compliance and compliance action must be recorded in NQAITS</li> </ul>
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Released under the FOI Act by DoE

## Early Childhood Education and Care

### Protocol for assessment and investigation of allegations or disclosures of physical or sexual abuse and/or sexual misconduct toward children

#### Purpose

The purpose of this protocol is to outline the process for assessing and investigating allegations or disclosures of ~~physical or~~ sexual abuse and/or sexual misconduct toward children, received by the Early Childhood Regulatory Authority.

**Commented [PA1]:** Maintain single protocol for both physical and sexual abuse, or have specific protocol/procedure for assessment and investigation of sexual abuse?

#### Receipt and referral

When information is received by the Regulatory Authority concerning possible physical or sexual abuse of children it must be referred by the receiving regional office to ~~the Compliance Team for assessment~~. There is no need for the regional office to determine whether the alleged conduct is likely to have occurred, or not, before the referral is made.

**Commented [PA2]:** update

The regional office should refer the matter by way of a Significant Matter Referral, and include the information outlined in the Protocol – Referral of Significant Matters to Compliance, located at CM 17/336811.

~~The regional office should also disclose the information to the Queensland Police Service in accordance with the Protocol for referring matters to the QPS at CM 23/335080.~~

**Commented [PA3]:** update – different for sexual abuse matters

The regional office should also remind the service of their mandatory reporting obligations to Child Safety.

**Commented [PA4]:** Please note, this protocol is not live

#### Compliance assessment

In the first instance, the Compliance Team will assess the available information to determine whether there may be an unacceptable risk of harm to children in the event the subject of the allegation is allowed to continue to provide education and care to children. In doing so, the team will consider the following:

- The seriousness of the alleged conduct, including level of force, proportionality and consistency of practice with the National Quality Framework
- Amount of evidence available that supports the conduct occurring i.e. the probability that the conduct has occurred as reported
- Any mitigating circumstances
- The subject person's qualifications and experience in the early childhood sector

- Whether the subject person is still able to work in the sector i.e. if they hold a current working with children check (blue card)
- Whether other agencies, including the Queensland Police Service, are investigating the reported conduct, and if so, at what stage their inquiries are at
- Level of expressed remorse, recognition and understanding of the wrongfulness of the person's actions and their impact on the child, other children, parents and other educators
- Previous conduct – any evidence that the subject person has engaged in repeated unlawful conduct
- Risk mitigation action taken by the service.

The Compliance Team will brief the Executive Director on this initial assessment and make a recommendation with respect to whether there is sufficient information to support prohibition of the subject person under section 182 of the National Law. The team will also recommend whether the prohibition take immediate effect, or whether a show cause process should be engaged.

The Compliance Team will notify Blue Card Services of any prohibition notice issued.

In the event there is not sufficient information to support prohibition of the subject educator, but risk is perceived to remain, the Compliance Team will:

1. Meet with the approved provider of the service to discuss risk mitigation strategies aimed at reducing the opportunity of inappropriate interactions with children occurring/re-occurring
2. Conduct preliminary inquiries, including:
  - a. Desktop review of documentary evidence to identify any prima facie non-compliance with sections 165 and 167 of the National Law and sections 155 and 170 of the National Regulations
  - b. Speaking with relevant witnesses e.g. the child's parents, colleagues of the subject person, to identify any concerns held about the person or their conduct
  - c. Speaking with the subject person to seek their response to any allegations or disclosures.

The Compliance Team will then:

- Re-brief the Executive Director with respect to prohibition of the subject person.
- Consider whether, in the circumstances, referral of any information to Blue Card Services is warranted (in addition to notice of any prohibition notice issued).
- Determine carriage of any remaining investigative activities.
- Record the allegation or disclosure in a contact record in NQAITS.

## Investigation

Once the immediate risk associated with the allegation or disclosure has been addressed, investigative activities can be undertaken. This is likely to be either:

- In the event of an allegation of physical abuse: an investigation into possible inappropriate discipline or inappropriate interactions with children. Refer to the Practice Guide for investigating allegations of inappropriate discipline at CM 22/107118

- In the event of an allegation of sexual abuse: an investigation into possible non-compliance with sections 165 and 167 of the National Law and sections 155 and 170 of the National Regulations, to determine if opportunity for the possible sexual abuse of a child existed at the time of the alleged conduct due to particular system control or governance failings on the part of the approved provider. NB: this does not involve forming a view as to whether the alleged conduct did/did not occur.

#### Notification of parents

- TBD

#### Applicable provisions of the National Law and National Regulations

Legislative provisions applicable to allegations or disclosures of physical or sexual abuse include:

##### National Law

Section 182 – Grounds for prohibition

Section 165 – Offence to inadequately supervise children

Section 166 – Offence to use inappropriate discipline

Section 167 – Offence relating to protection of children from harm and hazards

##### National Regulations

Section 155 – Interactions with children

Section 170 – policies and procedures to be followed

#### Further information

If you have any questions about the assessment process, contact Compliance by telephone on 3328 6901 or by email to [regulation@gcd.qld.gov.au](mailto:regulation@gcd.qld.gov.au)

#### References

- *Education and Care Services National Law (Queensland)*
- *Education and Care Services National Regulations (Queensland)*



## R4Q Practice Manual

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## Conduct an investigation

The [risk assessment process](#) helps determine the most appropriate response to a matter based on the outcome of the initial risk assessment. If the initial risk assessment returns a Response Level 3 or 4, this indicates an option to conduct an investigation.

It is appropriate at this stage to reconsider whether the matter meets the threshold for referral as per the Protocol for Referral of Significant Matters (CM 18/346281).

### Additional resources

Other information or templates related to investigations are:

- [Risk assessment process](#)
- Risk Assessment Tool (RAT)
- Investigation Training Materials (CM 18/346281).
- Powers of Authorised Officers (Table 32 in this Manual)
- Investigation Templates - Reactive Practice Manual – List of Templates, Guidelines and Reference Documents (17/367989)
- Investigation and Interview Fact Sheet (17/309327)
- Guide to the National Quality Framework – [Investigations and Evidence Gathering](#)
- Work Instruction – Case Records (19/305262) for processing investigations in the NQA ITS.

## The investigative process

An investigation is a formal and systematic inquiry to establish facts about a matter and should be robust and capable of withstanding scrutiny.

A Regulatory Officer is responsible for gathering all the relevant evidence or information to determine the facts of the matter.

Facts not in dispute can be accepted at face value, but facts in dispute should be constantly checked, changed and analysed – this is known as the investigative process.

Where an investigation is warranted based on the initial risk assessment, Authorised Officers should consider the following activities:

- consider any immediate risk that requires mitigation
- plan the investigation
- obtain evidence to rule out or confirm possible breaches of the National Law and National Regulations or ECS Act and Regulations
- document evidence or other information
- make enquiries of case-specific risk factors
- afford procedural fairness

- analyse the evidence and draw conclusions
- determine the most appropriate response to any confirmed breaches
- take relevant enforcement actions
- notify all parties of the outcome.

## **Role of the Regulatory Officer in conducting investigations**

The role is to:

- define the focus and scope of the investigation
- collect and document evidence
- establish the facts based on evidence
- prepare an investigation report (within the reactive decision record) that details the outcome of the investigation and makes findings or recommendations
- take enforcement action as required

The Regulatory Officer's duty is to collect and assess relevant information without bias. At the end of the process they must report their findings, make recommendations and possibly take high level action such as prosecution.

The standard of proof is based on the 'balance of probabilities. This means the Regulatory Officer should think about whether it is more likely than not that the conduct happened. This is lower than the standard of proof in a criminal case, which is 'beyond reasonable doubt'.

During the investigation process the Regulatory Officer should not make assumptions and be wary of developing an unconscious bias for or against the accused. Outcomes should be made from the evidence obtained.

## **Dealing with a complainant**

If an investigation is being conducted as a result of a complaint the Regulatory Officer is required to complete additional actions to ensure the complainant is kept informed. Activities include:

- Initial contact to advise that the complaint is being investigated (refer to the Risk assessment and response page, Step 6: Select response option and acknowledge information, [Written complaints](#) or [Verbal/anonymous complaints](#)).
- If applicable, advise that the investigation timeframe needs to be extended, this can be done via a telephone call or a 'Letter to Complainant – extension of investigation' (*Smart Flows template*) (17/516635). During the course of the investigation the Authorised Officer should keep the complainant regularly updated of the progress of the investigation.
- Post investigation to advise of the outcome. Refer to [Enacting the regulatory response \(post investigation\)](#).

## **Confidentiality**

The details of an investigation should be kept confidential unless there is a good reason not to do so. All persons involved in an investigation should be told that the investigation must be kept confidential except to the extent that there is a need to inform those who have a need to know, such as referral to CPIU or Blue Card Services.

## **Conflict of interest**

All investigations must be conducted impartially.

The Regulatory Officer must ensure they do not have a conflict of interest that could give rise to a either a perception of bias or actual bias in the way they investigate matters.

## **Investigation Plan**

Planning how an investigation will be undertaken is an essential activity. It involves the officer considering potential breaches, their elements, evidence obtained or to be obtained, and the types of evidence that will be sought. The plan would note observations to be made, photos to be taken, documents to be collected and questions that may be asked of specified people and who to talk to, and in which order.

The key to a good investigation is planning. Planning helps to ensure that:

- the investigation is carried out methodically and in a professional way
- evidence that needs to be obtained is identified
- resources are used effectively, and additional resources can be sought (if required)
- sources of relevant evidence are not overlooked and opportunities for people to remove, destroy or alter evidence is minimised
- all relevant witnesses are identified, and thought is given to the order of who needs to be interviewed and when. If a witness is not going to be interviewed the reason should be clearly recorded
- witnesses are interviewed separately, and in a determined order
- the subject of the allegation is given procedural fairness.

An investigation plan should be prepared before any investigation commences. It should identify what questions need to be answered, what evidence is needed to answer those questions and the best way to obtain that evidence.

The plan should set out:

- the background to the matter
- the suspected non-compliances and / or offences
- the evidence that you propose to collect that goes to each element (refer Section 2.3.1)
- investigative powers to be used

- the timing for proposed activities.

Planning can be done by completing an investigation plan (18/232601). Further guidance and an example of a completed investigation plan can be found in section 8 of the Investigation training materials (CM 18/346281).

## **Evidence Matrix**

To be satisfied that a provision has been breached it is necessary to obtain evidence that each element of the provision has been breached.

Elementising is the best way to determine what evidence is required.

Elements to be proved, evidence obtained and evidence to be obtained are recorded in section 3 of the Investigation Plan.

## **Elements of an offence**

Each provision is comprised of a number of elements. To be satisfied that a provision has been breached, it is necessary to obtain evidence which shows that each element of the provision has been breached.

When investigating, the best way to determine what evidence is required is to undertake the process of 'elementising'. This is where each provision under investigation is broken down into its elements and consideration is given to the evidence obtained or required in relation to each element.

Officers should be familiar with the elements of any possible offences at the start of an investigation. This allows for effective investigation planning and helps determine what evidence will be required.

The common elements of an offence include the date, place and time of an offence and the identity of the entity accused. Officers must be reasonably certain when (date and time) an alleged offence occurred. This is also because some matters may be statute barred (beyond the legislated time limit to commence prosecution action) and because events must be put into their true context in order to establish that the conduct was a breach of the legislation.

The Evidence Guide Table – National Regulations (17/149691) and Evidence Guide Table – National Law (17/352890) set out the elements of every compliance provision in the National Law. They also set out the types of evidence that could be collected to prove each element of each provision.

An example of elementising for section 167 is set out below:

### **s.167 Offence relating to protection of children from harm and hazard**

- (1) The approved provider of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury.  
Penalty \$10 000, in the case of an individual.

\$50 000, in any other case.

Element 1 – That the person accused is an AP for an ECS	This element tells us who can be in breach of section 167(1) and therefore who is the subject of our investigation.
Element 2 – That a child was not protected from a harm or hazard likely to cause injury	<p>This element may be proven if a child has sustained injury and that injury was caused by a harm or hazard that existed before the injury occurred. An injury to a child from tripping where there is no evidence of any tripping hazard would not be evidence to prove this element.</p> <p>This element may be proven when a child does not sustain an injury. For example, a child that left a service unattended may been exposed to a risk of harm or hazard likely to cause injury (i.e. that they could have been injured whilst outside the service unsupervised) even though the child was returned to the service with no injury.</p> <p>Example – Obtain evidence of injury, photos of injury, photos of hazard, medical records, CCTV.</p>
Element 3 – That the child was being educated and cared for at the relevant time	<p>This element requires evidence to show that the child injured or exposed to the harm or hazard likely to cause injury, was a child being educated and cared for at the time of the injury or exposure to harm or hazard.</p> <p>Example - Obtain copy of child enrolment form and child attendance record for the day of the incident.</p>
Element 5 – Evidence that the person accused did not take 'every reasonable precaution' to protect the child	This element requires the evidence to show that reasonable precautions were not taken. This requires the regulatory officer to identify what reasonable precautions should or could have been taken by the approved provider to protect the child from the harm or hazard that caused or was likely to cause injury.

## Defences

A Regulatory officer must gather evidence to prove each element of an offence in order to prove the offence. They should also be aware of possible defences. During the investigation obtain not only evidence to prove each element of the offence, but also look to gain evidence to overcome possible defences. An officer should know the defences that may arise and be prepared to negate those defences during the investigative process.

## Obtain evidence

Regulatory Officers need to gather relevant and reliable evidence to enable a decision to be made about whether there has been a breach of a compliance obligation.

Evidence is the sum total of the testimony, documents and other admissible information that proves all the facts of a matter to a sufficient standard. The Regulatory Officer has the responsibility of controlling evidence and ensuring it is stored appropriately so that it may be relied upon as required (i.e. to support enforcement action). If original evidence is seized for any reason, officers should liaise with the RASQ division to ensure that appropriate evidence handling practices are followed.

Below, guidance is given on:

- documenting evidence and other information
- investigative powers
- types of evidence that can be gathered
- chain of custody
- procedural fairness (natural justice).

### **Documenting evidence and other information**

A Regulatory Officer should document all information about the investigation including everything they did and why as well as records of all of the evidence collected. Regulatory Officers should create a Run Sheet (16/382253) and update it throughout the duration of the investigation. Best practice is to record activities such as phone calls, visits, interviews, documents obtained and emails sent and received etc. as soon as possible to ensure accuracy.

### **Powers**

Regulatory Officers appointed as Authorised Officers (AO), are required to always act within their powers.

Under the National Law, AOs and the Regulatory Authority have a range of powers to:

- Enter, inspect/search for evidence and take things (s197, 199, 200, 200A, 201) (see ACECQA Guide to the NQF p552-561);
- require information be given;
  - names, addresses, DOB (s204 and 205) (see ACECQA Guide to the NQF p562-564);
  - information, documents (s206, 215, 216) (see ACECQA Guide to the NQF p 547-550),

A summary and comparison of the various powers of entry is set out below in the table below.

Refer to:

- Section 4 of the Investigation Training Materials (CM 18/346281)
- Refer to National Quality Framework - [Regulatory Authority Powers](#).

### Summary and Comparison of powers of entry for Authorised Officers

	s197 – Monitoring or A&R or re s35 or 85	S199 – investigate a suspected offence	s200 – business premises – suspect an offence	s200A – suspect operating w/o service approval	s201 – search warrant
<b>Is consent required?</b>	No	No	Yes, must show ID and inform occupier 1st	Yes, must show ID and inform occupier 1st	No
<b>Can I enter a residence?</b>	Yes, if ECS is operating at the time or with consent	Yes, if ECS is operating at the time or with consent	Only with consent	Only with consent	Yes – consent not required
<b>Can I search?</b>	No	Yes	Yes	Yes	Yes
<b>Can I inspect the premises/ things?</b>	Yes*	Yes*	Yes	Yes	Yes
<b>Can I measure or test things/</b>	No	Yes*	Yes	Yes	Yes
<b>Can I take photos/ audio/video /sketches?</b>	Yes*	Yes*	Yes	Yes	Yes
<b>Take samples for analysis or measurement?</b>	No	Yes*	Yes	Yes	Yes
<b>Can I take copies of documents</b>	Yes*	Yes*	Yes	Yes	Yes
<b>Can I take documents?</b>	Yes*	Yes*	Yes	Yes	Yes
<b>Can I ask questions?</b>	Yes	Yes– warn under s212	Yes– warn under s212	Yes– warn under s212	Yes– warn under s212
<b>Can I ask for information/ docs?</b>	Yes	Yes– must warn under s212	Yes– must warn under s212	Yes– must warn under s212	Yes– must warn under s212
<b>What do I have to do if I take something</b>	must give a notice and return the document/ thing w/i 7 days	must return when no longer required or within 60 days unless extended by court (s202)	must return when no longer required or within 60 days unless extended by court (s202)	must return when no longer required or within 60 days unless extended by court (s202)	must return no longer required finished or within 60 days unless extended by court (s202)

\*Provided that the thing or document is used, or likely to be used in the provision of education and care services.



Powers of entry in sections 197 and 199 allow an AO to audio or video (electronically) record premises or things used or likely to be used in the provision of the education and care service.

There is no clear, express power to record conversations with or activities undertaken by persons during the exercise of a power of entry.

Where an AO wants to electronically record a site visit, the recommended approach is to announce the intention to use electronic recording during the exercise of a power of entry. If there is an objection raised, the AO should not proceed with the recording. They may decide to proceed with the inspection but will need to take detailed notes and photographs. They may also decide not to proceed with the inspection and instead seek advice or communicate further with the approved provider about the benefits of allowing the site visit to be recorded.

When asking potential witnesses questions during an investigation, AOs should also seek voluntary cooperation, even when they are exercising a power of entry.

An example of what can be said to a person to seek their voluntary cooperation with your questioning is:

*My name is ##, I am an authorised officer under the National Law. I'm here to investigate a [complaint/notification/incident about – describe the reason]. Are you aware of [refer to the complaint/notification/incident you just described]?*

*Would you be willing to talk to me about it and answer a few questions for me?*

*I would like to record our conversation to save me taking notes and to make sure I don't miss anything you tell me? Is that ok with you?*

If the person does not wish to answer questions or provide documents, the AO must stop questioning; or provide the person with the warnings required in sections 211 and 212 of the National Law before proceeding. Refer to Section 5.8 of the Investigation Training Materials (CM 18/346281).

### **Types of evidence that can be gathered**

Evidence is the total of the documents, photographs, statements and other admissible information that proves all the facts of a matter. Officers should gather all the available relevant evidence. Some information collected during an investigation may not be admissible but may still provide useful background information about the circumstances of the alleged offence.

### **Physical evidence**

Physical evidence includes documentary evidence, policies and procedures, child's enrolment form, attendance registers, incident reports, staff training records, staff rosters, staff employment forms, emails, CCTV footage and photos etc.

Officers should immediately record the details of any photographs in their run sheet. Include the

date and time the photographs were taken, which location and what the photographs show. Photographs should be transferred from the camera or phone to the computer system, without alteration, to preserve continuity of evidence.

When taking a video recording, a fair and accurate picture should be taken not just a select part of the process which may not accurately reflect the whole picture. The date, time and place should be recorded. All photos are to be clearly marked in Content Manager.

### **Site inspection / observation**

Attending the service and making observations of the surroundings E.g. play equipment, educators at work etc. may lead to the Regulatory Officer taking photographs of locations or items or making a diagram.

The Regulatory Officer should take detailed notes of the visit and may consider taking photographs and a diagram of anything specific to the investigation.

The visit must be added to the run sheet.

### **Witness account**

All relevant witnesses should be identified and where possible interviewed. The interview may be formal or informal depending on the nature and seriousness of the matter.

Formal – A letter of invitation to be sent to the witness to attend the office to participate in a formal record of interview or alternatively participate in a formal telephone record of interview. The officer should consider preparing an interview plan which includes areas/questions to be explored. The interview should be digitally recorded (templates, 17/309335).

Informal – Officers contact the witness, arrange a suitable time to speak to them and/or arrange a visit. If it is an educator, arrange a time suitable so that they have notice to ensure that sufficient staff are available to meet ratio requirements.

Where there is only one witness, it is good practice to gather any other additional evidence as it will further support the findings.

Witness accounts should be taken as soon as possible while the details are fresh in their memory and not tainted by time or discussion with other parties.

### **Obtaining witness statements**

Statements are formalised accounts of the facts and events known or witnessed by a person relevant to a matter. Statements are a written form of the testimony of a witness and should capture the details of the matter.

Before taking a witness statement Regulatory Officers should conduct preliminary enquiries to determine what the person may know about the incident and evaluate the information to determine its relevance. Regulatory Officers should:

- gather all known facts
- identify what elements must be proven to prove the offence
- identify the best venue to obtain the statement
- identify what information the witness may be able to provide
- clearly state the purpose of the statement

Statements should:

- be obtained only from relevant, appropriate witnesses or victims
- be as comprehensive as possible
- be in chronological order
- be written in the words of the witness without interpretation from the officer taking the statement
- be obtained at the earliest practicable opportunity
- set out all the information that a witness knows about a matter
- introduce any physical evidence provided by them
- be signed by the witness on the bottom of every page and at the end of the statement
- have a signed acknowledgement by the witness under either the Oaths Act 1867 or the Justices Act 1886. This section ensures the witness endorses the statement as being accurate. The template (15/125201) references the Justices Act. The difference is for the Justices Act endorsement there is no requirement for the witness to endorse the statement in the presence of a Justice of the Peace or Commissioner for Declarations which is required for the Oaths Act endorsement.
- generally be prepared by the Regulatory Officer taking the statement
- the Regulatory Officer should promote free recall and should never suggest that an event may have occurred as it may create false memories or accounts for the witness;
- the Regulatory Officer may prompt a witness for more information where it appears as though they may have missed some details.

Members of the public cannot be compelled to provide a statement. An unsigned statement generally cannot be tendered as evidence.

Refer to:

- Interview Statement template (15/125201)
- Section 5 of the Investigation Training Materials (CM 18/346281).

### **Direct evidence**

Direct evidence is obtained from the alleged victim, unless they are a child. If relevant, the alleged victim's parents may provide a statement. Where possible it is best practice to obtain a written witness statement. Where the victim is a child, no interview would be conducted as specialist

training is required to conduct meaningful interviews with children.

### **Expert evidence**

An expert witness has qualifications or experience to assist in determining the facts of a situation. They must have their expertise proven to the satisfaction of the court and owe their first duty to the court and not to either party.

An expert witness includes technical or specialist advisors for example, a doctor or psychologist, Kidsafe, QML Pathology, etc.

### **Accused account**

Alerting the subject of the allegation too early in the investigation may put the investigation at risk if there is some chance for evidence to be damaged or altered or witnesses to be pressured to change their story. An example of this may be where there is an allegation against an educator. All other evidence should be gathered first, before putting the allegations to the educator.

Regulatory Officers should keep in mind that the requirements of procedural fairness means that the allegations must, at an appropriate time before any adverse findings are made, be put to the subject of the allegation.

Consideration should be given to whether an informal or formal interview should be conducted. When putting allegations to an accused person, this would normally be conducted under a formal interview.

The interview should ideally take place at the Regulatory Authority's place of business. Alternatively, the location may be a private office free from distractions at the education and care service or an independent location.

The interview should be recorded. This is to protect both parties, provide a record of what was said, including cautions administered and any admissions or confessions. The original is kept by the Regulatory Officer and uploaded to the computer system without alteration. A copy may be provided to the subject post interview.

The subject has the right to silence and the presumption of innocence.

The Regulatory Officer should explain the interview process, what will happen after the interview and what support is available. All interviewees are entitled to have a support person present. The support person is not permitted to answer any questions on behalf of the interviewee and is there to offer support or advice to the interviewee only. The subject can be provided with the Investigation Fact Sheet (17/309327).

Refer to Section 5 of the Investigation Training Materials (CM 18/346281).

Pursuant to the National Law s.212 warning is to be given, an Authorised Officer must warn the person that a failure to comply with a requirement or to answer questions, without reasonable excuse, would constitute an offence Officers need to consider National Law s.211 protection

against self incrimination.

Refer to: Section 4 of the Investigation Training Materials (CM 18/346281).

### **Conducting formal witness (accused) interviews**

When preparing, the Regulatory Officer should consider the potential offences they are investigating, the points to be proved and any defence that the subject might raise.

The Regulatory Officer should prepare a written plan for all formal interviews. This will be updated as the interview progresses depending on the subject's responses. The plan should help keep track of what material the officer has, provide structure to the interview, include a range of topics to be covered, identify potential defences the subject may employ, and provide confidence to conduct an effective interview.

Refer to:

- Section 5 of the Investigation Training Materials (CM 18/346281)
- Investigation & Interview Fact Sheet (17/309327)
- Invitation for Interview Letter (17/309327)
- Interview Plan, subject of investigation (15/125203).

### **Issuing a warning (caution)**

Where an AO is speaking to a person who they suspect has committed a breach, best practice is to issue the person with a 'caution' reminding them of their rights against self-incrimination, before asking them questions or if mid conversation, continuing to ask questions. An example of a caution is:

*My name is ##, I am an authorised officer under the National Law. I'm here to investigate a [complaint/notification/incident about – describe the reason]. Are you aware of [refer to the complaint/notification/incident you just described]?*

*I suspect there may be breaches of the National Law in relation to this matter for [explain the breaches you are investigating E.g. a failure to notify the Regulatory Authority or a failure to adequately supervise children]. As the [approved provider/nominated supervisor] you might be responsible for these breaches. I'd like to speak to you about these matters. You don't have to speak to me about them if you don't want to. If you do speak to me what you say may be used as evidence of the breaches.*

*Or*

*Before I ask you any further questions, I must warn you that I have reason to believe a contravention of the (National Law/ECS ACT) has occurred. You are not obliged to say or do anything unless you wish to do so, however anything you do say or do will be recorded and may be given in evidence at a later date. Do you understand what I have just told you?*

Pursuant to the National Law s.218 a person must not obstruct or hinder the Regulatory Authority in exercising powers under section 215 and 216.

*I must warn you that I have reason to believe that you are obstructing the Regulatory Authority in obtaining information and/or documentation requested. I remind you of your obligations under the National Law and caution you that I believe you are committing an offence by failing to provide information and/or documentation requested by the Regulatory Authority.*

Refer to Section 5.8 of the Investigation Training Materials (CM 18/346281).

### **Chain of custody of evidence**

The reliability of evidence depends on how that evidence was collected and stored. Regulatory Officers are responsible for ensuring evidence is stored correctly and they may be required to give evidence about storage of evidentiary material and the chain of custody over that material if a matter ends up in legal proceedings.

Photos taken need to be kept on a secure computer so that evidence can be given about who has accessed the photos between when they were taken and when they are used in court.

Anything seized or taken during a site visit needs to be documented and a copy of the list of the items taken should be left with the representative you are dealing with at the Education and Care Service or APs place of business. This is mandatory if a power of entry is being exercised under section 197. It is not mandatory when exercising other powers of entry, however it is best practice and should always be done.

Anything seized, must be secured and the RA must be able to show that the things have not been accessed or tampered with whilst in the custody of the RA.

The National Law requires seized items to be returned within a specified period. See s 197(4) – 7 days and s 202, 60 days for items seized under section 199, 200, 200A or 201.

Seized items should be locked in secure storage and records need to be kept whenever any person has access to the items whilst they are in the possession of the RA.

The following templates should be used when exercising powers of entry and seizing documents:

- Acknowledgement of Consent under National Law (15/125366)
- Receipt for Materials Seized (15/125420)
- Return of Items Seized (15/5448)
- Chain of Custody Seized Items (15/125407).

### **Procedural fairness (natural justice)**

Procedural fairness is the opportunity to provide a person who may be adversely affected by a decision the Regulatory Authority is considering to be notified of the decision and an opportunity to respond to the decision.

It is best practice to apply procedural fairness when making an administrative decision which will affect the rights of a person, they must provide procedural fairness. This requires the decision

maker to:

- give the person affected an opportunity to be heard
- be open to persuasion
- be free from bias or conflict of interest
- have a reasonable basis to make the decision.

Unless an Act says expressly that an opportunity to be heard is not required, government decision makers must accord procedural fairness to those affected by their decisions.

**Example:** [Section 73](#) provides a power to suspend without show cause. Parliament has expressly provided that an opportunity to be heard via a written show cause notice is not required if this power is being used because there is an immediate risk to health, safety or wellbeing.

Where the act does not expressly state that an opportunity to be heard is not required, the decision maker should assume that an opportunity to be heard is required. The way in which this opportunity is given can vary, it can be in writing or oral. The law says that the nature of the opportunity to be heard will vary having regard to:

- what is fair in the circumstances of the case
- the seriousness of the proposed decision/impact on the person that will be affected by the decision
- the urgency required.

The law says that when giving an opportunity to be heard, there is NO obligation to:

- disclose every document or copies of all material that the decision maker has.  
However, sometimes it's easier and safer to do so – the decision maker can give an opportunity to be heard by conveying the substance of the information that they want the person to comment on **provided it is accurate**
- disclose the source of confidential information – procedural fairness must be balanced against the need for a decision maker to be able to accept information in confidence
- disclose the thinking process or the proposed decision, unless the proposed conclusion is not obvious.

The discussions with a nominated supervisor or approved provider during an investigation can be used to provide the opportunity to be heard. The Regulatory Officer can explain the breaches that are alleged and why the officer believes that these breaches have occurred and invite the person to provide an explanation. Usually, providing an opportunity to be heard to a nominated supervisor will be sufficient to give procedural fairness before making a decision to issue a compliance direction or notice to the approved provider.

Regulatory Officers must be open to persuasion and free from bias. This is consistent with the Guiding Principles of R4Q and all Regulatory Officers are expected to conduct themselves in accordance with those principles at all times.

Refer to: Section 3.1 to 3.5 of the Investigation Training Materials (CM 18/346281).

## **Analyse Evidence**

### **Determine breaches established**

Each element of the offence must be proven in order to prove an offence. The Regulatory Officer should explore the following questions:

- Is the evidence relevant, reliable, substantial and admissible?
- Is there another piece of evidence that either supports or contradicts the evidence in question?
- How plausible is the evidence in all of the circumstances?
- Is the evidence objective? Does it tell the full story?
- Do relevant witnesses give consistent accounts?
- Are witnesses competent, compelling, credible and available?
- Was the person who is the subject of the investigation given an opportunity to comment on the evidence and were they given the opportunity to tell their version of events?
- Is the evidence obtained relevant, sufficient, reliable and authentic?

Findings must be based on the weight of evidence and not on suspicion, rumours or hunches.

### **Determine Outcome**

Refer to the [Risk assessment and response](#) page in this library to determine and enact the appropriate regulatory response.

## **Example of investigation practice and procedure activities**

Fact scenario: A notification is made via the NQA ITS under section 174 about a serious incident in which a child sustained a severe head injury from a fallen bookshelf. The notification discloses that:

- the medical treatment given to the child at the time of the incident (which is considered by the officer to be adequate);
- a parent was notified immediately following the incident;
- the child was taken to hospital by the parent where several stitches were required, and the child stayed in hospital overnight;
- the incident was not witnessed by educators.

Initial enquiries: An initial call to the service confirms that the book shelf has been moved to a store



room. A review of the compliance history for the service shows no relevant compliance history. Based on the initial information the potential breaches are regulation 103, and section 165.

Initial risk assessment: The initial risk assessment results in a response level 3 and it is determined to conduct an unannounced site visit.

Investigation - unannounced site visit: Prior to conducting the visit the officer should consider commencing an investigation plan which will assist in their line of questioning and obtaining evidence during the visit.

The officer arrives at the site and produces their ID card. They announce their intention to enter the service under their power of entry to investigate suspected breaches of the National Law in relation to the notification of injury to child X, using section 199 of the National Law. The nominated supervisor is cooperative and helpful.

At the site visit, the officer viewed the bookshelf which was in a locked store room. A photo is taken of the bookshelf. Discussions with the nominated supervisor reveal that the book shelf was damaged a week prior to the incident. The damage was reported to the approved provider who was yet to decide whether to replace or repair the book shelf. The officer said that the failure to remove the book shelf when it was damaged was a failure to take reasonable precautions to prevent harm or hazard. The nominated supervisor said they had considered the book shelf to be stable, so it was not removed from the room. She understood now that this was the wrong decision.

The officer reviewed the incident record and observed that details of medical treatment given were not recorded. A brief review of other incident records identifies that 3 other recent records are also incomplete. Copies of the relevant records are photographed. The records were discussed with the nominated supervisor. She said that she would speak to the staff about the importance of completing incident records.

The staff roster and attendance record for the day of the incident were reviewed to check educator to child ratios and confirm the injured child was recorded as in attendance. It was determined that there were 2 educators at the service at the time of the incident for 17 children aged 3-4. Discussions with the nominated supervisor confirm that at the time of the incident one educator was with a child in the toilets, the other was cleaning paint brushes in the kitchen area and was not working directly with children. It is reported that the shelf fell when 2 children playing accidentally bumped into it. Ratio requirements and supervision practices were discussed. The nominated supervisor advised she has spoken to the educators involved about supervision practices and improvements to communication and that they reviewed their child safe supervision policy together and noted the supervision practices set out in that policy. The officer also speaks to the educators involved in the incident who confirm what the nominated supervisor has said. There is evidence that staff have regular training on policies, including a recent planning day and a copy of the planning day attendance record is reviewed by the officer.

The nominated supervisor was very cooperative and willing to take any further actions recommended by the officer. Based on the investigation, relevant breaches are now, s165, s167,

s169, r103 and r87.

Investigation – contacting the parent of the injured child: The officer makes a telephone call to the child's parent and is told that the child's recovery has been swift with no lasting inquiry. The parent also confirmed that they were notified immediately after the incident and were satisfied with the medical treatment given to the child by the service.

Documenting evidence and information: The officer prepares a report of their site visit which includes notes of conversations with the nominated supervisor and two educators present at the time of the incident. Those notes are signed by each person who was spoken to. The report refers clearly to photos of the book shelf, incident reports, attendance records for recent training on policies, the staff roster and attendance record for the day and a file note of the discussion with the parent is also recorded. The officer includes a summary of relevant evidence in the Decision Record and an analysis of the evidence. The officer is now ready to undertake their second risk assessment to determine what regulatory action should be taken in response to the confirmed breaches.

**Table 33: The following table shows how the above example follows the investigation practices and procedures:**

Considering immediate risk	The notification provided details of medical treatment given which was assessed as adequate. The officer telephoned the service as part of initial enquires to find out whether the book shelf had been removed from the play area and was told it had been. The officer viewed the shelf during the site visit to confirm it was in a locked store room.
Making enquiries to identify and rule out potential breaches	The officer considered a range of potential breaches which were triggered by questions asked and observations made during the site visit. They reviewed the incident record and found it to be incomplete (regulation 87). The officer confirmed that the parent was notified promptly after the event concluding that there was no breach of regulation 86. The officer asked questions about compliance with ratios and whilst there was the correct number of educators present at the service, the evidence was that there were not sufficient educators working directly with children at the time of the incident (section 165 and 169). The officer determined that the shelf had been damaged for a week. The approved provider was aware of the damage and there had been a failure to take reasonable precautions by removing the shelf from the play area (section 167 and regulation 103). The officer also asked questions about reasonable steps taken by the approved provider to ensure staff comply with policies and determined that regular training was undertaken so there was no breach of regulation 170.
Obtaining reliable evidence for breaches identified	The officer undertook a review of the notification, telephoned the service to make initial enquiries, made an unannounced site visit at which they made observations, reviewed documents and spoke to the staff members involved. The officer also contacted the parent of the injured child. The officer produced their ID card and announced

	<p>their site visit as being conducted under their power in section 199 of the National Law. The officer spoke cooperatively with staff at the service who voluntarily gave information. The officer recorded the site visit in NQA ITS.</p>
Making enquiries to inform the assessment of case specific factors	<p>The officer asked about the impact on the child – their recovery and any lasting injury. The officer determined that swift action was taken to remove the shelf after the incident. The officer was told that the nominated supervisor had proactively spoken to staff about supervision practices and reviewed the relevant child safe supervision policy with them. The officer observed that incident record management was lacking and was told that the shelf had been damaged for one week indicating systems to manage risk and comply with recording obligations need attention. The nominate supervisor has no compliance history and was very cooperative showing a willingness to rectify any breaches and improve.</p>
Providing procedural fairness	<p>The officer discussed the suspected breaches with the nominated supervisor during the site visit and provided them with an opportunity to comment as part of their investigation.</p> <p>The officer considered who the offence was against the Approved Provider, Nominated Supervisor or an Educator.</p> <p>(It may be that procedural fairness is conducted at the time of issuing a compliance notice. Issuing of the notice allows the Approved Provider to respond to the allegations contained in the notice).</p>
Documenting evidence or other information	<p>The officer made a record of the site visit in the 'run sheet', recorded notes of discussions with staff and had those staff sign the notes. They took photos of the book shelf and of relevant documents which they referenced clearly in their record of the site visit. The officer also spoke to the parent of the injured child and made a 'file note'. All information was saved in to Content Manager.</p>
Analyse Evidence	<p>The officer reviewed the evidence to ensure it was relevant, reliable and sufficient. They made an informed decision on whether any offences were proven or not. They completed the next stage of the decision record identifying which breaches were substantiated or not and outlined clearly why. They included the evidence relied upon to determine their decision. They ensured all evidence was saved in Content Manager.</p>
Conduct Second Risk Assessment	<p>The officer conducted a second risk assessment in the RAT to ascertain enforcement options available.</p>
Determine Outcome	<p>The officer considered which enforcement options were the most appropriate for this matter. They completed the decision record making the recommendations. They ensure that ALL documents and records were recorded in Content Manager. They then submitted the record to their manager for final approval and authorisation.</p>
Enforcement Action and Outcome	<p>The officer drafted the enforcement document and submitted it to their manager for approval. They also drafted the outcome letters to the relevant parties and submitted them to their manager for</p>

Correspondence	approval. NQA ITS was updated throughout the process and finalised upon completion of the investigation.
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## R4Q Practice Manual

<b>Title</b>	Risk assessment and response
<b>Page:</b>	<a href="https://qeducorp.sharepoint.com/sites/R4QRIL/SitePages/RiskAssessmentandResponse-ReactiveRegulatoryActivities.aspx">https://qeducorp.sharepoint.com/sites/R4QRIL/SitePages/RiskAssessmentandResponse-ReactiveRegulatoryActivities.aspx</a>
<b>Parent page(s)</b>	<a href="https://qeducorp.sharepoint.com/sites/R4QRIL/SitePages/Reactive-regulatory-activities.aspx">https://qeducorp.sharepoint.com/sites/R4QRIL/SitePages/Reactive-regulatory-activities.aspx</a>
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## Risk assessment and acknowledgement of information

**Commented [HC1]:** Nicola to check if this is the new heading for page or a sub heading

If a notification, complaint or intelligence is about an alleged or potential contravention of the National Law or National Regulations or ECS Act or ECS Regulations, the Regulatory Officer must assess the level of risk associated with the information received. This may require initial enquiries to be made and, based on those enquiries, the 6-step risk assessment process set out below can be applied.

### Level of enquiry

In order to conduct a risk assessment, initial enquiries may be necessary. Table 1 provides Regulatory Officers with guidance on the level of enquiry to be undertaken at different stages of the decision-making process and record-keeping requirements.

Where the complaint, notification or intelligence relates to an injury or risk of injury or harm to a child, the initial enquiries should include consideration of whether the risk has been removed or mitigated. This may be obvious from the initial information or it may be necessary to contact the service and ask questions about what steps have been taken since the incident to remove the risk.

Considering and enquiring about immediate risks has two main purposes: to prevent further injury or ongoing risk; and to provide an indication of how proactive the service has been in identifying and mitigating the risk. This informs the assessment of the case specific factor 'Attitude to correcting non-compliance and preventing recurrence'.

**Table 1: Guide to the level of enquiry and record keeping requirements**

Stage in process	To determine...	Level of enquiry	Decision Record and NQA ITS Case record?	NQA ITS CASE priority
Pre 1 <sup>st</sup> risk assessment Initial enquiries	Is there an immediate risk? Who what, where and when? Scope check Serious/critical incident? Potential non-compliance?	Desktop, limited calls/emails Generally entitled to assume information given is accurate and truthful	Yes, if breach possible/likely, a DR is required and the Case Record in NQA ITS is to be updated with potential breaches.  No, if not in scope or there is clearly no breach based on initial enquiries, a DR is not required. Reasons for decision recorded on file note in Content Manager and the Case Record in NQA ITS is closed with NFA.	LOW

Stage in process	To determine...	Level of enquiry	Decision Record and NQA ITS Case record?	NQA ITS CASE priority
Post 1 <sup>st</sup> risk assessment Response Level is 1 or 2 but may want to confirm or verify issues	Confirm breach and that action has or will be taken to resolve and prevent further breach (see further information in Stage 4: Activating the most appropriate response)	Minor – phone call, email request a document/photo	Yes, note enquiries made and action taken on DR and in Case Record in NQA ITS	LOW
Post 1 <sup>st</sup> risk assessment where Response Level is 3 or 4 Investigation	What happened? Whether breach occurred or not, inform regulatory response.	As necessary - multiple calls/emails, site visit, review documents, witness statements, interviews, coercive powers, etc.	Yes – summary of enquiries made, basis for decision in DR and in Case Record NQA ITS	HIGH

#### Where initial enquiries show there is no breach substantiated

In some circumstances, initial enquiries made before the first risk assessment is undertaken may identify that there is **no evidence of a breach** of the Law or Regulations. In these instances, the Regulatory Officer may propose that no regulatory action needs to be taken and:

- the Regulatory Officer records details of the enquiries and the reasons for the decision in a file note saved to Content Manager and as an activity record against the Case Record in the NQA ITS;
- the relevant Manager/Team Leader reviews and approves the proposed decision; and
- the Regulatory Officer closes the matter in NQA ITS.

#### The 6-step risk assessment process

Where the information initially received, and any further information obtained through initial enquiries, indicates that there is a potential breach(es) of the Law or Regulations the following 6 steps are taken using the Risk Assessment Tool and Decision Record:

- Step 1:** Update the Case Record in NQA ITS and create a Decision Record
- Step 2:** Identify compliance obligations
- Step 3:** Use the Risk Assessment Tool to determine the static risk
- Step 4:** Identify relevant case-specific factors to determine 'dynamic risk'
- Step 5:** Use the Risk Assessment Tool to determine response level
- Step 6:** Select regulatory response option.

## **Step 1: Update the Case Record in NQA ITS and generate a Decision Record**

Where initial enquiries suggest a breach of the National Law or National Regulations or ECS Act or ECS Regulations may have occurred, the Regulatory Officer completes relevant sections of the Reactive Decision Record (*Smart Flows template/18/201908*) and saves this record into the appropriate file in Content Manager.

The Decision Record is used to document key information which informs risk-based decision making to determine regulatory responses. It will include a record of the investigation preliminary enquiries, risk assessment which includes a summary of potential breaches, and a summary of and/or reference to all enquiries made or including the initial evidence gathered to support the initial decision.

By this stage of the process, a Case record will have been created in the NQA ITS about the notification, complaint or intelligence. Where the Regulatory Officer has formed the view that there is a potential breach of the National Law or National Regulations or ECS Act or ECS Regulations, the Case Record section in the NQA ITS will be used to record the potential breaches being considered.

### **What is a Decision Record and how do I use it to assess risk?**

The Decision Record steps Regulatory Officers through documenting information that is relevant to a matter and assessing and analysing that information in order to reach certain decision points. It is used to summarise and/or reference all relevant enquiries made and evidence gathered as part of the investigation of a matter.

The Decision Record identifies the relevant stages where risk is to be assessed in order to inform a decision. The Decision Record refers Regulatory Officers to the tools used to conduct a risk assessment (Risk Assessment Tool or RAT). Each risk assessment takes into account the risk associated with each provision of the National Law or National Regulations or ECS Act or ECS Regulations (static risk), as well as any case-specific factors that will influence the level of dynamic risk. The end result is a response level, which guides the decision maker on how to respond to a matter.

## **Step 2: Identify compliance obligations**

To identify the compliance obligations the Regulatory Officer will:

- assess the information received to identify the relevant compliance obligations in the National Law or National Regulations or ECS Act or ECS Regulations (otherwise known as provisions) which may have been breached.
- consider whether the potential breaches were committed by the approved provider, an educator or nominated supervisor.



- determine which provisions may have been breached by making initial enquiries of the complainant or notifier (including any person who provided intelligence).
  - Where information has been received in writing, contacting the complainant/notifier will usually assist to clarify or gather missing details. It is also an opportunity to manage the expectations of the complainant/notifier.
  - See Table 1 above for guidance on the level of enquiry that should be made at each stage in the risk assessment process.
  - Emphasise that contact at this point is for the purpose of gathering additional and/or clarifying information in order to determine how the RA will respond to the received information.
  - The purpose of gathering information at this stage to ensure a clear understanding of whether/which provisions may have been breached so that the **static risk**, referred to in Step 3 can be determined. If irrelevant provisions are considered, this will alter the accuracy of the static risk assessment completed.

Example: If a child cuts their knee on a sharp edge of a table and there is no indication that the child was not adequately supervised at the time, then the Regulatory Officer should not select section 165 or 167 of the National Law. Those provisions are rated as high static risk and may lead to an incorrect level of response to this matter. The relevant provision to consider in the risk assessment is regulation 103, requirement to ensure furniture is safe, clean and in good repair. Regulation 103 has a static risk rating of moderate.

- **Thorough evidence gathering will occur as required after the Risk assessment to substantiate whether a compliance obligation has been breached or not.**

*Example: A notification is received identifying that a child fell off a chair and sustained bruising to their knee when an educator knocked the chair with their foot. The child received immediate first aid care for the bruising. An enquiry may be to ask the questions: 'Why did the educator kick the chair?', 'Was this in response to any misbehaviour by the child?', 'Was the parent notified?' The responses will provide guidance as to the potential breaches to be considered. More detailed enquiries might be undertaken after the first risk assessment depending on the Response Level identified in Step 6.*
- record details of any conversations or enquiries made with the complainant/notifier and save in Content Manager. This may be in the form of a file note, which is then referenced in the Decision Record.
  - ensure that file notes are recorded contemporaneously (that is, at the time of the occurrence or as soon as practicable afterwards). Best practice is to record the

content as soon as possible to ensure accuracy E.g. completing a file note of the details of a telephone call after hanging up the phone.

- File notes can be recorded in a **Run Sheet** (16/382253) for brief matters, in an **email to self** as emails are timed/dated therefore good evidence that a file note is contemporaneous, or more detailed matters can be recorded using the **departmental file note template** in Microsoft Word.
- refer to Evidence Guide Tables for guidance on the types of evidence that may be collected to establish whether a provision has been breached:
  - Evidence Guide Table – National Regulations (17/149691)
  - Evidence Guide Table – National Law (17/352890).
- use judgement to identify with confidence the provisions most relevant and reasonably likely to have been breached.
- record the relevant provisions in the Decision Record, along with a brief analysis to support their assessment (i.e. the complaint refers to a child being smacked, therefore section 166, inappropriate discipline, is a potential breach).

### Step 3: Use the Risk Assessment Tool to determine the 'static' risk

The static risk rating for each compliance obligation has been pre-determined by the RA.

To determine the overall static risk associated with a matter, the Regulatory Officer will enter each of the relevant provisions and standards into the RAT – Reactive (17/362521).

The RAT calculates the overall level of static risk and provides a result, and the Regulatory Officer should document the result in the Decision Record.

#### **Definition of 'static risk'**

Static risk represents the relative compliance risk if a compliance obligation in the legislative framework is not met.

### Step 4: Identify relevant case-specific factors to determine dynamic risk

The Regulatory Officer will now assess the dynamic risk associated with the applicable case-specific factors (outlined in Table 2) using the RAT – Reactive (17/362521).

**Table 2: Case-specific factors for consideration in the initial risk assessment as part of determining dynamic risk in relation to a notification, complaint or intelligence**

Case-specific factor	Significance
ECEC service risk profile	Minor
Compliance history	Significant
Impact on children's safety, health or wellbeing	Very significant

Impact on children's educational or developmental outcomes	Very significant
Isolated or systemic non-compliance	Significant
Attitude to correcting non-compliance or preventing recurrence	Significant

Each case-specific factor has been given a relative weighting by the RA in an effort to ensure the focus in risk is proportionate to the importance of each case-specific factor.

Not all case-specific factors will apply or there may be insufficient information about some case-specific factors to enable an assessment. In these instances, the Regulatory Officer should select 'not applicable' so as not to skew the results. Guidance on how to assess each case-specific factor is provided below.

It is essential that as many case-specific factors as possible be considered when determining the response level and response action required. If some case-specific factors are unknown at the initial risk assessment and it is determined to undertake further investigation, that investigation should inform the assessment of seriousness of all case-specific factors for any subsequent risk assessments.

### **ECEC service risk profile**

ECEC service risk profiles can be found in the Services record in NQA ITS.

### **Compliance History**

The seriousness level for this case-specific factor should be chosen having regard to the number of previous breaches, the extent to which the Provider/Service has resolved previous breaches cooperatively, and the types of previous breaches. This information should be assessed from NQA ITS and Content Manager. If there is no compliance history because the service has not been visited by the RA or because they have always maintained a high-level of compliance, this case-specific factor should be recorded as the lowest level of seriousness, 'somewhat concerning'.

### **Impact on children's health, safety and wellbeing**

This case-specific factor considers the actual harm or impact to the child or children as well as any actual risk to children's health safety and wellbeing. The potential impact of any particular breach is addressed in the static risk for that breach.

Relevant matters would include the age of the child, the number of children impacted, the severity of any injury, and the duration of the impact. Impact on safety, health and wellbeing should all be considered. Was any child's safety compromised or put at risk? Was there any injury? If so how severe? Is there any evidence that a child's wellbeing was impacted?

There are a range of injuries that could happen to a child from minor scratches through to serious incidents involving emergency care and hospitalisation. To assess the severity of an injury for the purposes of making a risk assessment, consideration should be given to matters such as:

- the nature of the injury. For example, minor scratches are relatively less serious than a

wound requiring stitches. A break to a small bone, such as a wrist or finger is relatively less serious than a compound fracture to a leg or arm; and

- type of medical treatment required immediately after and/or on the days following the injury. For example, if all that was required was first aid treatment given at the service, this would be considered less serious compared to an injury requiring hospitalisation.

There may be an impact on safety when there is no injury or evidence of an impact on wellbeing. An impact on safety occurs where a child is put at risk of danger.

*Examples: A notification of a child that left a service unsupervised for 10 minutes but was returned uninjured or without distress would have a seriousness level of 'concerning'. Whilst there has been an impact on that child's safety, it was for a short period of time. In contrast a notification involving a child that left the service, was unsupervised for 40 minutes and is injured during that time the seriousness level would be 'very serious' – the child's safety was compromised for an extended period and they were injured. If the alleged breach does not directly, or immediately, impact children's safety, health or wellbeing this case-specific factor should be recorded as "Not applicable."*

The impact on a child's health, safety and wellbeing is only one factor to be considered. There will be times where a child has suffered a serious injury but there is no evidence of a failure to supervise the child or to protect them from harm or hazard. In such a case, remedial action may not be required, and any ongoing risk may be resolved with a relatively low response action, such as guidance and advice. There could also be cases where a child has not been injured but a serious system failure has been identified which put children at risk and which requires a relatively high response action such as an emergency action notice.

### **Impact on children's educational and developmental outcomes**

This case-specific factor will be relevant where the alleged non-compliance affects a child's educational and development outcomes. Relevant matters would include the age of the child, the number of children impacted, the severity of impact and the duration of the impact. Example:

Where there is no or a poor educational development plan for all children at a service the seriousness level would be 'very serious'. In contrast a developmental plan for one child that is adequate but has not been updated for 6 months would have seriousness level of 'somewhat concerning'. There will be many instances of non-compliance which do not directly, or immediately, impact on educational and development outcomes of children. In these cases, this case-specific factor should be recorded as "Not applicable."

### **Adequacy of controls**

This case-specific factor relates whether the facts indicate that there is a systemic level of non-compliance. Often notifications will relate to isolated breaches which have resulted in a serious incident. However, sometimes an incident will be evidence of a systemic failure – i.e. the service

has inadequate controls in place. Example: A notification is made to the RA of a child leaving through a gate that was broken. The missing child is identified and returned to the service within 10 minutes and the broken gate is repaired that day. After gathering information there is evidence the gate was broken the morning of the incident and no other non-compliances are identified.

This would be considered an isolated breach of sections 165 and 167 that has been self-corrected and would have a seriousness level of 'somewhat concerning'. In contrast a notification is made to the RA of a child leaving the service through a broken gate and returned to the service after 40 min. After gathering information there is evidence that gate has been broken for over a week and also evidence of staff ratios being non-compliant and no head-count practices in place. This would indicate a seriousness level of 'serious'.

### **Attitude to correcting breach or preventing reoccurrence**

This case-specific factor considers two factors, namely:

- whether the Service/Person detected the non-compliance themselves or acknowledged it when it was pointed out to them
- what the level of cooperation the Service/Person demonstrated after the non-compliance is detected.

This case-specific factor should be recorded when one or both of the above factors are apparent from the information available at the time the risk assessment is carried out. If the two factors have a different level of seriousness, the highest level should be recorded. Example: A Service notifies of a serious incident which resulted from a non-compliance but at the time of the notification that non-compliance was detected, effective measures were promptly taken to remedy the non-compliance or mitigate against it occurring again. This attitude would have a level of seriousness of 'somewhat concerning'. In contrast, a Service notifies of a serious incident. On enquiry it is determined by the AO that the incident occurred as a result of a non-compliance, the Service disputed the AO and was reluctant to incur the necessary costs to remedy the matter.

The seriousness level here would be 'serious'. In this second example, if a compliance notice was issued and the Service did not take the requested action in the time required in the letter, in the next risk assessment, the seriousness level would increase to 'very serious'.

### **Step 5: Use the Risk Assessment Tool to determine response level**

Having entered the static risk factors and case-specific factors into the RAT – Reactive, the RAT will calculate the overall level of 'dynamic risk' and provide one of four results:

- somewhat concerning
- concerning
- serious
- very serious.

The RAT then combines the static and dynamic risk ratings to determine the most appropriate response level from one of four possible response levels, ranging from Response Level 1 (low) to Response Level 4 (critical).

		STATIC RISK RATING				
		VERY LOW	LOW	MODERATE	HIGH	CRITICAL
DYNAMIC RISK RATING	VERY SERIOUS	Response Level 2	Response Level 3	Response Level 4	Response Level 4	Response Level 4
	SERIOUS	Response Level 2	Response Level 2	Response Level 3	Response Level 3	Response Level 4
	CONCERNING	Response Level 1	Response Level 1	Response Level 2	Response Level 3	Response Level 3
	SOMEWHAT CONCERNING	Response Level 1	Response Level 1	Response Level 1	Response Level 2	Response Level 3

As noted in Step 3, once the response level has been determined, the Regulatory Officer will document this in the Decision Record and save the completed RAT under the Decision Record in Content Manager. The Regulatory Officer will update the Case Record in the NQA ITS to record the required actions (E.g. investigation, visit, etc.).

#### Unusual or complex problems

While the decision-making framework will lead to a reasoned and proportionate response in most cases, there will be times where a matter is unusual or very complex and warrants a response outside the response level generated by the framework. This may occur where there is potential for a high level of public concern in a matter or where collaboration with other agencies requires the RA to respond in a particular way. In this situation a response level identified using the decision-making framework may be changed after consultation with a Manager or Director if it is agreed that other factors impact upon the risk.

There will be situations where the spectrum of non-compliance is so broad that the RA needs to develop a strategic response to address immediate risks first, followed by investigation to understand the breadth of the issues and enable the matter to be managed over a period of time. In these more complex cases the decision-making framework can inform a plan for ongoing regulatory oversight.

Where departures from the framework are agreed, these decisions and their rationale are to be recorded in the Decision Record.

#### **What if I need more information before recommending a certain response?**

There will be instances where the risk assessment returns a result of a Level 1 or 2 Response. Response Levels 1 and 2 consider that a matter is a low level of risk and does not warrant investigation. However, it may be the case that the Regulatory Officer requires additional information to feel confident they have the evidence to support their recommended response. In these instances, the Regulatory Officer should liaise with their Team Leader/ Manager about their proposed response and discuss the additional information required in order to confidently make a recommendation. The level of enquiry at this stage should primarily be for clarification or verification purposes in support of information already known about the matter. The level of information required should be minimal and not resource-intensive, in that the effort should be commensurate with the risk. Any evidence gathered or enquiries made at this stage must be clearly documented and saved in Content Manager. An analysis of the findings is to be included in the Decision Record prior to enacting the agreed response. Refer to Table 30 for guidance on the level of enquiry that should be undertaken at each stage of the risk assessment process.

#### **Example 1:**

*The risk assessment results in a Level 1 response. The matter related to an incoming complaint alleging that an unqualified staff member was working at a service. Initial enquiries with the service identified that the staff member is actively working towards the prescribed qualification but no evidence of this was received. The Regulatory Officer seeks to recommend a response of 'record data only', but prior to doing so, must be satisfied that the evidence supports no non-compliance. The Regulatory Officer would need to request evidence from the service to demonstrate that the staff member is actively working towards a qualification, and assuming the evidence supports the Regulatory Officer's initial assessment, would proceed to a recommendation of 'record data only'. If the evidence did not support the initial assessment, it may be necessary to conduct a further risk assessment and/or change the response.*

#### **Example 2:**

*The risk assessment results in a Level 2 response. The evidence relied upon includes incident records, notifications, statements from staff and a record identifying that the parent was notified of the incident. All evidence confirms that a child was left unsupervised for a period of time which is a breach of s165 of the National Law. The service has taken a number of actions to make sure this doesn't happen again. The case-specific factors indicate that this is a low-risk matter. The Regulatory Officer believes it is appropriate and proportionate in this case to issue a 'reminder of obligations' outcome letter, but to feel confident in their decision they must first verify that the staff statements are true and correct and that the parent was actually notified of the particulars of the*

incident. In this instance, after discussion with a Team Leader/ Manager, the Regulatory Officer would verify the statements and contact the parent to verify what is known to them. The Regulatory Officer should record their findings in a file note or other record and reference this material in the Decision Record. Assuming the enquiries confirmed what was already known, the Regulatory Officer could then confidently proceed with recommending a 'reminder of obligations' outcome letter; otherwise it may be necessary to conduct a second risk assessment to see if the level of risk has increased based on new information.

All decisions and their rationale are to be recorded in the Decision Record.

## Step 6: Select response option and acknowledge information (if relevant)

Using the response level that was determined in Step 5 using the RAT, the Regulatory Officer will consider the most appropriate and proportionate response in the circumstances by referring to the relevant Initial Risk Assessment Response Levels Table (National Law or ECS Act), as set out in the Decision Record.

From the relevant response level below, select an initial response action.

RESPONSE LEVEL ONE	RESPONSE LEVEL TWO	RESPONSE LEVEL THREE	RESPONSE LEVEL FOUR
Records data only	Give 'verbal instruction'	Conduct an investigation	Conduct an investigation
Give verbal advice and guidance	Issue a 'reminder of obligations' outcome letter	Issue an emergency action notice (s.179)	Issue an emergency action notice (s.179)
Negotiate informal resolution and record action taken	Issue a compliance direction (s.176)	Direct AP to exclude inappropriate person (s.171)	Direct AP to exclude inappropriate person (s.171)
Issue a 'reminder of obligation' outcome letter	Issue a compliance notice (s.177)	Show cause notice before prohibition (s.182)	Emergency removal of children (s.189)
Identify as "minor adjustment" in A&R report	Schedule a monitoring visit		Show cause notice before prohibition (s.182)
	Identify as a "minor adjustment" in A&R report		

The [Guide to the National Quality Framework](#) provides guidance on good decision-making and the purpose and function of each regulatory response available under the National Law. Even though an option may appear within a response level, it may not be available within the legislation for a particular breach.

Once determined, the response level and response option chosen will then be:



- recorded in the Decision Record, along with the justification, clearly stating what decisions are made, and how and why they are made.
- endorsed by an Early Childhood Team Leader or Early Childhood Manager prior to the Regulatory Officer progressing the matter for finalisation.

#### **Factors to consider when choosing a response option**

The appropriate response option is one that:

- the RA has the power to make
- meets the objectives of the National Law or ECS Act
- is in the public interest.

A range of factors may be relevant in guiding you to the most appropriate response, but not all factors are relevant in every circumstance.

Not all response options listed in each response level will be able to be used for all breaches of the National Law and National Regulations or ECS Act or ACS Regulations. For example, a compliance direction can only be issued where there has been a breach of a regulation that is prescribed in Schedule 3 of the National Regulations. Guidance for when to issue a compliance direction or compliance notice is outlined in section 1.3 of this part of the Practice Manual.

The factors that are relevant in every circumstance are those that assisted you in determining the case-specific factors associated with the matter under consideration. These include:

- ECEC service risk profile
- Compliance history
- Impact on children's health, safety and wellbeing
- Impact on educational and developmental outcomes of children
- Isolated or systemic non-compliance
- Attitude to preventing non-compliance or reoccurrence.

Other factors that may assist you in choosing the appropriate response option include:

- choosing the response which requires the least regulatory effort and has the least regulatory burden necessary to achieve the desired outcome
- choosing a response which allows for escalation if necessary
- choosing the response which is most likely to have the effect of deterring the person from engaging in the conduct again
- generally having regard to the response which best aligns with the public interest

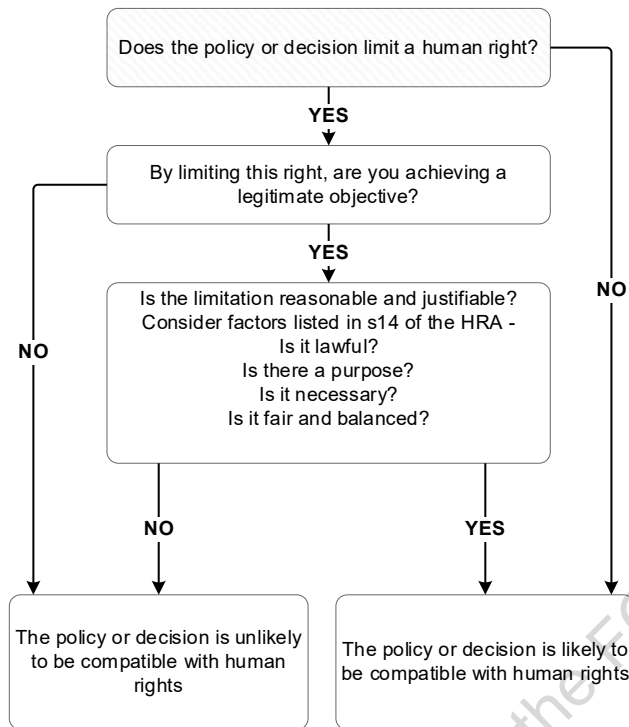
- the availability and efficacy of any alternatives to the proposed response (i.e. comparing the grounds for a show cause notice to suspend versus a show cause notice to cancel)
- the likely outcome of the proposed response, including, if the proposed response is prosecution, the penalties available to the court
- human rights.

**Consider human rights when recommending a response option**

As a public entity, the Regulatory Authority is required under the *Human Rights Act 2019* (HRA) to consider the impact of its actions and decisions on an individual.

Regulatory Officers must take into consideration the human rights protected under the HRA and record their assessment on the Decision Record. The delegate will review the assessment as part of their approval of the recommended response.

When making a recommendation for regulatory action, Regulatory Officers must first identify which rights are relevant then use this simple flowchart as a guide to make their assessment:



Regulatory Officers can register for free online courses at <https://www.qhrc.qld.gov.au/training/online-training> to ensure they understand the human rights and the obligations on the Regulatory Authority under the HRA.

### Activating the most appropriate regulatory response

Once a response option has been endorsed by a Manager or Team Leader, the Regulatory Officer must action the response. This endorsement should be recorded in the Decision Record.

The [Guide to the National Quality Framework](#) provides guidance for each enforcement action that is available to RAs. Notably, some of the response options for the Queensland RA are administrative in nature and are therefore not captured in the Guide to the National Quality Framework. The Queensland RA also does not currently issue penalty infringement notices.

For more information and a complete list of templates that are available for the various response options, refer to Reactive Practice Manual – List of Templates, Guidelines and Reference Documents (17/367989).

Where a template is provided for an enforcement action, this template should be used by Central Office and all Regional Offices.

Central Office and Regional Offices may wish to refer to their own internal procedures to guide

Regulatory Officers on how to enact certain response options, for example, how and where to record data and protocols for providing verbal advice and guidance.

In relation to responding to complaints, if the complainant was advised of 'no further action' in Stage 3, the Regulatory Officer will update the Case Record in NQA ITS and Content Manager with all of the relevant information and close the file.

### Outcome Letter to AP - 'Reminder of Obligations' Outcome Letter

The Regulatory Authority may issue a 'reminder of obligations' outcome letter to an approved provider, nominated supervisor or educator. This letter may be used where:

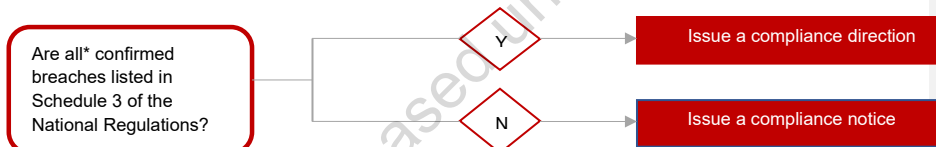
- the breach is minor or technical
- the offence is not so serious
- the party did not intend the breach
- the party has taken immediate corrective action.

Refer to Work Instruction – Compliance Actions (17/89431)

### Compliance Directions and Compliance Notices

Compliance directions (s176) can only be issued where there has been a breach of a regulation that is prescribed in Schedule 3 of the National Regulations. A compliance notice (s177) can be issued where an AP is not complying with any provision of the National Law or National Regulations.

The following diagram will help Regulatory Officers decide when to issue a compliance direction or compliance notice.



\*May refer to a single breach or multiple breaches

The objective of a compliance direction or notice is to require the AP to take steps to address a breach of the National Law or National Regulations or ECS Act or ECS Regulations.

Where a breach has occurred, but it is no longer occurring, there may be no further action to require the AP to take. For example, the Regulatory Officer observed an educator removing a child from the storage shed. The child had been trying to open a bottle of weed spray. The educator immediately moved the chemicals to a locked cupboard when the issue was discovered. It was found that the chemicals had been delivered that morning. That afternoon, the AP sent through their updated procedure for Managing Incoming Deliveries. A written record of the breach observed and the action taken should be sent to the AP and recorded on the NQA ITS and in Content Manager. However, in this case no compliance notice or direction can be given as there

are no additional actions to be taken by the AP.

Sometimes a breach may appear to have been remedied but there are other actions that should be taken by the AP to address inadequate controls which led to the breach. For example, children became ill from eating yoghurt which was past its use by date. It seems there are poor procedures for checking food. The yoghurt has been discarded (or eaten) but the service needs to improve its food handling and storage practices (regulation 77 – which is listed in Schedule 3 of the National Regulations). A compliance direction could be issued requiring all staff to be trained on safe food handling practices within a specified period.

See the [Compliance Notices and Compliance Direction Practice Guide](#) in the Regulatory Library.

Also see the Guide to the National Quality Framework – [Regulatory Authority Powers - Compliance Tools](#) (p503-507) for discussion on compliance directions and compliance notices.

### **Conduct an investigation (response levels 3 and 4)**

In some cases, the risk assessment will lead to a response level 3 and 4 (conduct an investigation). The purpose of an investigation is to gather evidence to establish if a breach of the National Law or National Regulations or ECS Act or ECS Regulations has occurred. If a breach has occurred, investigation findings are considered to determine the appropriate regulatory response in the circumstances.

For more information in relation to guidance for investigations, refer to:

- Tele-monitoring, see the [Monitoring](#) page in the library
- Investigative Practices page in the Library
- [Investigation Training Materials](#)
- Guide to the National Quality Framework – [Regulatory Authority Powers – Conducting an investigation](#)
- Work Instruction – Case Records (19/305262) for processing investigations in the NQA ITS.

### **Publication of enforcement action as a regulatory response**

Response levels 3 and 4 includes publication of the enforcement action as an enforcement option. Section 270(5) of the National Law and Division 9 of the Education and Care Services Act 2013 (the Act) set out the frameworks for publishable enforcement actions. National Regulation 227 provides details about the type of information that can be published under the National Law.

Publication of enforcement actions directly addresses objectives of the National Law and ECS Act and is generally reserved for serious breaches. The decision to publish information is discretionary, the delegate decision makers are the [Executive Director RASQ and /or Director RASQ](#).

Information about enforcement action is published on the department's website [Serious enforcement actions](#) and in some cases a media article will accompany the basic information

about the enforcement action taken, particularly if there has been a QCAT decision upholding the breach(es). (See work instructions CM 21/646121)

*Publication of enforcement action is generally reserved for serious non-compliance, such as prosecution, cancellation and suspension of provider and /or service approvals, enforceable undertakings and amendments made to approvals for the purpose of enforcement (i.e. non-voluntary conditions imposed). You may recommend other publishable enforcement actions (e.g. compliance notice or emergency action notices) based on the serious nature of the non-compliance or serial non-compliance if you consider publication is a proportionate response (see R4Q principles).*

In accordance with the 'Good regulatory practice' guidelines, Regulatory Officers should consider:

- whether publication is an appropriate response when recommending enforcement action;
- high-risk breaches and situations where the provider has repeated breaches and /or demonstrated minimal inclination over time to improve quality or safety at services; and
- Queensland Human Rights Act 2019 in deliberations.

A rationale supporting the recommendation to publish must be provided in the Decision Record.

Regulatory Officers should discuss potential publication with the team leader or manager at the recommendation stage so that in principle agreement for publication can be obtained from the delegate decision makers, ED RASQ or Director RASQ to gauge the likelihood of eventual publication.

The QRA position on publication, upheld by the Director General on 23 July 2021, is based on several factors such as deterrence, transparency and the public's right to know about the QRA's work to support quality services, staff and providers.

More information about publication can be found in the Guide to the National Quality Framework, Section 5, [Regulatory Authority Powers](#).

### **Enacting the regulatory response (post investigation)**

The Regulatory Officer will draft the endorsed regulatory response, which may be enforcement action or administrative in nature (i.e. show cause notice/compliance notice versus a 'reminder of obligations' outcome letter to the AP).

The Regulatory Officer must have the draft endorsed by their Leader or Manager, and any enforcement action must be signed by the appropriate delegate.

If the enforcement action requires the service of a notice, Regulatory Officers should refer to section 293 of the National Law, which sets out the requirements for service of a notice. For more information in relation to the service of notices, refer to:

- Guide to the National Quality Framework – [Regulatory Authority Powers - Serving Notices](#).

The Regulatory Officer will record the particulars of the delivery or issuance of any enforcement action or administrative response in the Decision Record, along with details of any follow-up that will be required.

At this time, the Regulatory Officer will:

- finalise and send an outcome letter to the complainant or AP
- update all relevant details in NQA ITS (refer to the Work Instruction — Compliance Action Records (17/89431))
- ensure all relevant documents and notations are up-to-date in Content Manager and close the file
- if compliance action has been issued which requires a response from the AP, leave Case Record open until all evidence has been provided to a satisfactory conclusion
- note any follow-up dates in their diary for the AP's response
- if publication of enforcement action is proposed, diarise for expiry of review dates or outcome of review if one is requested if publication beyond the serious enforcement action list is approved, liaise with Program Officer Monitoring and Compliance and Manager Governance and Corporate Support, Communications for submission to the Web and Digital Production team (IT).

#### **Review of decisions**

Under the National Law, the Regulatory Authority's decision to take certain compliance actions can be internally reviewed. Approved Providers have 14 days from the date of notification to make this application. For this reason, it is vital to ensure that the relevant file contains all materials relied upon to arrive at the decision to issue the relevant enforcement actions, all correspondence relating to the decision and other relevant documentation such as a completed decision record. For more information on internal review refer to the [Internal Reviews](#) page section in this Library.

#### **Other agencies**

Other state or federal enforcement agencies such as Queensland Police Service (QPS) which includes, Child Protection Investigations Unit (CPIU), may already be involved or have an interest in the matter. All Regulatory Officers must observe relevant protocols defining lead agency status or refer to their manager for further instruction and advice. The Regulatory Authority should liaise closely with the other agency to avoid taking any action that jeopardises the other agency's investigation. This is particularly important when a QPS investigation is being carried out.

During the course of an investigation, it may become apparent that other agencies should be notified of particular incident. The Regulatory Officer should consider the individual circumstances of each case and document this in their enquiry/investigation. Regard should also be had to information sharing provisions when dealing with other agencies.

For more information on information sharing provisions in the National Law see the [Disclosure of information page in this Library \(link to be added when page is developed\)](#).

Refer to: [Protocol for referring matters to QPS](#) (This document is currently under review)

### **Disclosure of information to Blue Card Services**

Sections 20 and 21 of the National Law (Queensland) Act require that the RA must disclose information about certain enforcement action it has taken to Blue Card Services. [Refer to the Disclosure of Information page in this Library for further information \(This page is currently under construction. We'll let you know when it becomes available\).](#)

The RA is notified by Blue Card Services when there are changes to the blue card status of certain individuals. [Refer to the Blue Card notifications page in this Library for further information \(This page is currently under construction. We'll let you know when it becomes available\).](#)

### **Disclosure of information to other Regulatory Authorities**

Under section 271(5) of the National Law, the RA must disclose information to Regulatory Authorities in other jurisdictions when it is notified of the suspension or cancellation of a nominated supervisor's working with children check, working with children card or teacher registration. [Refer to Disclosure of Information page in this Library for further information \(this page is currently under construction. We'll let you know when it becomes available\).](#)

### **Department of Communities, Child Safety and Disability Services (Child Safety)**

Authorised officers are mandated by law to report child safety concerns to the Child Safety where there is a reasonable suspicion that the child has suffered, is suffering, or is at unacceptable risk of suffering, significant harm caused by physical or sexual abuse, and there is not a parent willing and able to protect the child from harm.

Further information and fact sheets available from the [Regulating for Quality Portal – Mandatory report of abuse](#)

### **Escalating a regulatory response**

Where a response option has been enacted, and it requests or requires a person to resolve the non-compliance or to take certain steps within a specified timeframe, the Regulatory Officer must follow-up to ascertain whether the request or requirement has been complied with.

A failure to comply or respond appropriately to a regulatory response may indicate:

- there is an unresolved or a continuing risk of further non-compliance occurring
- there is an unresolved legal risk to the RA as the action it has taken has been unsuccessful in mitigating or preventing that risk and/or achieving compliance
- that the person to whom the notice was issued has a poor attitude to resolving non-compliance.

If the regulatory response is not escalated, the risk or the continuing non-compliance may not resolve itself. To mitigate the risk, it may be necessary to escalate enforcement action. Monitoring



and Compliance or LALB may be able to provide advice on how to escalate non-compliance in specific cases.

**Escalation example**

Where there has been no or an inadequate response to a compliance direction or a compliance notice, it may be appropriate to escalate the response.

Escalated enforcement actions include:

- seeking an enforceable undertaking from the person if they appear to have a genuine intent to comply
- issuing a prohibition notice
- amending the provider or service approval
- issuing a show cause notice to suspend the provider or service approval
- issuing a notice to suspend education and care by a FDC educator
- recommending a prosecution
- publishing the enforcement action (if it has not already been published).

Released under the FOI Act by DoE

# Part A: SMR assessment

<b>OVERVIEW</b>			
CM Reference			
Date of briefing			
Briefing prepared by			
Date SMR referred to CO			
Date RO notified			
RO referring			
Reason for referral			
<b>ALLEGED CONDUCT</b>			
Date/s			
Location			
Details	[what is alleged to have happened; level of force used; covert/overt]		
Mitigating factors			
<b>COMPLAINANT &amp; WITNESSES DETAILS</b>			
Name and details	[include contact details] [include information about why the witness felt compelled to report the alleged conduct i.e. whether they were obligated to report by policy/procedure or whether they held a particular concern about the subject educator's conduct/performance] [include any information that may bring the witness's reliability into question]		
Cultural background			
Name and details			
Name and details			
<b>CHILD'S DETAILS</b>			
Name			
DOB/Age			
Sex			
Cultural background			
Other information	[include circumstantial information specific to the child e.g. behaviour management plan; disability]		
Child's response to incident			
Parent contact details			
<b>SUBJECT EDUCATOR</b>			
Name			
DOB			
Sex	[biological M/F/I]		
Gender	[how does the person identify?]		
Cultural background			
Contact details			
History in NQAITS			
History in CM			
Blue card	Number	Expiry	Status
Qualification			
Employment status			
Length of service			
Child protection training			



<b>Workplace history</b>	[include information about any previous workplace incidents/disciplinary action or any concerns held by the NS/AP about the educator's conduct/performance]
<b>Educator response to incident</b>	
<b>Other information</b>	[e.g. medical conditions; disabilities]
<b>AP/SERVICE</b>	
<b>Service Name</b>	
<b>Service Approval</b>	
<b>Provider Name</b>	
<b>Provider Approval</b>	
<b>Relevant compliance history</b>	
<b>ACTION TAKEN BY AP</b>	
<b>Date AP became aware of alleged conduct</b>	
<b>How did AP become aware of alleged conduct</b>	
<b>Notification type</b>	
<b>Steps taken by AP in response to alleged conduct</b>	[include details about risk mitigation strategies, when parents notified, any CPIU referral, any internal investigation, and when these steps were taken]
<b>STEPS TAKEN BY RA &amp; EVIDENCE OBTAINED TO DATE</b>	
<b>Documents requested/obtained</b>	
<b>CCTV</b>	
<b>Statements provided/obtained</b>	
<b>Other</b>	
<b>STAKEHOLDER ENGAGEMENT</b>	
<b>Queensland Police Service (QPS)</b>	[if a disclosure has been made by the RO, include information about the date of the disclosure, who made the disclosure, to whom the disclosure was made (QPS contact), QPS case number and any response]
<b>Other relevant stakeholders</b>	[e.g. Blue Card Services (BCS); Child Safety]
<b>ASSESSMENT</b>	
<p><b>1. Risk (does/could a person present an unacceptable risk of harm to children if they are allowed to continue working in the sector?)</b>  <i>Considerations include:</i></p> <ul style="list-style-type: none"> <li>• <i>Seriousness (nature of conduct, level of force, proportionality, actual/possible harm)</i></li> <li>• <i>Probability (opportunity, credibility/reliability of complainant, witnesses, other evidence to suggest conduct occurred, police response, previous history)</i></li> <li>• <i>Likelihood of reoccurrence (mitigating circumstances, qualifications/experience, validity of blue card, level of remorse/contrition, previous conduct, risk mitigation strategies already in place).</i></li> </ul> <p><b>2. Non-compliance (is there prima facie evidence of non-compliance with the National Law/Regulations?)</b></p> <ul style="list-style-type: none"> <li>• <i>Consider ss165, 167 and 174 National Law</i></li> <li>• <i>Consider ss86, 155 and 170 National Regulations</i></li> </ul>	

<b>RAT result</b>	
<b>RECOMMENDATION</b>	
<b>Action</b>	<p>For risk</p> <p><input type="checkbox"/> Immediate prohibition of an individual</p> <p><input type="checkbox"/> Show cause before prohibition</p> <p><input type="checkbox"/> Prohibition from being a nominated supervisor</p> <p><input type="checkbox"/> Investigation required</p> <p><input type="checkbox"/> Engage with AP with respect to risk mitigation strategies</p> <p><input type="checkbox"/> Disclosure of information to external agency e.g. QPS or BCS</p> <p><input type="checkbox"/> Reminder of obligation to an individual</p> <p><input type="checkbox"/> No action</p> <p>For non-compliance</p> <p><input type="checkbox"/> Investigation required</p> <p><input type="checkbox"/> Compliance action (specify in reasons for recommended action)</p> <p><input type="checkbox"/> No action</p> <p><input type="checkbox"/> Other</p>
<b>Reasons for recommended action</b>	<p>[If relating to non-compliance, include response level from RAT]</p> <p>[If recommending compliance action, specify what]</p>
<b>Carriage</b>	<p><input type="checkbox"/> Regulatory Response Team</p> <p><input type="checkbox"/> Regional office</p> <p><input type="checkbox"/> Co-investigation</p> <p><input type="checkbox"/> Other: [specify]</p>
<b>Reasons for recommended carriage</b>	<p><input type="checkbox"/> High level enforcement action (delegation)</p> <p>[Consider if prosecution, suspension/cancellation of service or provider approval, prohibition, or enforceable undertaking will be the likely regulatory action]</p> <p><input type="checkbox"/> Complexity and sensitivity</p> <p>[Consider whether the matter requires specialist investigative skill i.e. extensive scope, evidentiary challenges, multi-jurisdictional involvement, services with SIR rating, unresponsiveness to previous enforcement action]</p> <p>[Consider whether there are circumstantial factors such as reputational risk to the department, significant media or Ministerial interest, involvement of legal representatives, conflicts of interest, confidentiality challenges]</p>
<b>MANAGER'S DECISION</b>	
<div style="border: 1px solid black; height: 50px; width: 100%;"></div>	
<b>Name</b>	
<b>Signature</b>	
<b>Date</b>	
<b>DIRECTOR ENDORSEMENT</b>	
<div style="border: 1px solid black; height: 100px; width: 100%;"></div>	

<b>Name</b>	
<b>Signature</b>	
<b>Date</b>	
<b>ASSESSMENT COMPLETION CHECKLIST</b>	
<input type="checkbox"/> Allegations against an individual have been recorded in NQAITS (include name, service name, WWCC, DOB)	
<input type="checkbox"/> Outcome of assessment communicated to regional office	
<input type="checkbox"/> Investigation record created (if applicable)	

Released under the FOI Act by DoE



# Part B: Investigation report

AUTHORISATION	
Investigation authorised by	[Name, position, date]
Investigator	[Name and position]
Commencement date	
Completion date	
Scope of investigation	[Precis or complaint and allegations] [Relevant provisions of the National Law/National Regulations]
Relevant legislation	<p>Education and Care Services National Law Act 2011</p> <p>Education and Care Services National Law (Queensland)</p> <p>Education and Care Services National Regulations</p> <p>Education and Care Services Act 2013</p> <p>Privacy Act (Cth) 1988</p> <p>Freedom of Information Act (Cth) 1982</p> <p>Criminal Code Act 1899</p> <p>Working with Children (Risk Management and Screening) Act 2000</p> <p>Child Protection Act 1999</p> <p>Information Privacy Act 2009</p> <p>Right to Information Act 2009</p> <p>Public Service Act 2008</p> <p>Public Sector Ethics Act 1994</p> <p>Public Records Act 2002</p>
INVESTIGATION PROCESS	
Investigative principles	<p><b>Regulating for quality (R4Q) principles</b></p> <p>In carrying out regulatory activities, authorised officers must act 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 authorised officers are set out in the National Law and ECS Act.</p> <p>The regulatory authority's approach to regulation is underpinned by best practice principles of modern risk-based regulation:</p> <p><i>Proportionality:</i> 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.</p> <p><i>Transparency:</i> regulatory action is taken in a way that demonstrates operational consistency, unbiased decision-making and the public provision of regulatory information.</p> <p><i>Defined outcomes and priorities:</i> 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.</p> <p><i>Risk-based approach embedded:</i> risk identification and management is integrated into strategy, planning decision-making, communication and processes, supporting an agile and problem-centric approach to regulation.</p> <p><i>Effective stakeholder relationships:</i> our regulatory philosophy promotes and values reciprocal engagement and communication with all stakeholders, incorporating their voices in decisions that affect them.</p>





	<p><b>Effective information management:</b> data is collected, retained and analysed in a way that helps identify, manage and communicate risk through all regulatory actions.</p> <p><b>Measure, review, continually improve risk management:</b> our learning, evaluation and performance framework supports our leaders to use review findings to continually improve R4Q.</p> <p><b>Standard of Proof</b> The standard of proof in administrative investigations such as these is on the balance of probabilities. The case of <i>Briginshaw v Briginshaw</i> (1938) 60 CLR 336 is generally regarded as authority for the proposition that if a finding, on the balance of probabilities, is likely to produce grave consequences the evidence should be of high probative value.</p> <p><b>Procedural fairness</b> In reaching decisions in the course of investigation, regard will be given to procedural fairness. Procedural fairness requires that:</p> <ul style="list-style-type: none"> <li>• a decision-maker is impartial, and free from actual or apparent bias (the bias rule),</li> <li>• a person whose interests will be affected by a proposed decision receives a fair hearing, including the opportunity to respond to any adverse material that could influence the decision (the hearing rule), and</li> <li>• findings are based on evidence that is relevant and logically capable of supporting the findings made (the evidence rule).</li> </ul> <p>The right to procedural fairness arises only in relation to a person whose rights or interests may be adversely affected by a decision.</p> <p><b>Human Rights</b> In accordance with section 58(5) of the <i>Human Rights Act 2019</i>, proper consideration to human rights has been taken during the information gathering and decision-making process.</p> <p>The Regulatory Authority is empowered to investigate suspected non-compliance with the National Law and ECS Act, and so to gather information about the provision of education and care to children, including information about approved providers of education and care services, family day care educators, nominated supervisors and educators.</p>
<p><b>Investigation activities</b></p>	<p>The following activities were undertaken during this investigation: [Delete/add as applicable:</p> <ul style="list-style-type: none"> <li>• Obtained and reviewed relevant documentary evidence.</li> <li>• Reviewed relevant legislation, departmental policies, procedures, guidance and operating manuals.</li> <li>• Attended and inspected all relevant facilities and/or premises.</li> <li>• Accessed, or made reasonable attempts to access any other evidence (i.e. not held by service), which was considered relevant to the allegations (e.g. information from QPS/BCS).</li> <li>• Conducted an interview with the complainant and/or other persons who could potentially contribute information relevant to the investigation.</li> </ul>

	<ul style="list-style-type: none"><li>Conducted an interview with the subject educator(s) in relation to their alleged involvement in this matter and recorded their responses to the allegations.]</li></ul>		
Interviews	<p>The following interviews were conducted in person/via telephone/via Microsoft Teams:</p> <ul style="list-style-type: none"><li>[Date, Name, position]</li><li>[Date, Name, position]</li></ul> <p>All interviews were electronically recorded. All individuals who participated in an interview in person or via telephone/Microsoft Teams were offered a copy of the interview recording at the conclusion of the interview.</p> <p>The following persons were not interviewed: [List any witnesses that could not be interviewed and why]</p>		
INVESTIGATION FINDINGS			
Summary of testimonial evidence	[Name and summarise each witness statement, quote from statement where relevant, set out how the witness statement is relevant/significant to overall findings]		
Summary of documentary evidence	[Name and summarise what each document contained, set out how the evidence is relevant/significant to overall findings]		
	Document	Relevance (what does the document show)	Significance (what does the information mean?)
	E.g. Attendance record – child x	E.g. that child x was in attendance at the service between 9:00am and 5:00pm on Friday 3 June 2024	E.g. When considered together with the staff record, the document supports that there was opportunity for the alleged incident to have occurred on 3 June 2024
Analysis/conclusion	<p>[Findings with respect to allegations made against an individual] [In the event of contradictory versions of events, explain which version/parts of which version/s are accepted and why] [Findings of any non-compliance, addressing the elements of any offence provisions] [Include observations on systemic issues and governance failings] [Quality considerations, if any]</p> <p>Analysis must include commentary around the following control points:</p> <ul style="list-style-type: none"><li>Recruitment and onboarding/induction practices</li><li>Service policies and procedures, particularly interactions with children policy, staff code of conduct and child safe environment policy</li><li>Supervision practices for children and staff, and supervision of hidden spaces</li><li>Access to children outside of the service</li><li>Steps taken to support protection of children from sexual abuse/misconduct</li><li>Processes for responding to allegations of harm against children</li></ul>		



	<ul style="list-style-type: none"> <li>Relationships between the subject educator, colleagues, parents and children</li> <li>Vulnerability factors of victim children</li> <li>Disciplinary history of the subject educator</li> <li>Effectiveness/adequacy of risk mitigation action taken subsequent to alleged incident</li> </ul>
<b>RAT result</b>	
<b>RECOMMENDATIONS</b>	
<b>Recommended regulatory response</b>	<p>For an individual</p> <p><input type="checkbox"/> Immediate prohibition</p> <p><input type="checkbox"/> Show cause before prohibition</p> <p><input type="checkbox"/> Prohibition from being a nominated supervisor</p> <p><input type="checkbox"/> Enforceable undertaking</p> <p><input type="checkbox"/> Reminder of obligation</p> <p><input type="checkbox"/> No action (only outcome of investigation letter)</p> <p>For non-compliance</p> <p><input type="checkbox"/> Prosecution</p> <p><input type="checkbox"/> Suspension/cancellation of provider approval</p> <p><input type="checkbox"/> Suspension/cancellation of service approval</p> <p><input type="checkbox"/> Condition on service approval</p> <p><input type="checkbox"/> Compliance notice/direction</p> <p><input type="checkbox"/> Reminder of obligation</p> <p><input type="checkbox"/> No action</p> <p><input type="checkbox"/> Other</p> <p>Is re-assessment and rating required?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>
<b>Reasons for recommended regulatory response</b>	[If relating to non-compliance, include response level from RAT]
<b>Is publication of regulatory action recommended?</b>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>[Include reasons for this recommendation]</p>
<b>Human rights considerations</b> <i>This section only relates to actions or decisions of public entities as they affect the human rights of individuals</i>	<p>[Are there any relevant human rights that may be impacted by the decision you're making? In particular, consider ss22, 23 and 25 of the Human Rights Act]</p> <p>[If yes, will the proposed decision limit/restrict a human right? E.g. decision to prohibit may restrict eligibility and access to employment in the public service and limit freedom of association with others]</p> <p>[If yes, is the limitation reasonable and justifiable, as set out in s13 of the Human Rights Act]</p>
<b>Do findings need to be shared with regional office?</b>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>[Explain what findings/information needs to be shared and why]</p>

<b>Should information be disclosed to another agency?</b>	<input type="checkbox"/> Blue Card Services <input type="checkbox"/> Queensland Police Services <input type="checkbox"/> Other <input type="checkbox"/> None  [Explain what information should be disclosed and why – consider here relevant disclosure provisions under the Privacy Act]
<b>Recommendation made by</b>	[Investigator's name and position]
<b>Date of recommendation</b>	
<b>FINAL DECISION AND ENDORSEMENT</b>	
<b>Manager's decision</b>	<input type="checkbox"/> Recommendation is endorsed in full <input type="checkbox"/> Recommendation is partially endorsed <input type="checkbox"/> Recommendation is rejected
<b>Comments</b>	
<b>Manager</b>	[Manager's name and position]
<b>Signature</b>	
<b>Date of decision</b>	
<b>Delegate endorsement</b>	<input type="checkbox"/> Recommendation is endorsed in full <input type="checkbox"/> Recommendation is partially endorsed <input type="checkbox"/> Recommendation is rejected
<b>Comments</b>	[Include endorsement of human rights assessment]
<b>Delegate</b>	[Delegate's name and position]
<b>Signature</b>	
<b>Date of endorsement</b>	
<b>SUPPORTING DOCUMENTS</b>	
[CM reference]	Run sheet
[CM reference]	Evidence list
[CM reference]	Investigation plan
[CM reference]	RAT
<b>CLOSURE CHECKLIST</b>	
<input type="checkbox"/> Allegations against an individual have been updated in NQAITS (including that allegations have been investigated; outcome of investigation; any findings around vexatiousness) <input type="checkbox"/> Non-compliance has been recorded in NQAITS <input type="checkbox"/> Compliance action has been recorded in NQAITS <input type="checkbox"/> Outcome correspondence has been issued <input type="checkbox"/> CM record is complete and accurate <input type="checkbox"/> Close record in CM (set to home) with relevant closure notes	

## Protocol – Referral of Significant Matters to Compliance

### Referral of Significant Matters to Compliance

Referring regions, please complete this referral form with reference to the guidance located on the [Intelligence page of the Regulatory Library](#).

#### Referring Officer

Director, Regulation:		Regional Office:	
Phone number:		Signature:	
Email:			

Contact officer:		Position:	
Phone number:		Email:	

To be submitted by Director Regulation to Director Compliance via **Regulation Inbox** ([regulation@qed.qld.gov.au](mailto:regulation@qed.qld.gov.au)).

Date request made:	
Service Name:	
Service Approval:	
Provider Name:	
Provider Approval:	
CM Reference:	

#### 1. Brief summary of the allegations made to the Regulatory Authority from IO1 notification and/or other sources:

*[Succinctly summarise the intelligence and source (current notification/complaint/other)]*

*[For protracted matters, include relevant background, organising events in chronological order]*

*[Identify any potential breaches that appear evident from the intelligence, including the outcome of the RAT if undertaken]*

#### 2. Analysis of evidence currently obtained

*[Has the RO investigated the matter or made preliminary enquiries? Please specify]*

*[List any evidence that has already been obtained ie through a visit or information request. Was CCTV footage requested?]*

*[Is the RO aware whether the service has conducted its own investigation/obtained statements from witnesses? Has the AP provided this information?]*

*[What does this preliminary information indicate to the RO in terms of the potential breaches identified?]*

#### 3. Risk mitigation

## Protocol – Referral of Significant Matters to Compliance

*[Has the RO identified any matters or persons posing immediate risk to the health safety and wellbeing of children? If so, what risk mitigation steps have been undertaken or are proposed for CO to take (if delegation sits here?)]*

### 4. Service history

Please review the service's compliance history in NQAITS and provide a summary of any prior action against the service, **relevant to the current circumstances only** (a full compliance history is **not** required).

DATE	ACTION TYPE and CM#	BREACHES	REASONS
Eg: 01/02/2021	Compliance Notice 22/XXXXXX	S 165	Child was left on bus unattended for 1.5 hours – established through 3 witness statements.
		R 158	Children were not signed in to attendance record at the time they arrived or departed
		S 167	Approved Provider did not have adequate safeguards in place, including an inadequate risk assessment, inadequate training and failing to ensure training was complete before staff transported children

Are any other breaches recorded but no formal action taken? Please list.

What is the service's risk rating?

Date and outcome of last A&R?

### 5. Reasons for referral as a significant matter (please tick all that apply and provide detail where prompted):

#### **Threshold questions:**

- ☐ actual serious/significant harm or injury to a child (including death);
- ☐ incident which had the potential to result in serious/significant harm, injury or death (a near miss, eg child left on transportation for more than a few minutes; child left service premises unattended; service over administered medication);

**[If referring because a child has left a service unattended, please ensure the following information is included:**

- **How long the child was missing**
- **Whether the service independently identified that the child was missing**
- **What harms/hazards the child was exposed to in the time they were away from the service**
- **Particular vulnerabilities of the child e.g. very young age; disability**
- **Evidence of particularly careless/negligent practice**
- **Evidence of failure of system controls or governance**

- ☐ matters where the delegation for likely compliance action sits with central office/DDG (eg prohibition of an individual, cancellation of provider or service approval, prosecution);

**[Indicate what the compliance action is, and why this is the likely/proportionate enforcement response]**

- ☐ allegation of physical or sexual abuse

**[If referring for this reason, please ensure the following information is included:**

## Protocol – Referral of Significant Matters to Compliance

- Details of the alleged conduct including when it occurred, where it occurred and how the Regulatory Authority came to know about it – include particularly information about level of force and mitigating circumstances
- Any evidence referred to in the notification to the Regulatory Authority e.g. statements collected by the approved provider and any statement from the subject educator
- The subject educator's qualifications and length of time in the sector
- The subject educator's blue card details, DOB, Place of Birth, personal email address, phone number and address
- Whether QPS has been notified of the allegations – if yes, include contact details for local station
- Details of any previous conduct on the part of the subject educator that may be relevant/concerning
- Details of risk mitigation action taken by the service in response to the allegations.]

### Other relevant factors:

- ☐ reputational risk to the department [check whether matter should/has been reported as a CIR];
- ☐ significant media or Ministerial interest [check whether matter should/has been reported as a CIR];
- ☐ sensitive and/or complex, such as:
  - protracted matters
  - matters involving multiple serious suspected offences
  - matters with multi-Departmental / jurisdictional involvement (i.e. CPIU / Child Safety)  
[include details of any referrals made to other agencies, status and reference numbers supplied]
  - matters relating to a service with a significant history of non-compliance  
[indicate with reference to the compliance history above, why this is significant or of concern]
  - matters relating to a service that has received a rating of Significant Improvement Required;
  - other [please outline].

[Include rationale here for selection/s]

### 6. What action/s are proposed?

- ☐ Delegate in CO take immediate action (specify)
- ☐ Delegate in CO to consider investigation completed by RO and take recommended enforcement action (specify)
- ☐ Compliance to investigate
- ☐ Regional Office and Compliance co-investigate
- ☐ Other (specify)

[Include rationale here for selection/s]

### 7. Any other relevant information:

## Protocol – Referral of Significant Matters to Compliance

To be completed by Manager, Compliance:

Date referral received:	
Assessment date:	

1. **Assessment recommendation** (reasons noted in rationale below)

- ☐ Compliance to have carriage of the matter
- ☐ Refer back to the Regional Office to take action or investigate
- ☐ Compliance to co-investigate (nominate which office has primary carriage of matter)
- ☐ No further action with reason/s
- ☐ Other: \_\_\_\_\_

2. **Rationale:**

- A clear rationale explaining the assessment and making reference to either the retention or return to the RO to investigate, should be provided here.

Assessed by:

Name:	
Manager, Compliance	
Signature:	
Phone number:	

Approved by:

Name:	
Director, Compliance	
Signature:	
Phone number:	

**FOR CENTRAL OFFICE COMPLETION ONLY**

**Allocated to Compliance Officer (if relevant):**

Name & Position:	
Phone number:	