



NSW Department of
Community Services

Children's Services Directorate

Strategic Compliance Monitoring and Enforcement Framework

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FOREWORD

The provision of children's services is an important responsibility.

Access to quality early childhood services is a vital plank of the NSW Government's State Plan. The provision of quality children's services is a strategy to achieve State Plan priorities to increase the proportion of children with skills for life and learning (F6) and reduce rates of child abuse and neglect (F7).

This priority is based on a wealth of research regarding the importance of early childhood services in promoting good outcomes for children and families. Research tells us that early intervention in the early years can produce a sustained change in children's health, welfare and educational attainment. Research evidence also clearly points to early childhood services as an essential component of case planning for children who have been neglected or harmed.

The early years of a child's life are foundation years. It is a time of rapid growth and development that has a major impact on how well people fare throughout their lives. We know the benefits that arise from young children being well nurtured and developing strong attachments to their caregivers, which provide the basis for safe and healthy development.

NSW has a strong licensing system for children's services administered by the Department of Community Services. Parents need to be assured that when their children attend a licensed children's service they are being provided with safe, high quality, well-regulated education and care which meets the child's developmental needs.

The Department of Community Services (DoCS) has established the Children's Services Directorate to regulate and monitor the provision of children's services in NSW. In doing so DoCS is refocusing its compliance and enforcement efforts to ensure that community goals as expressed by the children's services legislation are supported and enforced.

Children's services licensees and professionals work hard and conscientiously to maintain appropriate standards in compliance with the law. DoCS' objective in its licensing, compliance and enforcement work is to ensure that the providers of children's services are knowledgeable, capable and effective in meeting their legal obligations.

The *Strategic Compliance Monitoring and Enforcement Framework* expresses a new strategic approach to monitoring compliance and enforcing children's services legislation.

The Framework envisages a wider range of targeted monitoring activities to set DoCS' priorities and to support and develop a culture of compliance in the children's services sector.

Section 1. Introduction

1.1 Purpose

The purpose of this document is to outline a compliance monitoring and enforcement framework within which the Department of Community Services' Children's Services Directorate ("the CSD") will meet its regulatory obligations under the *Children and Young Persons (Care and Protection) Act 1998* ("the Act") and the *Children's Services Regulation 2004* ("the Regulation").

The framework reflects the purpose of the DoCS' Children's Services Reform Project to reform the way in which DoCS performs its regulatory functions associated with the children's services sector; to ensure that there is consistency and efficiency in the delivery of these functions and that services remain safe and developmentally appropriate for children.

A key principle which underpins the framework is the shift to a more strategic, evidence based approach for setting priorities for monitoring and enforcing compliance in the children's services sector.

This document forms the basis of engagement and consultation with internal stakeholders about the objectives, direction and proposed approach to the planning and implementation of this strategic approach and the consequent changes to the monitoring and investigative roles and responsibilities of compliance monitoring officers within the CSD. Detailed policies and procedures for the implementation of the framework will be developed subsequently.

1.2 Objectives

The objectives of the proposed framework are to:

- Demonstrate DoCS' commitment to fulfilling the objects of the Act and the Regulation.
- Build a clear, fair and manageable compliance monitoring and enforcement regime.
- Raise the profile of DoCS compliance activities and maintain DoCS' presence throughout NSW.
- Increase the industry understanding of its rights and responsibilities in complying with the legislation and increase industry capacity to meet those obligations.
- Ensure that all DoCS officers interacting with the children's services sector are clear about their roles, and responsibilities, adequately supported with both advice and investigation tools, and carry manageable workloads.
- Introduce work and management practices that aim to prevent corrupt conduct and minimise the exposure of DoCS officers to actual and perceived conflicts of interest in the performance of their statutory duties.

Through the rigorous implementation and promotion of the Strategic Compliance Monitoring and Enforcement Framework DoCS aims to encourage children's services in NSW to improve service quality beyond compliance with legal minimum standards.

Section 2. Background

2.1 Children's Services Reform

The Children's Services Reform Project involves a fundamental shift in the way DoCS performs its regulatory functions.

DoCS has instituted a centralised regulatory model in relation to the receiving and processing of licenses. This will enable children's services officers to focus on the monitoring and enforcement of key quality aspects of the Act and the Regulation.

One of the guiding principles of the shift is that Departmental efforts to inform, support, monitor and enforce compliance and investigate and prosecute non-compliance are approached more strategically. This strategic approach will be based on evidence of non-compliance and an assessment of risk to the health, safety and well being of children in children's services.

The Framework will adopt the following strategies to achieve the Reform's objectives. The strategies will:

- Develop a proactive and targeted approach to monitoring children's services with clear outcomes identified for each monitoring activity.
- Develop and maintain collaborative links with the child care industry and stakeholders through the provision of information and feedback on compliance matters involving the children's services sector.
- Involve key stakeholders in cooperative ventures through education and targeted campaigns.
- Progressively develop strong investigative skills in DoCS officers and introduce a strong organisational capability to respond to complaints and fully investigate serious and major breaches of children's services legislation.
- Improve data capture and provide risk assessment tools to better identify high risk services and patterns of frequent and/or serious non-compliance.
- Develop supporting guidelines and policies to ensure improved consistency of treatment and approach to the monitoring and enforcement of non compliance.
- Build a strong prosecution capability based on clear policies and strong skills in the collection of evidence and preparation of briefs.
- Provide staff with the opportunity to develop new skills and participate in interesting and varied work.

The Enforcement and Prosecutions Branch ("E&P") has been established in the Directorate to provide high quality professional, legal and investigative services, and to develop and implement efficient and effective compliance strategies consistent with current and emerging best practice.

The Branch is also responsible for providing training to Children's Services Officers (CSOs - formerly known as CSAs) and the new positions of Children's Services Team Leaders (CSTLs) so that these officers have a clear understanding of their respective roles and are able to develop and put into practice exemplary professional investigative skills.

Compliance activity must be guided by a clear strategic direction, identify priority areas for attention and allocate resources accordingly. This is essential to maximise effectiveness and achieve significant sector wide improvement throughout NSW.

2.2 Legislative Context

The basis for CSD's compliance and enforcement responsibilities is the Act and Regulation. Chapter 12 of the Act deals specifically with Children's Services.

The legislation provides the legal framework within which activities relating to the monitoring of compliance, enforcement and administration of appropriate penalties for offences must operate.

The Act and the Regulation require compliance by licensees with a range of requirements which are attached through the Regulation, to a licence to operate children's services in NSW. It is within this legislative framework that the *Strategic Compliance Monitoring and Enforcement Framework* has been developed.

The legislation provides a limited range of penalties that may be imposed when licensees fail to comply. The penalties available are the institution of a criminal prosecution before a magistrate in the Local Court and/or the taking of administrative action to revoke, suspend, vary or impose a further condition on a licence. These administrative actions have a right of appeal to the Administrative Decisions Tribunal.

The Act sets out objects and principles to guide the administration of Chapter 12 Children's Services. These are found in:

Section 201 Objects of Chapter

The objects of this chapter are:

- (a) to ensure the safety, welfare and well-being of children in children's services, and*
- (b) to promote certain standards for those services, and*
- (c) to ensure, as far as possible, that all persons working in children's services are suitable for such work.*

Section 202 Principles underlying the provision of children's services

The provision of children's services should be based on the following principles:

- (a) the paramount consideration in the provision of children's services is the best interests of children,*
- (b) children should receive services that meet their individual needs (including children with a disability) and enhance their physical, emotional, cognitive, social; and cultural development,*
- (c) Parents have both a right and a responsibility to be involved in the making of decisions by children's services in so far as those decisions affect their children.*

2.3 Conditions of licence

All children's services licences are subject to the conditions prescribed in the Regulation for the particular type of children's service. These conditions are found in the following provisions of the Regulation.

- **Part 3 – Licence conditions - facilities and equipment requirements:** These provisions relate to outdoor play areas, facilities and amenities, laundry, toilet and washing facilities; requirements regarding nappy change facilities, sleeping areas, storage safety, fire safety, standard of safety glass and fencing.

- **Part 4 – Licence conditions - staffing requirements:** These provisions relate to requirements to provide sufficient numbers of fit and proper and qualified staff and the setting of staff to child ratios.
- **Part 5 - Licence conditions – child number requirements:** These provisions relate to the number of children for which a service can provide care and/or education.
- **Part 6 - Licence conditions – operational requirements:** These provisions relate to the way that a children’s service is operated and include requirements about food and nutrition, child health, emergency and evacuation procedures; information about and access to children.
- **Part 7- Licence conditions - administrative requirements:** These provisions relate to the development of policies to promote the health safety and well being of children attending the service and ensuring that parents have access to these policies; allowing right of entry and inspection by DoCs officers; keeping records in relation to children and their attendance at the service and processes applying to the change of authorised supervisor and the change in circumstances of the licensee.

Failure to comply with a licence condition is an offence under the Act as follows:

Section 210(1) of the Act

A person who is the licensee or authorised supervisor under a licence for a children’s service must not contravene or fail to comply with any condition of the licence that applies to the person.

Maximum penalty: 200 penalty units (\$22,000)

2.4 Powers of entry

Section 235 of the Act gives DoCS officers wide powers to enter and inspect, without warrant and unannounced, any premises that are subject to control or regulation under the Act or the Regulation by means of a licence or otherwise for the purposes of:

- (a) *making an inquiry in relation to an application under this Act in respect of the premises,*
- (b) *ensuring that the provisions of this Act and the regulations with respect to the premises, and any conditions imposed on a licence or under an authority with respect to the premises are being complied with*
- (c) *ensuring that the conditions of any exemption relating to the premises are complied with.*

DoCS has a statutory duty to monitor children’s services to ensure they are operating in accordance with the requirements of the Act and the Regulation keeping in mind the objects and guiding principles expressed in the legislation.

2.5 Penalty regime

The Act creates a number of criminal offences and a range of administrative sanctions to be applied where a person or organisation does not comply with the provisions of the Act and Regulation which apply to them. The maximum penalty for these criminal offences is \$22,000 and applies to both corporations and individuals.

If DoCS needs to take enforcement action where a licensee continually fails to rectify identified breaches the options available are the initiation of prosecution action in the Local Court; the revocation, variation or suspension of the licence or the imposition of a further

condition on a licence. The limits of this penalty regime restrict DoCS' ability to use enforcement sanctions more strategically to gain compliance.

In many instances the breaches may be minor in themselves but there is a clear and wilful refusal to comply. In other cases there may be a large number of small breaches. In both situations taking prosecution action or revoking or suspending the licence may not be the appropriate and proportional response. Significant periods of time may elapse before a matter is ready to be heard in court and the closure of a children's service may be a heavy handed response detrimental to the children in the particular circumstances.

In other comparable regulatory jurisdictions in NSW there are graded penalty schemes which may provide for the issuing of penalty notices, enforceable improvement/clean-up/prohibition notice and the signing of enforceable undertakings. Such enforcement sanctions are found in the *Occupational Health and Safety Act 2000*, *Industrial Relations Act 1996* and *Protection of the Environment Act 2000*.

Section 3. Current Compliance Monitoring Framework

With the introduction of the *Children's Services Regulation 2004* licensees and authorised supervisors were required to certify with each application for a licence that they would each respectively conduct checks to ensure that the service was complying with the provisions of the Regulation relating to facilities and equipment, administration and operational requirements.

Because DoCS officers were no longer required to certify compliance with the Regulation on every occasion before a licence could be issued, it was envisaged that a more strategic approach to monitoring compliance could be implemented. By streamlining the administrative and monitoring processes associated with approving licences more attention could be placed on strategic monitoring of compliance.

The *Licensing and Monitoring Procedures Manual* was developed to assist children's services officers and regional management in this regard. In relation to the approach to managing compliance the Manual states that:

"Effective compliance management will be dependent on strategic planning of licence inspections and regular service monitoring in line with clearly identified priorities.

The licensing and monitoring process will focus more on major aspects of the Regulation that most impact on the performance of the service in terms of child safety and service quality. This will reflect that the regulations have extensive requirements but that some requirements will be most critical to service quality and therefore warrant closest attention during licensing and enforcement".

(Licensing and Monitoring Procedures Manual, June 2005)

3.1 Current compliance monitoring practices

Children's Services Officers (CSOs) are responsible for monitoring ongoing compliance with the children's services legislation. These responsibilities are organised on a regional basis where historically each CSO has had a specific allocation of children's services for which they are responsible.

The responsibility for the strategic monitoring of compliance and setting priorities also rests in the Regions. Regions are required to set priorities and monitor compliance by developing Annual Monitoring Plans. The minimum requirement is that each service is visited annually.

3.2 Criteria for setting priorities.

The strategy for setting priorities proposed in the Manual is that certain requirements in the Regulation have a priority status and breaches of these regulations are categorised as "critical breaches" because they are regarded as essential to the immediate health, safety and well being of children. Each visit to a service must ensure compliance with these requirements. Failure to comply will prevent a service from being licensed and such failure is non-negotiable for enforcement action if not rectified.

CRITICAL BREACHES RELATE TO THE FOLLOWING AREAS:

Health

- No medical details of children; no emergency contact details or parent authorisations for emergencies and excursions
- Kitchen, toilets and nappy change areas unhygienic, pests vermin , leaking drains
- No First Aid qualified staff on premises
- No secure storage- poisons stored safely

Safety

- At least two primary contact staff must be on premises
- No authorised supervisor
- Exceeding maximum licence numbers of children
- Staff: child ratios not met
- Staff unable to see children at all times
- Play equipment and physical surrounds not maintained – unsafe conditions
- Fences, gates, barriers inadequate to prevent children from escaping or intruders from accessing the centre

Well-being

- Qualified staff in accordance with requirement of the Regulation
- Staff understand their responsibilities under child protection legislation.

The Manual provides further guidance for how priorities are to be set. When planning monitoring programs, priority status should be considered for services that:

- have not been visited within the last 12 months
- have a history of complaints
- have a history of substantiated breaches
- have at least one ECT approval
- share an authorised supervisor with another service
- have a licensee with a history of complaints
- have an OSHC service on the premises
- have more than one trainee
- have no qualified staff other the authorised supervisor
- cater for children under 2 years of age.

The Manual recommends that monitoring visits be primarily unannounced and that the purpose of such visits is to provide an opportunity to

- observe the service's day to day operation
- establish a productive working relationship with the licensee and staff of the service
- become acquainted with the issues that exist for a particular service
- advise on regulatory matters and good quality practices

- prevent regulatory breaches occurring and/or becoming entrenched.

3.3 Operation of current monitoring framework

Regions are responsible for preparing strategies and criteria for monitoring of children's services.

Where monitoring is planned over the three year period of a licence the strategy usually is to monitor services systematically taking into account all the conditions prescribed by the Regulation.

Even then most visits focus on Part 3 conditions and rarely monitor compliance with other provisions. The following percentages demonstrate the focus of compliance visits over a three year period as advised by the regions

- Between 30% to 70% of all visits were in relation to Part 3 Licence conditions - facilities and equipment requirements
- Between 10% and 25% of all visits related to Part 4 - staffing requirements, with a focus on authorised supervisors and ECT requirements
- Monitoring compliance with parts 5, 6, and 7 can be as low as 5% of all visits in a three year period. These sections relate to child numbers, operational requirements and administrative requirements.

Part 4 and Part 5 concern staffing requirements and child number requirements respectively. These requirements are clearly important in terms of achieving good developmental outcomes for children but may not get the attention they deserve.

Inadequate staffing or poor child: staff ratio has the potential to make unsafe, services that would otherwise comply with *Part 3 facilities and equipment requirements*. In such circumstances poor supervision or child management may increase risks to the health and safety of children not foreseen by the legislation or Part 3 requirements and may by their very nature create new areas of risk.

3.4 Managing repeated non-compliance

Enforcement practices are to issue breach letters followed by regular visits and, where compliance is not achieved, to issue further breach letters. Discussions take place with licensees who are informed that prosecution action may need to be taken in some circumstances. Practices for managing repeated non-compliance have been cited to include

- Negotiation with licensees
- Phone calls
- Follow up letters
- Further visits
- Issue notice of intention to refuse
- Liaising with the former Office of Child Care in Head Office.
- Liaising and seeking advice from the Legal Services Branch.

3.5 Prosecutions

Between 1996 and 2006 DoCS prosecuted 49 licensees for a total of approximately 300 breaches. The most frequent breaches related to:

- Inadequate fencing
- Inadequate storage of dangerous chemicals
- Unhygienic premises

- Inadequate soft fall under playground equipment
- More children on premises than on licence
- Failure to maintain staffing and attendance records
- Inadequate number of qualified staff
- Staff/child ratios not met
- No authorised supervisor
- Failure to keep records.

3.6 Identifying trends and issues across children's services.

One of the aims of the processes developed for monitoring children's services as expressed in the Manual is to improve DoCS' capacity to identify trends and issues across children's services through improved data capture.

The Children's Services Information System (CSIS) has been designed to capture and manage information regarding the licensing and ongoing monitoring of children's services.

CSIS is used primarily by CSOs as a repository of all details regarding the services they manage. Data is used for a variety of statistical and corporate purposes within DoCS such as the Annual Report, internal and external audits and state-wide mail outs to services.

CSOs are able to enter breach results from monitoring visits and produce appropriate documents to send to the licensee. The reporting functionality of CSIS is limited.

Section 4. Proposed Strategic Compliance Monitoring and Enforcement Strategy

As described in the previous section the aim of the current monitoring framework is that effective compliance management is dependent on strategic planning of licence inspections and regular service monitoring in line with clearly identified priorities.

At present monitoring of compliance in a children's service is process and event driven rather than strategic. A compliance activity (which usually involves a visit to the premises of the service) is initiated by:

- a requirement to conduct a visit related to a licensing change
- a requirement to conduct an annual visit
- a requirement to carry out an investigation in response to a complaint

The new Framework envisages a move to a more targeted, multifaceted compliance and enforcement strategy aimed at resolving identified problem areas of non compliance.

Because the priorities for setting targeted compliance activities will be based on evidence and analysis they will need to be developed and planned centrally but implementation will be a regional responsibility. Evaluation of compliance activities in particular targeted campaigns, will take place in each region and intelligence gathered will be analysed centrally by Special Project Teams to inform further activities and campaigns.

While targeted campaigns will be planned annually, quarterly reports received from the regions will ensure that amendments can be made to the campaigns based on identified trends and patterns on non-compliance. (*For explanation of targeted campaigns refer to section 4.1 below*)

Monitoring visits will still occur for key events. Such events may involve applications for new and further licences and changes and renewals of licences. Where complaints are received investigations into the allegations will follow within a set timeframe in accordance with the *CSD Complaint Investigation Policy*.

After a period of transition it is proposed that targeted campaigns will become the main form of compliance monitoring.

The model proposed envisages a gradual integration of traditional compliance activities such as inspection and prosecution with more innovative problem-solving approaches.

4.1 Targeted Strategy

Evidence based planning for targeted campaigns will develop overtime as intelligence grows about the nature and level of compliance in the children's services sector. A research and analysis process to identify patterns, trends of non-compliance and poor quality services will be developed.

Early campaigns will need to focus on gathering information about the levels of compliance over a range of licence conditions which might be identified as critical to the health, safety and well being and the proper development of children.

A cross-functional project team will be given the task of identifying those critical areas

based on the team's experience and knowledge of the sector and other data that may be gleaned from CSIS and the results of prosecution action over the last 10 years.

Targeting strategies will ensure that:

- different models of targeting are developed and designed to provide different levels of intervention appropriate to the risk assessed
- a research/intelligence phase is a required step before a targeted campaign is commenced including deciding on which model of targeting is to be used
- an objective set of measurable goals for each campaign is developed prior to its commencement
- in preparation for the campaign officers involved discuss targeted issues, pro forma standards of compliance and appropriate remedial action with an officer from the Enforcement and Prosecutions Branch
- a completion date is set for the campaign.

A risk analysis will be undertaken of the compliance data collected from the results of observations and findings documented during the different phases of the targeted strategy. Such analysis will inform the target (provisions of the legislation, type of children's service, geographical area etc) and scope of:

- future targeted campaigns
- follow up inspections to be undertaken of any breaches identified during the inspection phase of a campaign
- future compliance audits, mini-blitz campaigns, investigations.

Risk analysis is also a crucial part of determining what enforcement sanction to apply when breaches have been identified and a licensee fails to rectify the breaches after being given an opportunity to do so.

4.2 Risk Assessment Protocol

A Risk Assessment Protocol will be developed and revised as experience grows. The purpose of the protocol is to establish a risk based process to guide the decision making associated with setting priorities for targeted campaigns and other proactive monitoring activities.

It is recommended that a team will annually:

- collect, research and analyse data
- identify non-compliance issues
- choose and precisely define important issues to target
- choose appropriate monitoring approaches and tools
- review and recommend re-ordering of priorities
- define progress measures and outcomes.

DoCS will also regularly consult with interested parties in relation to its compliance program and priorities. These will be reviewed in light of concerns or issues raised. When responding to any concerns DoCS will balance the allocation of its resources across the full range of children's services and in accordance with areas indicating the highest levels of risk for children.

4.3 Phases of Targeted Campaigns

Targeted campaigns generally consist of the following phases.

- **Planning phase:** involves the establishment of parameters of the targeted campaign setting measurable outcomes, goals and protocols based on intelligence available on the nature and level of non-compliance in the children's services sector.
- **Education phase:** involves the provision of information to licensees before the campaign begins.

The information describes how DoCS will monitor compliance and what to expect when an authorised DoCS officer (usually a CSO, CSTL or a Principle Investigator the E&P Branch) visits a service. Licensees are notified of the timeframe over which the campaign will be conducted and what provisions of the Regulation are to be targeted. This phase may also occur outside the timeframe of a specific campaign.

An ongoing education and information strategy may be proposed to build networks with the child care industry, peak organizations, stakeholders, and other government agencies, through the organisation of seminars, forums and use of websites and other publications.

- **Inspection phase:** involves field inspections of all or a percentage of services across the state.

Inspections may be targeted at particular service types or a particular geographic location. The number and location of services are identified at the planning phase of the campaign based on the intelligence available to DoCS. The inspection plan may involve initial inspection only or require follow up inspections where serious non-compliance is identified.

- **Enforcement phase:** involves taking appropriate action where instances of non-compliance with the targeted provisions of legislation are identified.

Such action may involve issuing criminal or administrative sanctions and lead to the initiation of court action or the revocation, suspension, variation or the imposition of a further condition on the licence. The nature of the action taken will depend on the level of the non-compliance.

- **Evaluation phase:** involves an assessment of the results obtained against the outcomes and protocols established in the planning phase.

A Campaign Evaluation Report will be produced at the end of each campaign. The progress and results of the campaign will be reviewed on a quarterly basis. An assessment or evaluation of the outcomes of the targeted activity will be undertaken at the end of each campaign. This type of analysis will be undertaken on a regular basis and shared with other relevant sections of DoCS.

Consideration will also be given to releasing this information to the public and/or to the sector on a regular basis and sharing it with the relevant children's services organisations.

- **Publicity phase:** involves advertising the results of the campaign.

The results may identify levels of compliance or non compliance; information about common breaches; information about improvements in the performance of the sector; the percentage of services providing more than minimum requirements; numbers of penalty notices issued; the number of services being considered for prosecution action; or the number of licenses to be revoked.

Seminars and forums may also be planned to provide feedback and discussion for the children's services sector about the results.

4.4 Conducting Targeted Campaigns

There are a number of ways in which targeted campaigns can be conducted. Targeted campaigns may range from having a purely 'educational' focus to an 'exhaustive compliance assessment' approach which comprehensively assesses compliance of services with a wide spectrum of the Act and the Regulation.

The planning of each campaign is a critical process which will need to take into account the challenges presented and the resources available to conduct the campaign.

Commonly agencies use a 'snap shot' approach, involving the wide dissemination of information, and then a number of compliance checks carried out on a random basis. Random checks for a short period scrutinise compliance by children's services, sometimes focussing upon several aspects of the Regulation. As breaches are identified, licensees are required to demonstrate that remedial action has been undertaken. Follow up inspections may occur later but are not necessarily always part of the particular campaign.

4.5 Follow up Compliance Activities

It is anticipated that at least two state-wide targeted campaigns will be conducted each year. These will be informed by evidence available to DoCS of non-compliance in relation to specific provisions of the Act and the Regulation or to non compliance in particular types of children's services. These campaigns will be planned centrally.

As a result of intelligence gathering during the campaigns (or from complaint investigations) a risk assessment of breaches identified and the types of services visited will also be undertaken at the regional level and further regional action planned through the following compliance activities.

- **Follow up inspections:** These will be conducted for services assessed as demonstrating serious or frequent breaches with a view to ensure breaches are rectified and appropriate enforcement action taken.
- **Compliance Audits:** Where high risk children's services are identified the services may be subject to immediate or future compliance audits.

Each region will be required to regularly report on its program of compliance audits. Planning of a compliance audit will required a timetable identifying the date and frequency of visits to the service; the scope of the audit(s) and the appropriate enforcement action to be considered when non compliance is identified. All services which have been referred for prosecution and have been successfully prosecuted must be the subject to a future program of audits to ensure the ongoing health, safety and well-being of children attending the service.

- **Mini blitzes:** This activity involves a short, usually two day, targeted campaign developed at regional level to address geographic, local or systemic areas of non-compliance. The aim of a mini blitz is to carry out a well publicised, high impact regulatory intervention in a short defined period of time. Resourcing of a mini-blitz may require the involvement of officers from other regions as well as team leaders and principal investigators.

- **Complaint investigation:** Investigations are carried out based on complaints and information from parents, employees, members of the public and the media or of ministerial and departmental concern.
- **Special Project Teams:** Where problems of poor performance are identified that cannot be remedied through the above monitoring activities special project teams will be established to develop innovative problem solving programs to better address and fix identified problems.

4.6 Cross-functional Project Teams

Cross functional project teams will be formed for a defined purpose and time frame to address specific problems which cannot be fixed through the traditional monitoring and enforcement model described above.

These teams may consist of officers from the CSD, case workers, legal officers, investigators, academics, and researchers. The teams will be responsible for undertaking research and analysis and consulting with appropriate bodies. Based on this information they will be responsible for developing an approach aimed at rectifying the specific problem or improving the broader performance of the particular service or sector more generally.

Importantly such teams will be able to make a range of recommendations which might involve policy or legislative changes, media and marketing initiatives, training proposals, and interaction with other government, community and private sector agencies.

4.7 Interface with Service Funding Strategy

As at June 2007 a total of 3,341 children's services were licensed by DoCS.

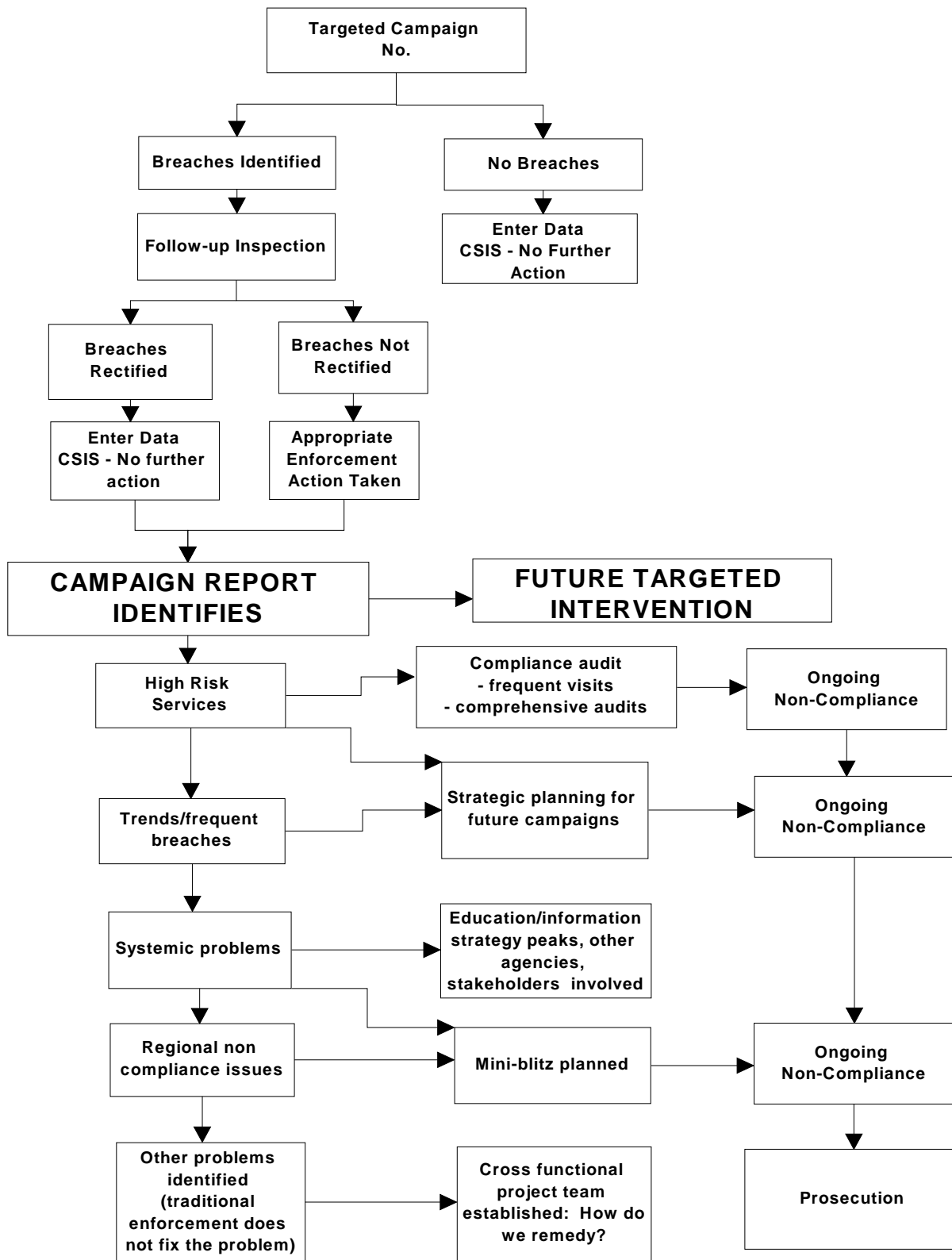
DoCS also provides funding to community based children's services. In the 2006/07 financial year DoCS provided funding to 1,619 children's services including long day care, preschool, occasional care, vacation care, toy libraries, supported playgroups and other support services. Among other things, funding is used to provide child care places and to reduce fees for families with low incomes.

The processes and outcomes of regulatory compliance activities may also have implications for DoCS funding relationship with services.

Protocols will need to be established regarding appropriate liaison and coordination between the licensing and compliance activities of the CSD and the funding activities of Service Funding Strategy and Partnerships and Planning Teams.

STRATEGIC MONITORING FRAMEWORK

CREATED BY ENFORCEMENT AND PROSECUTIONS UNIT
CHILDREN'S SERVICES DIRECTORATE
DoCS - January, 2007



Section 5. Enforcement Strategy

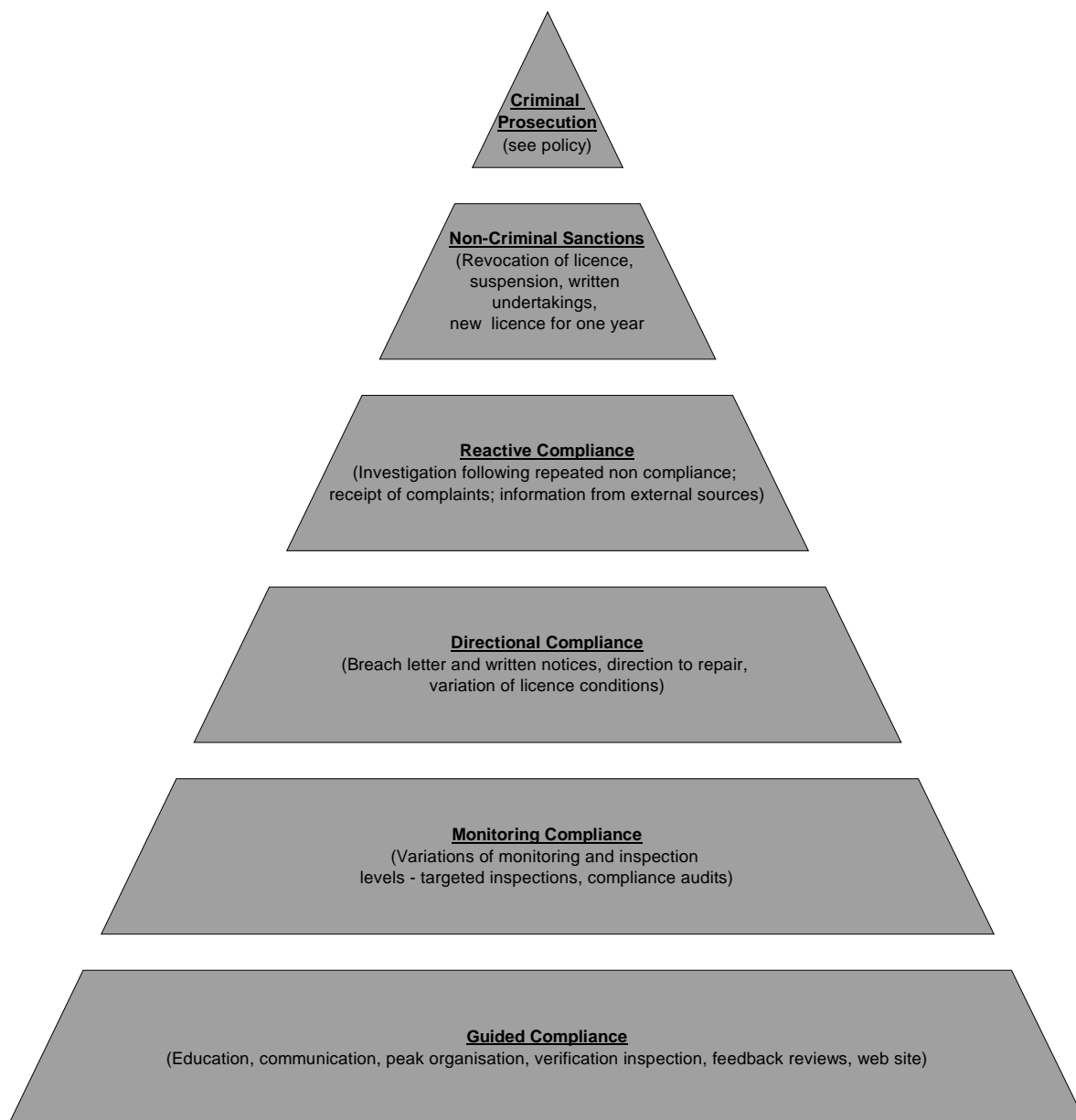
It is acknowledged that most licensees aim to operate within the law and work hard and conscientiously to maintain appropriate standards in compliance with the law. DoCS' objective in its enforcement strategy is to ensure that the providers of children's services are knowledgeable, capable and effective in meeting their legal obligations.

The strategy also seeks to ensure that any non-compliant conduct ceases. DoCS recognises that it should not unnecessarily interfere with the operation of a children's service or seek to impose harsh penalties for minor breaches of the legislation. Nevertheless strong enforcement action will be directed at deterring or punishing repeat offenders and those who wilfully disregard their legal obligations.

DoCS' aim is to change the behaviour of non-compliant parties by applying a mix of enforcement strategies as set out below.

5.1 Hierarchy of compliance and enforcement strategies.

Adapted from I. Ayres and J. Braithwaite, Responsive Regulation, Oxford 1992



5.2 Enforcement sanctions available to DoCS

Enforcement sanctions in the Act are limited. The legislative framework does not provide a graded penalty regime. In particular there is no provision for the issuing of penalty notices or statutory notices (such as improvement, clean-up, or prohibition notices) which form part of the penalty regime of comparable regulatory legislation – for example the *Occupational Health and Safety Act 2000*, *Industrial Relations Act 1996*, *Protection of the Environment Act 2000*.

As discussed in Section 3 enforcement is achieved by CSOs through negotiation, repeat visits, and potential or actual prosecution action.

The Framework provides six types of enforcement sanctions depicted in the pyramid Diagram at 5.1 to apply against identified non-complying behaviour.

NB: While the pyramid reflects the increasing severity of compliance options it does not mean that all compliance action always follows a staged approach. DoCS will choose one or more options based on the individual circumstances of the non-compliance identified.

Guided compliance: Guided compliance occurs where DoCS officers assist licensees and authorised supervisors to comply with the legislation and thereby minimise occurrence of non-compliant behaviour. This approach involves compliance strategies such as education programs, feedback from targeted campaigns, seminars, assistance to peak bodies and web-site information. Where instances of minor non-compliance are identified DoCS officers may guide the person to compliance by:-

- explaining the requirements of the legislation;
- requiring the person to rectify the non-compliance immediately; or
- referring the person to for assistance to a peak body, appropriate organisation or web-site.

Monitoring Compliance: Monitoring compliance aims at keeping the licensee and the authorised supervisor on track with a range of compliance activities including unannounced visits, targeted campaigns, mini-blitzes and compliance audits.

Directional Compliance: Directional compliance describes DoCS' response when instances of non-compliance are identified; the person is informed of the alleged non-compliance but fails to rectify the non-compliance within an appropriate time frame. DoCS may respond by issuing a verbal or written caution, sending out notices setting timeframes for the non-compliance to be rectified, and conducting formal records of interview with persons alleged to be responsible for the non-compliance.

Reactive Compliance: Reactive Compliance occurs by the initiation an immediate investigation as a result of a serious complaint or notification of a critical incident involving a child at a particular service. It also describes DoCS response to serious allegations and other information obtained from external sources such as services users, other professionals, the Minister and media, However an investigation may also result from internal intelligence that requires immediate and thorough investigation, for example where risk of harm reports made to DoCS involve a children's service.

Non-Criminal Sanctions: Together with the initiation of prosecution action these sanctions are reserved for serious or repeated non compliant behaviour, in particular where that non-compliance poses a risk to the safety, health and well-being of children at the children's service. Examples of enforcement action at this level include revocation, variation or suspension of a licence or the imposition of a further condition on a licence.

Criminal prosecutions: Serious or wilful non-compliance may result in prosecution action being taken against a person or organisation for an offence under the Act and the Regulation. All such offences are criminal in nature and may result in a conviction being recorded against the person or the organisation. Prosecution action is only taken where there is sufficient evidence to establish that an offence has been committed and in accordance with the *DoCS Prosecutions Policy and Guidelines*.

Section 6. Enforcement and Prosecutions Branch

The role of the Enforcement and Prosecutions Branch is to be involved in the wider education, compliance and enforcement activities of the CSD, recognising that the skills and expertise in the area are pivotal to the conduct of appropriate and effective inspections and investigations. The Branch shares responsibility for informing and training CSOs and Children's Services Team Leaders (CSTLs) in legislative and procedural issues, as well as the decisions of courts.

In particular the Branch advises CSOs and CSTLS of the sufficiency and admissibility of evidence to support a breach, and the proofs required to establish the elements of an offence. The Branch advises CSOs where further evidence is required and together with CSTLS gives guidance on the further progress of monitoring activities in line with CSD policies and guidelines on investigation processes.

The Enforcement and Prosecutions Branch consists of a Director and two Principal Investigators. The position of Director requires legal qualifications and experience in conducting and approving matters for prosecution. The Director is responsible for establishing and maintaining a high level investigation and prosecution function to support DoCS responsibilities in ensuring safe, high quality children's services in NSW.

Principal Investigators are experts in conducting investigations, collecting evidence and preparing matters for prosecution. Their role is to investigate serious and major breaches of the legislation, assist and train CSOs and CSTLS in the collection of evidence and the preparation of briefs of evidence.

6.1 Prosecution Policy

The *Prosecution Policy and Guidelines* are set out in a separate document. In summary the policy states that once reasonable action has been taken to obtain voluntary compliance and it has been decided that voluntary compliance is unlikely to occur, appropriate enforcement action is to be considered.

It should be noted, however, that where a serious and/or major breach of the legislation is alleged or wilful non-compliance is demonstrated, DoCS may initiate prosecution action without further negotiation or notification.

The enforcement options currently available to DoCS are to institute a criminal prosecution and/or apply non criminal sanctions.

6.2 Decision to prosecute.

There are two major considerations to make when deciding whether prosecution action should be taken. These are:

1. whether there is sufficient evidence to establish that an offence has been committed; and
2. if there is sufficient evidence whether in all the circumstances of the case prosecution action should be taken.

Before a recommendation is made that prosecution action should be initiated it is important that:

- a breach of the legislation has been identified;
- particulars of the breach have been communicated to the relevant person or organisation; and
- the person or the organisation is unwilling or unable to demonstrate compliance with the legislation within a reasonable timeframe.

Further consideration should then be given to:

- the severity of the breach;
- the likelihood of a repeat of the issue or event that lead to the breach;
- what other enforcement sanctions might be more appropriate to address the non-compliance (eg variation, suspension or revocation of the licence.)
- the culpability of the licensee or person covered by the licence
- the need for specific or general deterrence.

6.3 Non-criminal sanctions.

A range of non criminal sanctions other than prosecution action may be used by DoCS. These include decisions

- to revoke, suspend or vary a licence;
- impose a further condition on a licence; or
- enter into a written undertaking rather than take prosecution action

Section 7. Managing Targeted Campaigns

The Director, Enforcement and Prosecutions oversees the management of the targeted initiatives undertaken by the CSD. All targeted activities require effective planning, leadership, support, mentoring, training and monitoring to ensure that these initiatives are delivered efficiently, equitably and consistently at all times.

CSTLS and CSOs work with the Director, E&P, in planning and conducting these initiatives at the regional level.

7.1 Role of CSTLS and CSOs.

The conduct of a targeted campaign involves cooperation between all CSD compliance both at head office and at regional level throughout all the stages of the campaign as follows.

Planning: CSD targeted activities are planned centrally with regional involvement. Targeted campaigns are planned on an annual basis, with quarterly reviews that permit adjustments in the scope, conduct and resourcing of a campaign.

Approval: All targeted campaigns require prior approval of the Executive Director, CSD and will be conducted in line with the *CSD Targeted Campaigns Policy*, as varied from time to time. The Minister is advised of proposed targeting activities on a quarterly basis, and will be invited to recommend directions for future targeting efforts.

Monitoring: A Special Project Team will be established initially on an annual basis to assess previous and current compliance campaigns, monitor and revise the targeting policy and to promote the results of targeting activities throughout the CSD and beyond. It reports to the Director, E&P.

Responsibility & reporting: The conduct of all targeted activities at regional level will be the responsibility of the CSTLS who will regularly report on the progress of the campaign and provide an evaluation report at the completion of each campaign.

Allocation of resources to targeting: Full flexibility will be given to regional offices to allocate their resources in the conduct of each campaign. All staff within regional offices are involved in targeting work, in accordance with the position descriptions applying to the positions.

Generally, this means that

- CSTLS lead their teams in the conduct of a campaign
- Both CSTLS and CSOs are involved in the campaign planning phase
- CSTLS coordinate the administrative functions associated with recording data and outcomes
- CSTLS allocate resources to ensure the campaign is conducted in an efficient and timely manner
- CSOs conduct targeted inspections together with Principal Investigators from the E&P Branch
- Both CSOS and CSTLS are involved in the education phase of the campaign
- CSTLS and CSOs are involved in the reporting of outcomes and evaluation of results.

7.2 The role and structure of Investigation Case Management (ICM)

Achieving quality outcomes requires quality inspections of premises and investigations into complaints and allegations of non-compliance. They must be undertaken in accordance with numerous legal and procedural requirements, such as laws of evidence, procedural fairness and natural justice, and codes of conduct.

The investigation process is accountable, and is always subject to public, statutory and judicial scrutiny. In this context it is essential that DoCS is selective in the number and type of matters chosen for inspection and investigation. Proper assessment and prioritising of instances of non-compliance enables quality investigations to be undertaken and the use of resources to maximum effect. Quality outcomes cannot be achieved when the number of matters on hand precludes officers from giving the necessary priority to all of them.

Regular Investigation Case Management (ICM) meetings between the CSTL and the CSOs are undertaken to focus an investigation towards nominated possible breaches of NSW children's services laws, with a view to preparing a matter for prosecution or a recommendation that the license be revoked, varied or suspended.

The CSO assigned to the inspection and investigation has a responsibility to ensure that all relevant information is available for review at the ICM meeting. The CSTL has a supervisory responsibility. A member of the E&P Branch can be available to provide technical and legal advice. A Principal Investigator may assist or takeover an inspection and investigation where serious or major breaches are being alleged.

Section 8. Consultation

The following regulatory agencies and documentation were consulted in the preparation of the Strategic Monitoring Framework.

Department of Aging and Disability and Home Care NSW

- Licensed Residential Centres: Licensing Monitoring and Closure, October 2006

Department of Environment and Conservation NSW

- Audit and Enforcement Strategy, Forestry Unit, Environment Protection Authority October 2001

Department of Commerce, Office of Industrial Relations NSW

- Compliance, Enforcement and Prosecutions Policy, NSW Office of Industrial Relations Feb 2006
- Resolving Industrial Complaints Policy; NSW Office of Industrial Relations February 2006
- Workplace Targeting Policy; NSW Office of Industrial Relations February 2006
- Refocus of the Compliance Function, submission to the Minister, May 1996.

Department of Consumer and Employment Protection WA

- Compliance Strategy, Future Directions 2002-2005

Office of Liquor, Gaming and Racing NSW

- Office of Charities Inquiry Report, and other documentation for investigators from NSW Office of Liquor, Gaming and Racing

WorkCover NSW

- Compliance and Prosecution Guidelines, WorkCover 2004
- Strategic Enforcement, Michele Patterson, Assistant General Manager, WorkCover NSW. Paper presented to the Current Issues in Regulation: Enforcement and Compliance Conference, September 2002

Department of Human Services Victoria

- Children's Services Monitoring Framework, September 2005

Office of the Gene Technology Regulator Commonwealth

- Monitoring and Compliance Framework, Working Document July 2002

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Sparrow, Malcolm K, The Regulatory Craft: Controlling Risks, Solving Problems, and Managing Compliance, Brookings Institute Press, Washington DC 2000

Managing Regulation, Enforcement and Compliance, papers submitted to Workshop of the Australian and New Zealand School of Government, December 2006