



Department of Disability, Housing and Community Services
Office for Children, Youth and Family Support
Children's Policy and Regulation Unit

COMPLIANCE STRATEGY

JANUARY 2009

Compliance Strategy

ACT Children's Policy and Regulation Unit

Office for Children Youth and Family Support

The ACT Children's Policy and Regulation Unit (CPRU) is responsible for ensuring that licensed ACT childcare services are operating in compliance with the *Children and Young People Act 2008* and the *ACT Childcare Services Standards*. This Compliance Strategy articulates the roles and responsibilities of the CPRU in ensuring childcare services are licensed in accordance with their regulatory requirements.

Our Goal

Our goal is to ensure children's services have ongoing and consistent compliance with the Children and Young People Act 2008 and the ACT Childcare Services Standards to make sure there is a basis for high quality service provision and outcomes for children in the ACT.

What is Compliance?

Compliance means different things in different situations.

In a societal context it may mean obeying the road rules, acting courteously toward others or paying taxes. Without this level of compliance accidents could occur or chaos could reign.

Regulatory compliance refers to systems to ensure that people are aware of and take steps to act according to certain accepted standards, laws and regulations.

Compliance for the CPRU and licensed ACT children's services means that each licensed children's service meets their minimum requirements as set out in the Children and Young People Act 2008 and the ACT Childcare Services Standards.

Why is Compliance Important?

The quality of childcare services has a profound influence on children's development throughout the life course. Regulations exert an upward influence on quality regardless of service type¹.

The *Children and Young People Act 2008* and the *ACT Childcare Services Standards* are in place to ensure that licensed children's services in the ACT provide care that:

- is safe, positive and nurturing;
- promotes the educational, social and developmental wellbeing of children; and
- ensures the best interests of children are paramount.

¹ Centre for Community Child Health, Royal Children's Hospital, Melbourne

Who is a Children's Services Adviser?

Children's Services Advisers are experienced early childhood professionals who have extensive professional knowledge about:

- children
- children's services
- planning, design and establishment of new services
- relevant legislation
- program development
- policy development
- behaviour guidance
- health and hygiene practices
- safety measures
- mandatory reporting and protective behaviours
- referral agencies
- family support services.

Children's Services Advisers are skilled communicators and regulators. They engage in the practice of regulating responsively by effectively providing technical support, advice and referrals to services that are willing to do the right thing and services that try to do the right thing and do not always succeed. They balance this part of the regulatory role with effectively detecting and deterring those services who do not want to comply or who have chosen not to comply. Maintaining this balance is a skill that can be underestimated, but is beneficial to the ACT children's services sector.

How does a Children's Services Adviser Monitor Compliance?

Children's Services Advisers are authorised officers under the *Children and Young People Act 2008* (section 26). They have the authority to monitor compliance and investigate allegations of noncompliance with the *Children and Young People Act 2008* and the *ACT Childcare Services Standards*.

Children's Services Advisers undertake a minimum of 3 or 4 visits to each licensed children's service each year. These are a balance of announced or unannounced visits. During visits Advisers will monitor compliance by;

- inspecting records and policies;
- reviewing programs;
- inspecting safety health and hygiene procedures;
- observing interactions between staff and children;
- inspecting cleanliness and maintenance of the premises; and
- investigating any complaints received.

Gathering this information ensures that the Adviser has the relevant context of compliance or noncompliance at the service and informs the way forward to achieve compliance.

Services are also required to meet some additional administrative requirements, such as providing certification of insurance currency. Advisers monitor this by correspondence and telephone calls with services when not undertaking visits.

The CPRU is required to assess each service's compliance with the *ACT Childcare Services Standards* once during their licence period. In addition to this the CPRU is required to prepare an annual *Childcare Standards Report* for each service.

What is Noncompliance?

Noncompliance is when a service does not meet the requirements of the *Children and Young People Act 2008* and the *ACT Childcare Services Standards*.

How the CPRU responds to ensure compliance is achieved is through the practice of responsive regulation. The CPRU decides on the action/s required for services to address areas of noncompliance and to mitigate potential risks successfully. This allows services to build on their strengths rather than focus solely on their perceived deficits.

However, it is important to note that the CPRU may immediately utilise statutory means to elicit compliance. This may be through issuing a *Compliance Notice, Suspension, or Safety Suspension*.

What is Regulating Responsively?

The CPRU utilises a collaborative, strengths based and child centred approach when working with children's services. This approach ensures services feel empowered to meet their minimum requirements and understand the need for the requirements to exist.

The approach draws on the research and theories of Professors Ian Ayres and John Braithwaite and Dr Valerie Braithwaite. This is the practice of *Responsive Regulation* which elicits compliance through cooperative dialogue and capacity building.

There are three basic underlying principles to *Responsive Regulation*. These are:

1. Take note of context.
2. Utilise strategies from least intrusive to most intrusive (giving preference to the least intrusive).
3. Ensure there are opportunities for discussion about why regulation is necessary and to elicit commitment to voluntary compliance.

Highly developed relationships enable regulators to work proactively to achieve compliance.

The Australian Tax Office and other Australian and international government agencies utilise the practice of *Responsive Regulation*. The basic method is to understand the motivating factors influencing those who wish to comply, and then to decide where on the regulatory pyramid this fits to decide on the response.

The CPRU utilises this model (**Diagram A**) and lays it over a practice model (**Diagram B**). The CPRU utilises the shape of a pyramid to indicate the progressive nature of the compliance model, and to show that most regulating is directed to the base of the pyramid.

Diagram A: Responsive Regulation Model

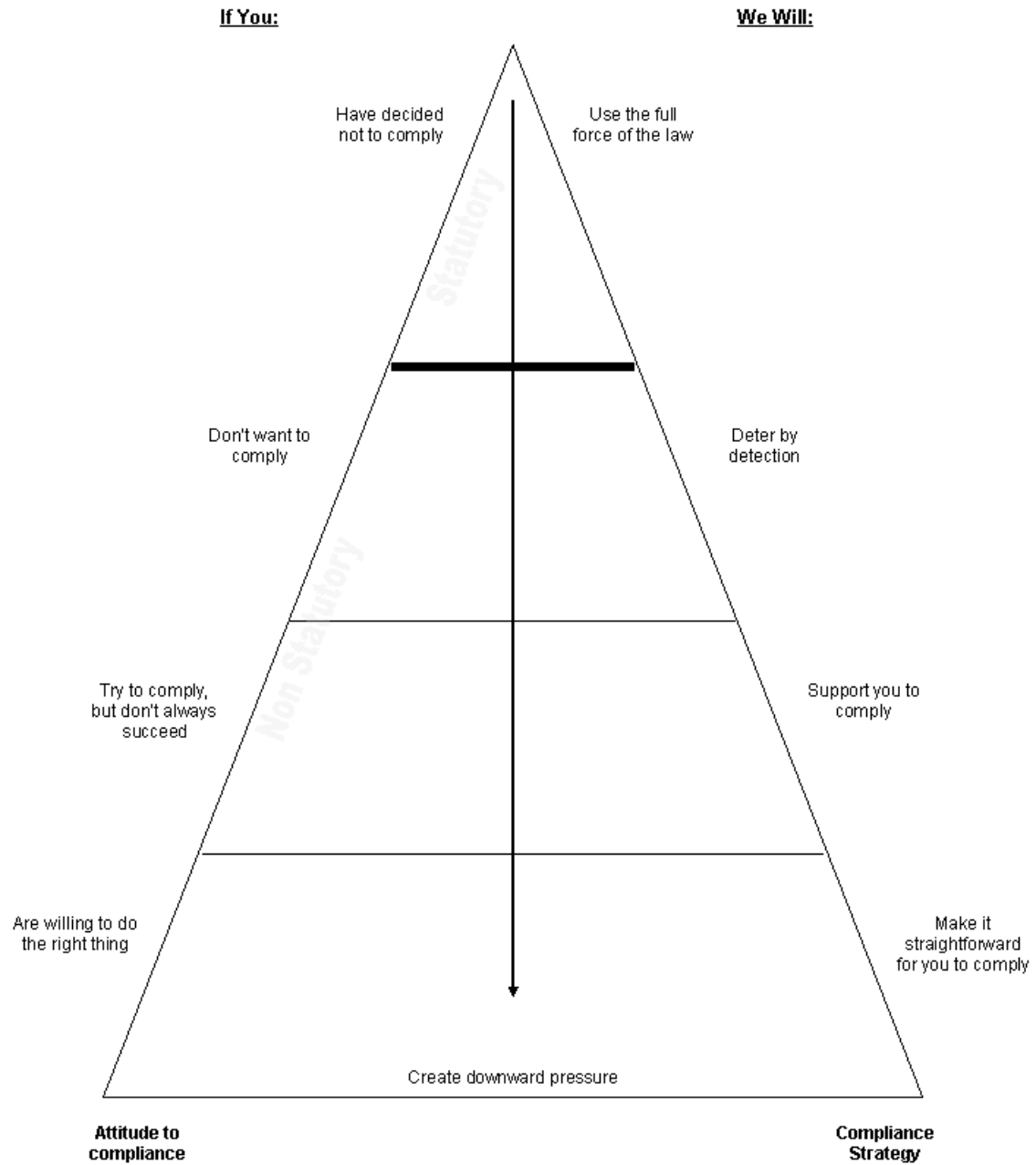
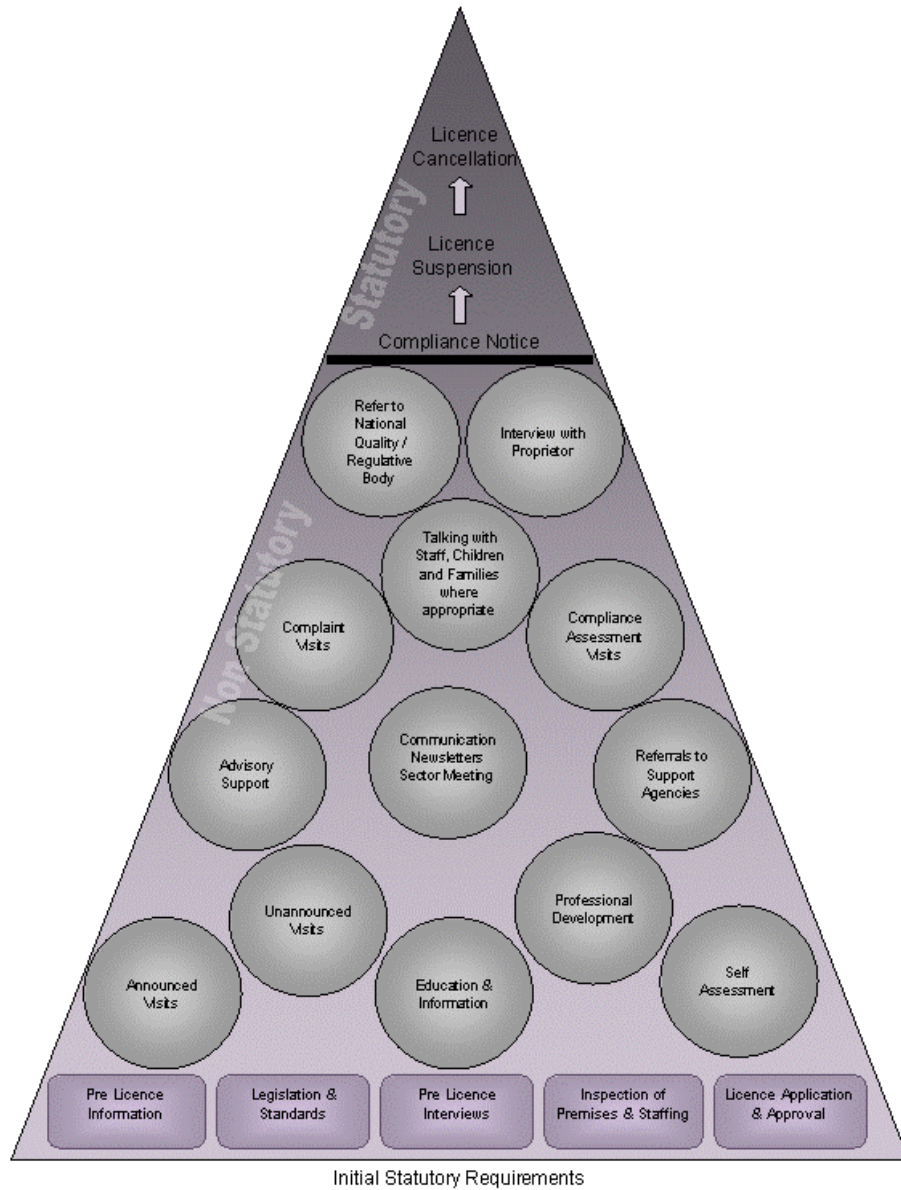


Diagram B: CPRU Practice Model

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What Happens When Noncompliance is Identified?

Issues of noncompliance can be identified at visits, through complaints or concerns, self identification, correspondence or telephone calls.

When noncompliance is identified, Children's Services Advisers utilise the *CPRU Practice Model (Diagram B)* along with the *Responsive Regulation Model (Diagram A)*. The *CPRU Practice Model* outlines the array of responses available to assist services to address the identified noncompliance.

Advisers will apply risk ratings dependent on the risk/impact of the provider not meeting the Standard/s. Higher risk ratings will be assigned to Standards where the impact or possible impact would seriously affect the safety and wellbeing of children at the service. Advisers will use the Noncompliance Risk Matrix (**Attachment A**) to guide them, and discuss the possibility of the risk (potential and actual risk to children) occurring and consequences of the noncompliance with the service representative.

Advisers will place the noncompliance in context of service type, history, level of risk, willingness to comply/attitude toward compliance, budget, number of children, etc and rate the level of importance of these factors (**Attachment B**). They will discuss this with the service representative to ensure the perspective of the service is considered.

After determining the level of risk the noncompliance poses, and placing it in the appropriate context for that service at that time, Advisers will then determine timeframes that the service must adhere to, to regain compliance (**Attachment C**). They will inform the service representative or proprietor of the determined timeframes within a reasonable period.

Issues of noncompliance, required actions and timeframes for addressing noncompliance are usually recorded on a *Record of Visit* form. This form may be left at the service at the time of visit, or forwarded to the service/proprietor within a reasonable timeframe.

When will Statutory Intervention be Taken to Address Noncompliance?

Statutory intervention may be taken by the CPRU at any point noncompliance is identified. In general, statutory intervention will be taken by the CPRU when:

- a) non statutory steps have not addressed the noncompliance at a service;
- b) the risk of the noncompliance is considered rated as red (8 – 10); or
- c) there are more than six (6) simultaneous issues of noncompliance at the service.

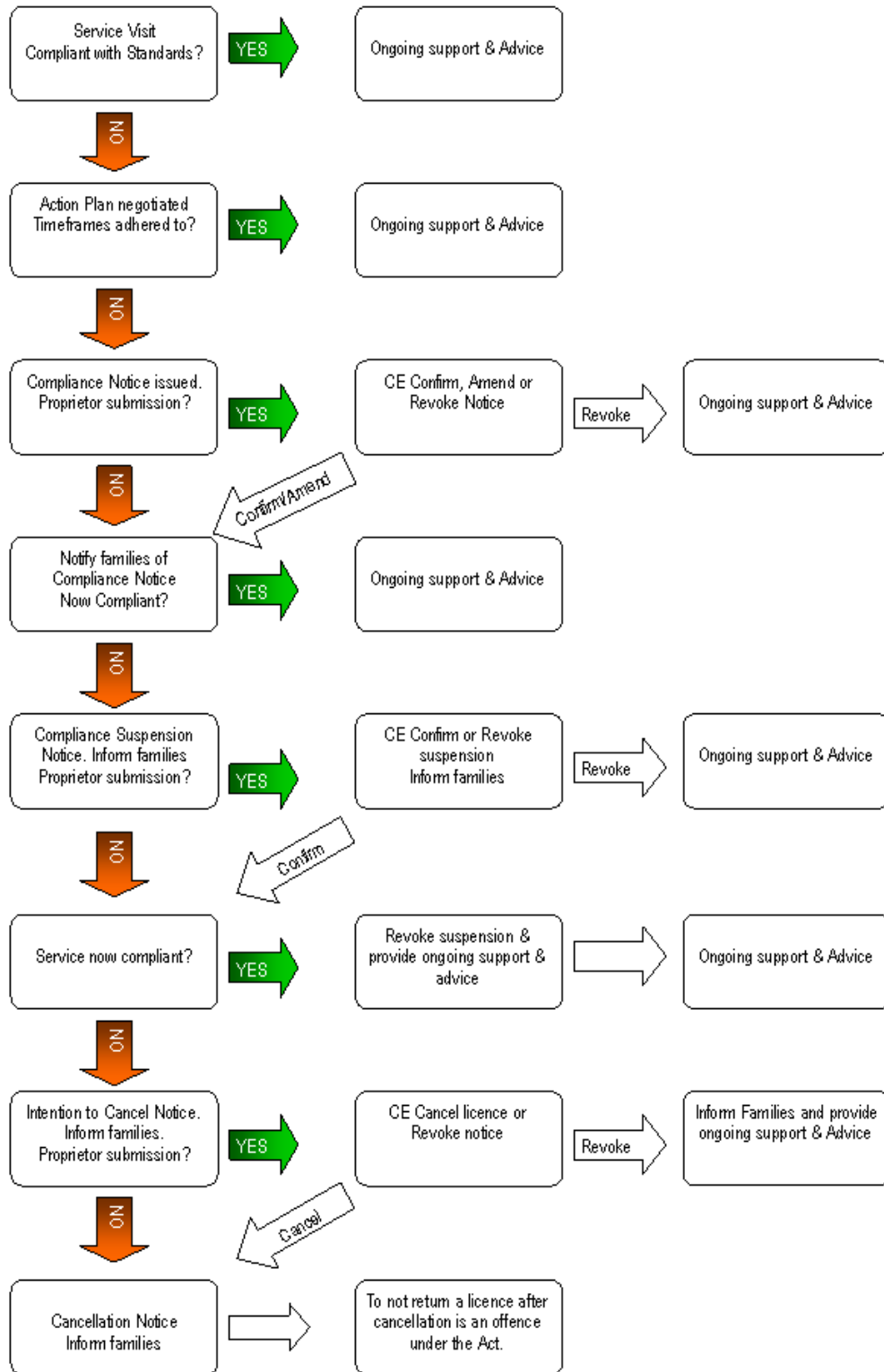
What are the Enforceable Statutory Interventions?

Chapter 20 of the *Children and Young People Act 2008* relates specifically to childcare services including the licensing and compliance monitoring of those services. These interventions are applied at the top of the pyramid/s and the emphasis is always on creating downward pressure to elicit compliance.

In severe cases, section 762 of the *Children and Young People Act 2008* enables the suspension of a childcare service licence if there is reasonable belief that children at the service are unsafe and closing the service is necessary to protect the children. After issuing a *Safety Suspension Notice*, the Chief Executive must take reasonable steps to inform parent/guardians of the children attending the service about the suspension of the licence. A *Safety Suspension Notice* has effect until revoked in writing by the Chief Executive and given to the proprietor.

In all other cases where statutory interventions are required (at the top of the pyramid/s), the following flow chart illustrates the legislative steps (section 759 to 764 of the *Children and Young People Act 2008*) in place to encourage compliance.

Children's Policy and Regulation Unit Compliance Monitoring Flow Chart



What are Assessment Requirements and Annual Childcare Standards Reports?

Compliance Assessments

Section 774 of the *Children and Young People Act 2008* requires the CPRU to make a formal assessment of each service's compliance with the *ACT Childcare Services Standards* at least once during the service's licence period (a service can be licensed for no more than three years at a time).

A Children's Services Adviser may assess compliance, utilising the *Compliance Assessment Checklist*, with all or some of the *ACT Childcare Services Standards* during any visit to a service. The complete assessment could be accumulated throughout the license period, or could be conducted at a target visit. A service may be assessed more than once throughout their licence period.

Children's Services Advisers will conduct key checks (such as staff: child ratios) at most visits to licensed services. Advisers will inform the person in charge of the service at the time of the visit if they are conducting a compliance assessment. Advisers will also inform the proprietor, controlling person or person in charge of any noncompliance identified within a reasonable period after it has been identified. Advisers will supply services with a *Record of Visit* for each visit within a reasonable period after the visit.

Childcare Standards Reports

Section 775 of the *Children and Young People Act 2008* requires the CPRU to publish a *ACT Childcare Standards Report* for each financial year. This report describes each licensed childcare service, the particulars of their licence, any *Temporary Standards Exemptions* granted and the service's compliance for that financial year. Information about noncompliance will be included in the report if the service has had a confirmed or amended *Compliance Notice*, a suspension, cancellation or offence under chapter 20, *Children and Young People Act 2008*.

If there is a proposal to include noncompliance in a *Childcare Standards Report*, the proprietor of the service will be informed and have an opportunity to make a submission. This submission is then considered and a decision made to include or not to include the information about noncompliance. If the decision is to include the information, the proprietor's submission must also be included in the *Childcare Standards Report*.

Under no circumstances can any information be included in a *Childcare Standards Report* that would identify, or allow a person's identity to be worked out if they made a confidential report, are a child attending the service, or a childcare worker at the service.

How does the CPRU Respond to Complaints and Concerns about Childcare Services?

The CPRU is obliged to respond to all complaints from the public about childcare services' compliance with the *Children and Young People Act 2008* and/or the *ACT Childcare Services Standards*. The primary concern at all times is the wellbeing of children in care. The CPRU *Complaints and Concerns about Childcare Services Policy and Procedure* is followed by CPRU staff.

Complaints about a service or an individual will be investigated where appropriate and any problems addressed as quickly as possible. In many instances concerns can be resolved during the initial contact with the complainant, or by the person being advised to make contact with the service directly or with another relevant authority. Children's Services Advisors will always stress the importance of discussing the issue with the service before taking any other steps.

In situations where the information received is assessed as possibly constituting noncompliance with the *Children and Young People Act 2008* and/or the *ACT Childcare Services Standards*, a formal investigation will take place. On these occasions, two Children's Services Advisers will usually visit the service.

When investigating complaints the privacy of all parties will be respected.

When investigating a complaint, advisers will:

- carry ACT Government authorisation;
- identify themselves to the person in charge;
- explain the nature of the complaint;
- reasonably protect the privacy of the complainant;
- discuss the complaint with the person in charge; and
- collect as much evidence as necessary (this may be via conversations, copying records, etc, and may take more than one visit).

Following the visit/s, advisers will prepare a report about the visit noting the outcome of their investigation.

Where appropriate the complainant will be notified of the outcome of the investigation.

In circumstances where a complaint has been substantiated and noncompliance identified, the service will be required to take steps to address the noncompliance.

What Other Legal Responsibilities Should Staff Know About?

Responsible People (section 737)

A responsible person under this Act is a person who:

- a) is a proprietor of a childcare service;
- b) is a controlling person of a childcare service, or
- c) is a person caring for a child at a childcare service.

All staff at childcare services are responsible people under this legislation. The offences listed below are applicable to all responsible people; therefore it is essential that staff are aware of their responsibilities.

- Fail to protect a child from injury (section 738);
- Fail to supervise child (section 739);
- Unreasonably discipline child (section 740); and
- Failure to maintain buildings, equipment, etc (section 741).

These offences carry maximum penalties of 50 penalty units, 6 months imprisonment or both.

Mandatory Reporting (Section 355)

This section describes who is a mandated reporter, what they are required to report, and the penalties if they do not.

A person caring for a child at a childcare centre (this includes all licensed children's services except family day care), and coordination unit staff for family day care schemes are mandated reporters if they:

- a) are an adult;
- b) reasonably believe a child has experienced or is experiencing
 - i) sexual abuse; or
 - ii) non accidental physical injury; and
- c) this belief is formed through the course of their work.

It is an offence not to make a mandatory report if you are required to. It carries a maximum penalty of 50 penalty units, 6 months imprisonment or both.

Voluntary Reporting of Child Abuse and Neglect (section 353)

It is important to note that any citizen is able to make a voluntary report if they suspect any child is being abused or neglected, or is at risk of abuse or neglect.

NONCOMPLIANCE RISK MATRIX

Consequence of Risk (noncompliance)

		1 Low	2 Medium	3 High	4 Very High	5 Extreme
Possibility of Risk Occurring (actual & potential risk of harm to children)	5 Extreme	6	7	8	9	10
	4 Very High	5	6	7	8	9
	3 High	4	5	6	7	8
	2 Medium	3	4	5	6	7
	1 Low	2	3	4	5	6

ATTACHMENT B

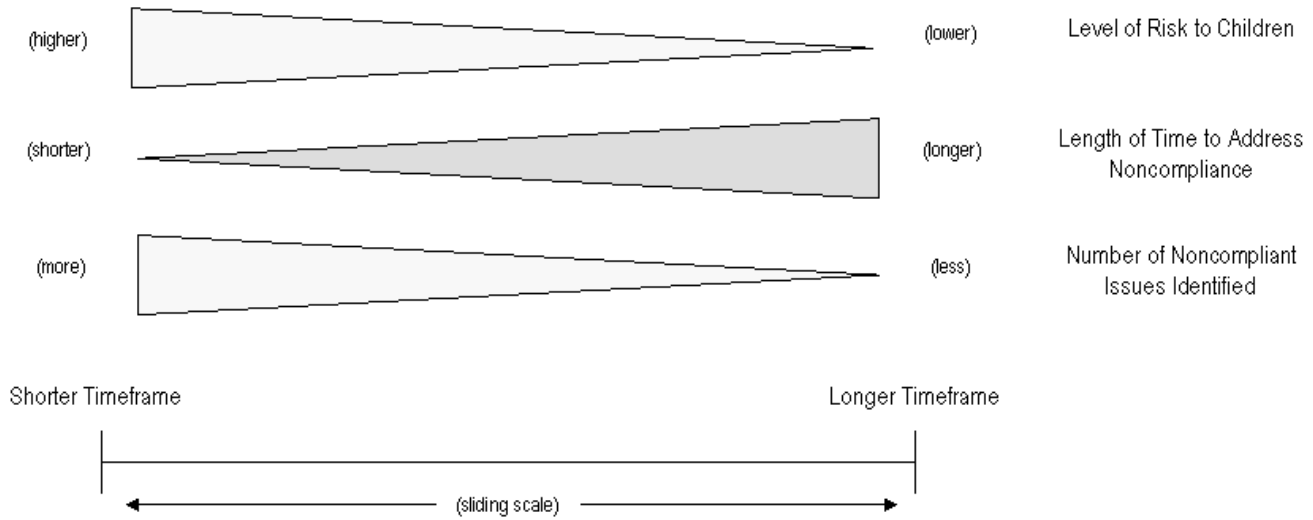
Contextual Considerations for Addressing Noncompliance

This list is not exhaustive, and may be used as a guide or as a checklist, and may be added to if required. For complex issues of noncompliance, or complex complaints, this list should be utilised as a matter of course.

Contextual Consideration	Question	Importance Rate: 1(low) – 5(high)	Notes
Service Type	How does the noncompliance affect the provision of care or operation of the service?		
Compliance History	What has been the service's compliance history? Have they had ongoing noncompliance? Have they had many complaints?		
Qualification Level of Staff	Does the service have the required number of fully qualified staff? How many unqualified staff are working in qualified positions?		
Experience of Staff	Are staff experienced in childcare service settings? Is the person in charge experienced in that role? What is the level of staff turnover?		
Level of Risk of Noncompliance	Is it apparent that there is immediate potential or actual risk to children?		
Willingness to Comply	Does the person in charge want to address the noncompliance?		
Attitude Toward Compliance/Motivation	What is the person in charge / proprietor's attitude toward compliance? Is compliance important because what is best for children is important? What is the motivation for compliance?		

Budgetary Impact	What is the impact on the service's budget to achieve compliance? If there are budgetary restrictions, how is the interim risk mitigated?		
Number & Ages of Children Affected by Noncompliance	Are all children attending the service affected by the noncompliance? What impact would continuing noncompliance have on these children?		
Ability to Effectively Mitigate the Risk	Can the person in charge / proprietor effectively mitigate the risk of noncompliance without fully complying in the short term?		

Determining Timeframes for Addressing Noncompliance



Key Considerations are the *level of risk*, the *number of noncompliant issues* and the *length of time* it should take to address the issue. These timeframes will also take into account service specific contextual considerations, such as willingness to comply, and the ability of the service to effectively mitigate the risk to children until compliance is achieved.