



**ACT**  
Government  
Education

# CHILDREN'S EDUCATION AND CARE ASSURANCE (CECA)

EDUCATE AND ENGAGE:  
COMPLIANCE FRAMEWORK

January 2017



## CECA IN SUMMARY

CECA is the ACT's Regulatory Authority for the education and care sector. CECA exercise the powers of the ACT Regulatory Authority under the *Education and Care Services National Law (the National Law)*.

CECA's regulatory strategy is shaped by:

- ▶ The obligations and principles that apply to exercising the *National Law*.
- ▶ Alignment with the *Human Rights Act* and the Convention on the Rights of the Child.
- ▶ Alignment with the public purposes of the *National Law*.
- ▶ Alignment with the principles of responsive regulation.
- ▶ Working with the Sector to solve problems and improve quality.

CECA's regulatory strategy is to:

1. Use formal processes and informal education to persuade everyone in the sector to abide by the *National Law*.
2. Create opportunities and forums for the sector to develop best practice and manage risk.
3. Use assessment and rating, education and auditing to maximise best practice;
4. Use auditing and risk rating methodology to prevent, manage and reduce harm;
5. Use the powers of the National Law to protect children from harm and hazard.

## THE LEGISLATIVE FRAMEWORK

In 2012 the National Quality Framework (NQF) established the National Law which applies to the majority of childcare services in the ACT. The National Law replaced Chapter 20 of the *Children and Young People Act 2008*. The NQF established a nationally uniform approach to the regulation and quality assessment of the education and care sector.

A small number of childcare services in the ACT remain out of scope of the *National Law*. Chapter 20 of the Children and Young People Act still applies to the Regulation of these services.

## CECA'S OBLIGATIONS AND RESPONSIBILITIES

The *National Law* works to protect a particularly vulnerable part of our society — children — when they are in the care of people other than their parents or guardians.

The *National Law* sets out what the regulator is supposed to do, what tools are available, and fundamental obligations.

Section 260 of the *National Law* specifies the functions of the Regulatory Authority. They are:

- ▶ to assess services against the National Quality Standard and determine the ratings of those services;
- ▶ to monitor and enforce compliance;
- ▶ to receive and investigate complaints arising under the Law;
- ▶ to educate and inform education and care services and the community about the National Quality Framework;
- ▶ to work in collaboration with ACECQA to support and promote continuous quality improvements

Section 3 of the National Law then sets out objectives and guiding principles that apply to these functions.

Objectives significant to CECA's functions include:

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

Guiding principles significant to CECA's function include:

- ▶ that the rights and best interests of the child are paramount; and
- ▶ that best practice is expected in the provision of education and care services

## THE CONVENTION ON THE RIGHTS OF THE CHILD

In the ACT the *Convention on the Rights of the Child* has a legal status because the ACT has a *Human Rights Act*. The convention exists as does the National Law to protect children due to their inherent vulnerability.

**Article 3** of the Convention states that in any actions concerning children, the best interests of the child shall be a primary consideration.

**Article 3** also imparts a duty that all appropriate legislative and administrative measures be taken to ensure the protection, care and well-being of children and young people.

**Article 19** of the Convention requires participating countries to take all legislative and administrative steps to protect children and young people from all forms of physical and mental violence, injury or abuse, neglect or exploitation. This includes measures for prevention, reporting and investigation.

Children, as the Convention notes, by the reason of their physical and mental immaturity, need special safeguards and care, including appropriate legal protection.

Built into the National Law is an obligation upon Regulators to do their part to protect children, and the National Law provides significant powers to CECA to carry out that role.

## OBLIGATIONS AND RESPONSIBILITIES OF APPROVED PROVIDERS, PERSONS WITH MANAGEMENT AND CONTROL

Approved Providers and people with Management and Control are expected to have a sound working knowledge of the relevant legislation and regulations and understand their rights and responsibilities under those laws.

Providers must be able to interpret and apply the National Quality Standard and the *National Law* when undertaking their day to day activities, including managing and operating a service.

Providers have an obligation to be truthful and provide requested information, evidence and material in a legible manner.

## NATURAL JUSTICE

Providers have rights under the *National Law* which includes the right to natural justice and procedural fairness.

These terms are used interchangeably. They are defined as follows:-

*“Natural justice requires that a person whose interests might be adversely affected by a decision be notified in advance that a decision is to be made and be given an opportunity to respond. In particular, the person must be given a chance to rebut any evidence or information (including factual information) that is adverse to their case or prejudicial to them personally. It makes no difference whether another party provided the evidence or information or it was obtained as a result of the decision maker’s own inquiries”.*

In circumstances where CECA has exercised its functions under that *National Law* and the evidence obtained engages a quality or compliance issue, Approved Services and Providers will be provided with relevant evidence and given an opportunity to make a submission in respect to the evidence.

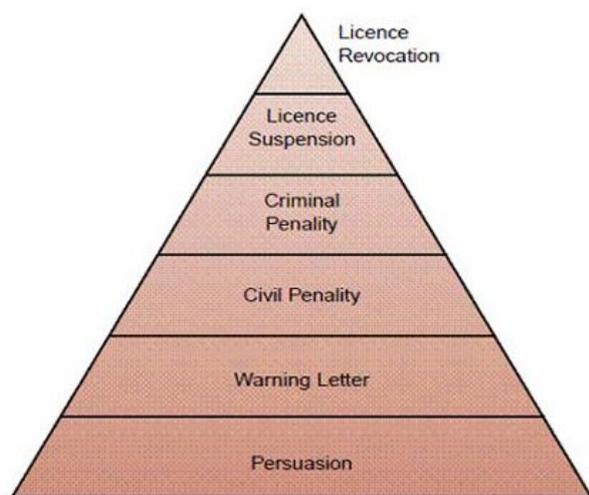
Examples of Provider or Services right of reply include

- ▶ receipt of a draft Assessment and Rating report gives services an opportunity to provide feedback following the rating process **or**
- ▶ Issued with a show cause letter when compliance action is being considered following an investigation or compliance audit with evidence of breaches of the *National Law*.

# OBLIGATIONS AND RESPONSIBILITIES OF NOMINATED SUPERVISORS AND EDUCATORS

It is the responsibility of Providers to ensure Nominated Supervisors and educators are aware of their obligations and have a sound working knowledge of the *National Law*.

In circumstances where CECA has exercised its functions under the *National Law* and the evidence obtained engages an offence, Nominated Supervisors and/or educators who are persons alleged to have breached the Law will be provided with the evidence and an opportunity to make a submission in response to that evidence.



Source: Ayres and Braithwaite (1992).

## RESPONSIVE AND ASPIRATIONAL REGULATION

The regulatory theory informing the *National Law* is known as responsive regulation. Responsive regulation has been the standard model that informs both the structure of regulatory laws and the practice of regulators, for approximately three decades.

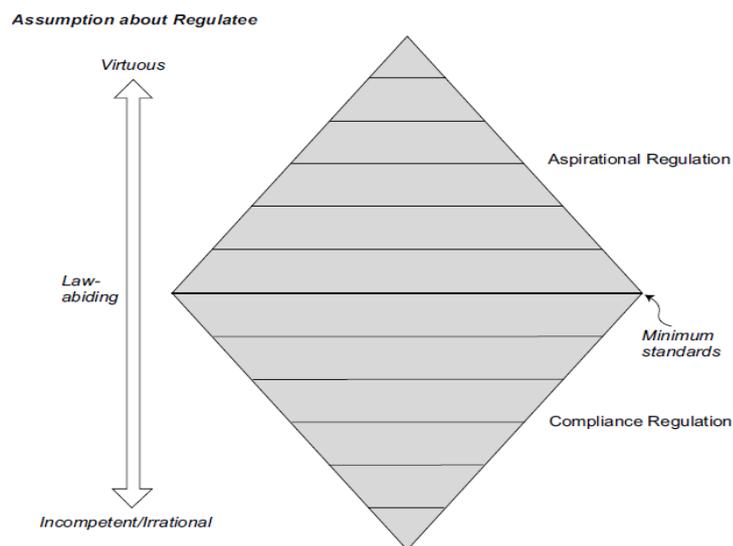
The model most familiar to regulators and regulated entities is the ‘regulatory pyramid’ illustrated simply by Ayres and Braithwaite. The pyramid is a representation of the approach responsive regulators would take when responding to non-compliances.

Responsible Regulators will give balance and proportionality, based on the fact situation, to their decisions. The model supports varied regulatory responses to matters where there is a risk to children’s safety, health and wellbeing.

The size of each layer of the triangle represents the expected proportion of the type of regulatory activity in response to issues of non-compliance within the regulated sector.

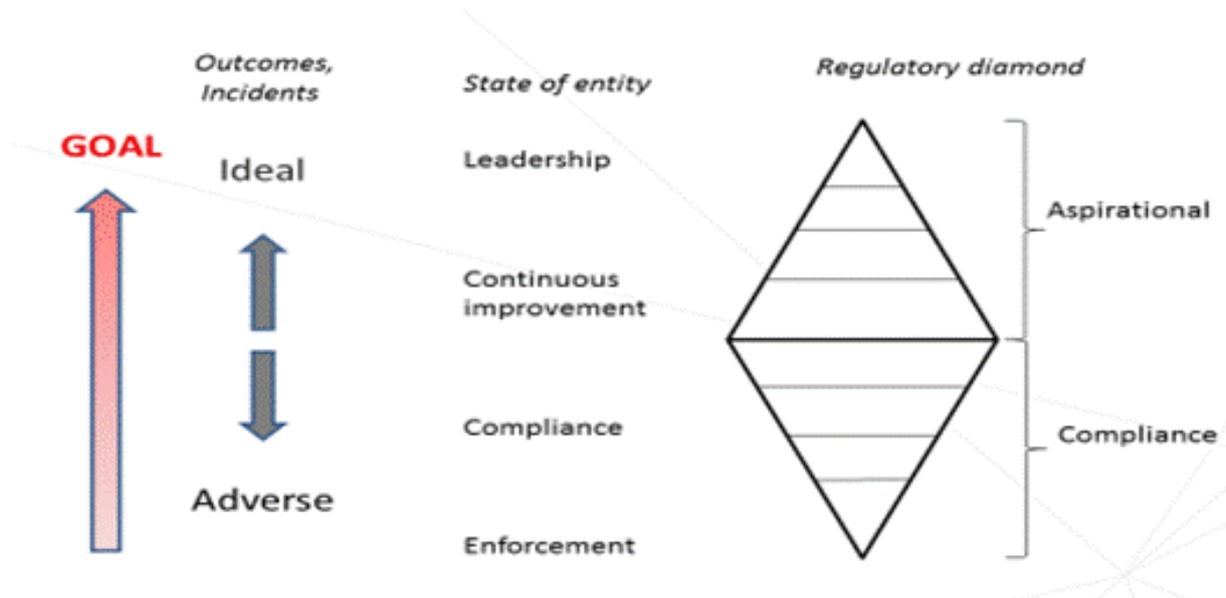
The concept is also informed by always thinking and engaging with the regulated sector, with a view to adjusting as appropriate, and where necessary starting from first principles again.

Figure 4: The Regulatory Diamond



Compared with traditional regulatory regimens familiar to the ACT education and care sector the *National Law* has a different but complementary component, this is embodied in the Quality Assessment process. This component is termed aspirational regulation. Aspirational Regulation combined with the traditional regulatory pyramid forms a Regulatory Diamond as illustrated in Figure 4.

Aspirational regulation shown with responsive regulation, Source: Jonathan Kolieb, 2015



All of the elements of the regulatory diamond exist in the *National Law*, and the *National Law* has a mix of responses that engage positive outcomes and adverse outcomes.

### The Regulatory Tool kit

CECA's responsive regulatory model and the *National Law* enable various response options to complaints or concerns raised. Broadly these options can be categorised as administrative or statutory. Low level or pre-emptory compliance issues may be addressed through the provision of educative material, emails, phone calls or letters outlining concerns.

In some circumstances, CECA may decide to conduct a formal meeting with providers to discuss systemic issues. This approach enables engagement with the issues and development of a reasoned way forward. A statutory response

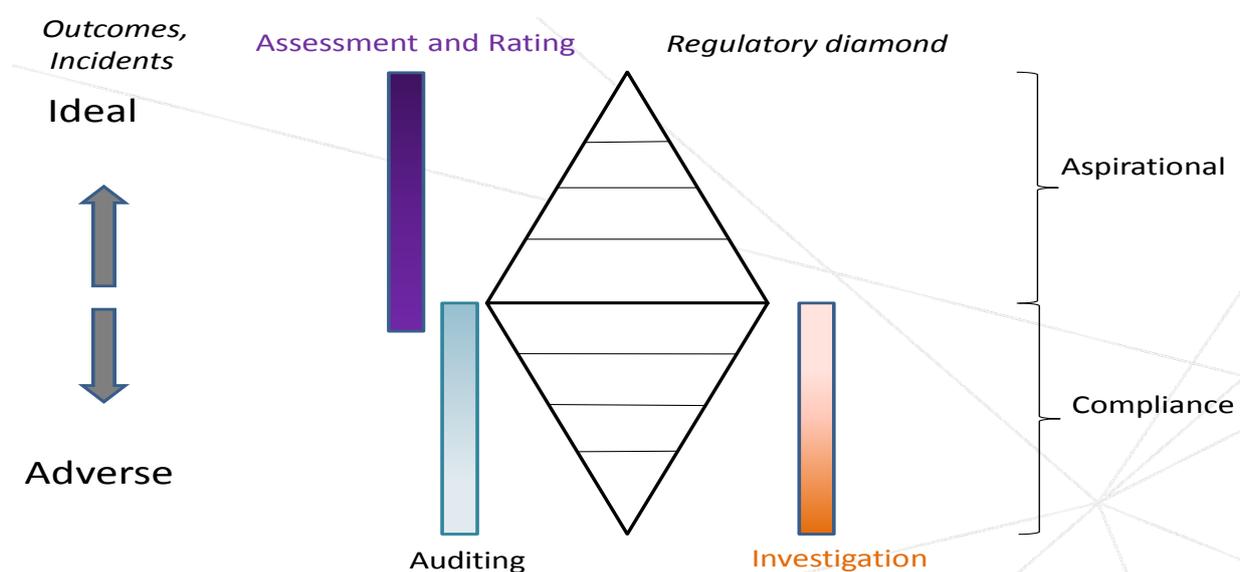
may include the issuing of a notice or direction, enforceable undertakings or prosecution as provided for under the *National Law*.

### Accountability

CECA's decision making is subject to broader ACT government review and scrutiny processes. These include external reviews on statutory decisions by the ACT Civil and Administrative Tribunal (ACAT), and the ACT Supreme Court and the Territory's Ombudsman. CECA's Processes and procedures are also subject to audits by the ACT Auditor General's Office.

### Applying the Regulatory Diamond

CECA is made up of three interconnected teams each contributing to the unit's functions under the *National Law* and within the Regulatory Diamond. The teams are: Quality Assurance Team, Audit and Risk Management Team and Investigation Team.



## CECA and the Regulatory diamond

The effective functioning of each element of the diamond informs the effectiveness of the other elements. The collaboration and interconnectedness of the teams within CECA enhances the effectiveness of the whole system. For example:

Effective A&R has a significant impact on improving compliance and the sector thriving, and the outcomes for children.

Effective investigation has a significant impact on improving targeted education and auditing. It also has considerable impact on reducing harm and ensuring safe education and care environments.

Effective auditing enables systemic problems to be understood and prevented.

## STAKEHOLDER ENGAGEMENT

### Educate and Inform functions

CECA engages in educational development for the sector. CECA convenes the Education and Care Sector Forum at least three times a year. The aim of the sector forum is to expand best practice and improve risk management.

Newsletters are regularly published to advise the sector on latest information or inform their rights and responsibilities under the *National Law*.

CECA's authorised officers undertake Assessment and Ratings of all ACT Educate and Care Services. Once A&R reports are drafted they are sent to the Service for review and reply comment.

This provides the service with any opportunity to provide alternative evidence or further clarification before the report is finalised. Once finalised the Services rating is published on the ACECQA website.

This interaction provides services and providers with comprehensive, individualised information which enables continuous improvement of their education and care Service. This process facilitates professional dialogue and collegiate interactions between CECA and the service.

## Internal government Relationships

CECA's work overlaps with ACT Policing, Working with Vulnerable People Team, The Office for Children, Youth and Family Support and Access Canberra. Any work undertaken between agencies is subject to the Reportable Conduct scheme.

## External Government Relationships

CECA works with other States, Territories and the Commonwealth in numerous capacities. These include sharing information and evidence with other regulators, participating in National conversations through the Early Childhood Policy Group or participating in Commonwealth Working Groups.

CECA works closely with the Australian Children's Education and Care Quality Authority (ACECQA). ACECQA has numerous national responsibilities they including: providing support to Regulatory Authorities to enable best regulatory practice and quality outcomes for children, promoting education and awareness within the sector and the community; and supporting and developing a high quality Education and Care workforce.

## CECA's TEAMS

### Quality Assurance

The Quality Assurance team is the first point of contact for information and queries about the *National Law* and the National Quality Standard. This team of Authorised Officers undertake the Assessment and Rating (A&R) process in accordance with the *National Law*. The Quality Assurance function operates predominately in realm of the aspirational regulation. The key objective of quality assurance is to assist providers and services in their journey of continuous improvement

The A&R process provides parents and children within Education and Care Services with many benefits. These include:

- ▶ improved educator to child ratios
- ▶ greater individual care and attention for children
- ▶ educators with increased skills and qualifications
- ▶ better support for children's learning and development
- ▶ a national register to help parents assess the quality of education and care services in their area.

The National Quality Standard (the standard) is a key aspect of the NQF and sets a national benchmark for early childhood education and care, and outside school hours care services in Australia. The NQF requires each service to be assessed and rated against the standard. A stated objective of the NQF is to 'improve the educational and developmental outcomes for children attending education and care services'.

The standard consists of seven quality areas:

1. Education program and practice
2. Children's health and safety
3. Physical environment
4. Staffing arrangements
5. Relationships with children
6. Collaborative partnerships with families and communities
7. Leadership and service management

During an assessment, an overall rating is given dependant on evidence collected across the seven quality areas. The seven quality areas are made up of 18 standards and 58 individual elements.

There are five rating levels within the assessment and rating process as follows:

1. Excellent rating, awarded by ACECQA
2. Exceeding National Quality Standard
3. Meeting National Quality Standard
4. Working Towards National Quality Standard
5. Significant Improvement Required (SIR)

In the ACT Authorised Officers are Early Childhood Trained professionals who have undertaken further professional development through the National Authority to ensure they have the necessary skills and knowledge and operate consistently within and across jurisdictions.

Quality Assurance plays a key role in the implementation of the CECA Educate and Inform Strategy.

## **Audit and Risk Management**

In the ACT the Audit and Risk Management team undertake compliance audits and risk assessment

audits of services. Compliance audits help to ensure that services are meeting their minimum requirements as set under the *National Law*.

The team has a yearly schedule of announced and unannounced compliance audits of services. The team also carries out short notice audits in response to relevant incidents or allegations. These types of audits are called risk audits or if appropriate, emergency response audits. Risk audits and emergency response audits are conducted to resolve any specific and immediate risk to children.

The Audit and Risk Management team also leads CECA in risk assessments of each and every service. Those risk assessments are used to inform the long-term scheduling of audits and quality assessments and rating. Each service is provided with a risk rating score and overall risk rating which informs the frequency of visits required to the service to ensure the health, safety and wellbeing of children is being sufficiently met.

The Audit and Risk Management team works predominately in the compliance space. The key objective of this team is to work proactively to identify any non-compliance in their early stages to prevent more serious breaches of the *National Law*. Its work is weighted towards addressing less adverse outcomes or incidents and responding with educative tools such as a formal e-mails, meetings, administrative letters, or by issuing compliance notices. In the more serious non-compliance matters, the team may also consider other compliance powers.

## **Investigation**

The investigation team's focus is on the information that becomes known to the Authority that there has, or may have been, contraventions of the National Law where the contraventions represent a risk or the potential for risk to the safety, health and well-being of children.

The investigations team is obligated in its investigative function to exercise the powers necessary to obtain, to the greatest extent possible, the facts of the matter being investigated. The National Law has a range of significant investigation powers. Those powers exist because children are inherently vulnerable and as a general rule it is preferred that they would not be asked to give evidence.

In exercising its investigative functions CECA aims where appropriate, to adhere to the Australian Government Investigation Standards. Authorised Officers responsible for conducting investigations are trained to Certificate IV in Government (Investigations). Authorised Officers responsible for the coordination and supervision of investigations are trained to Diploma of Government (Investigations).

CECA assesses each source of alleged, apparent or potential contraventions applying a risk based methodology to case selection. A sub-team of senior Authorised Officer within CECA have oversight of matters referred to investigation. A range of factors are considered in making such decisions, including risk factors engaged, object seriousness of the matter, prospects of getting to the facts and the capacity of the investigations team.

## COMPLIANCE AND INVESTIGATION ENFORCEMENT PRIORITIES

CECA's regulatory strategies are assessed through a hierarchy of considerations relating to harmful conduct. Conduct deemed harmful may include:

- ▶ Harm of a physical, psychological or emotional nature to a child
- ▶ A blatant disregard for the law
- ▶ Unlawful conduct at national or regional scale
- ▶ Conduct or failings which have a detrimental impact on disadvantaged or vulnerable groups.

### Statutory Powers of the Regulator and Authorised Officers

The *National Law* provides regulatory authorities with a wide range of powers to protect children from harm and hazards or address unlawful conduct:

#### Notices

- ▶ Compliance directions
- ▶ Compliance notices
- ▶ Notice to suspend education and care by a family day care educator
- ▶ Emergency action notices
- ▶ Prohibition notices
- ▶ Emergency removal of children
- ▶ Powers of Entry

#### Other powers

- ▶ to require name and address
- ▶ to require evidence of age, name and address of person
- ▶ to require individuals to provide evidence to the regulatory authority
- ▶ to require the provision of documents and other forms of evidence
- ▶ obtain information for rating purposes

## RISK MANAGEMENT APPROACH

CECA has a risk methodology that applies to Assessment and Rating, audit and risk management and triage decisions for investigation.

Compliance monitoring of approved providers and services is prioritised based on a range of factors as outlined below. This methodology was modelled on the successful Victorian risk management system.

A risk rating number is allocated to each service based on the following:

- ▶ assessment and rating of the service;
- ▶ notifications, incidents and complaints;
- ▶ investigations and non-compliance;
- ▶ changes in leadership, environment; and
- ▶ extenuating circumstances such as approved provider non-compliance.

A Risk Rating Tool is completed for each service. An overall number of 1-3 is determined and attributed to a service which results in a rating of low, medium or high. This enables a schedule of compliance monitoring audits to be developed. Services rated as low are typically visited every two years, medium rated services every 12-18 months. Services rated in the high category are visited every 6 months to best ensure the health, safety and wellbeing of children.

