

EDUCATION AND CARE

Information Sheet – Cautions

What is a caution?

A caution is an administrative compliance action that is recorded on the approved service's record. A caution does not attract a financial penalty or enforceable undertaking.

A caution is issued following the identification of low risk non-compliance with a requirement of the *Education and Care Services National Law Act 2010* (National Law) or the *Education and Care Services National Regulations* (National Regulations)

A caution can be issued to an approved provider, nominated supervisor, or family day care educator.

When will a caution be issued?

A caution will be issued when low risk non-compliance with a requirement of the National Law or National Regulations, that can be quickly rectified, is identified by an authorised officer at an education and care service premises.

The Education and Care Unit will be issuing cautions from January 2020.

What is the caution process?

When an authorised officer identifies non-compliance with a requirement of the National Law or National Regulations during a visit to an education and care service premises, the authorised officer will:

- consider the risk presented by the non-compliance to children's health, safety and wellbeing, and if the risk is low,
- discuss the service's willingness and ability to address the non-compliance quickly with the responsible person, nominated supervisor or family day care educator, as appropriate.

If the identified non-compliance presents a low risk to children and can be quickly rectified, a caution will be issued.

The authorised officer will record the identified non-compliance and indicate that a caution was issued on the visit summary sheet.

The authorised officer will also note on the visit summary sheet whether the identified non-compliance was rectified during the visit or that the responsible person, nominated supervisor or family day care educator has agreed to both rectify the non-compliance and to provide evidence that demonstrates that the requirement is now met.

Upon return to the ECU office, the authorised officer will contact the approved provider of the education and care service advising that a caution was issued and that this will be recorded on the approved service's record.

Why is the approved provider notified?

Notifying the approved provider that a caution was issued for one of their services enables them to address issues of non-compliance.

The approved provider has responsibility for ensuring compliance with the requirements of the National Law and the National Regulations in their services and this communication is important in ensuring a fair and transparent process.

Examples of some requirements that a caution may be used for

Low risk matters that can be quickly rectified may include:

- a piece of prescribed information not displayed, as required by section 172 of the National Law,
- the weekly menu not displayed, as required by regulation 80,
- moveable equipment being located next to a fence, thereby reducing the effective fence height.

Is there a prescribed list of which requirements of the National Law or National Regulations cautions will be used for?

No, there is not a prescribed list.

This is because each individual circumstance is different as is each approved provider's and each service's history of non-compliance.

In determining whether a caution is the appropriate compliance action, the authorised officer will also consider any history of non-compliance and, the risk to children depending on the individual circumstances. The approved provider, nominated supervisor or family day care educator's ability and willingness to comply with the requirements of the National Law and National Regulations is also considered.

Why use cautions?

This approach reduces regulatory burden for both the sector and the ECU, addresses low risk matters quickly and efficiently, and supports the ECU to direct its resources to high risk matters to ensure the safety, health and wellbeing of children.

How does the ECU monitor the consistent and appropriate use of the cautions?

The ECU has two regulatory officers for compliance and their role is to oversee authorised officers' monitoring and compliance activities across Tasmania, including the consistent application of compliance processes.

What is the alternative to a caution for identified non-compliance?

To address medium or high risk non-compliance, which includes history of low risk non-compliance that require escalation, the ECU will continue to conduct investigations where required, and issue letters of apparent breach.