

Complaints - policy

Quality Education and Care NT as the Regulatory Authority for education and care services in the Northern Territory

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Read this with the Complaints procedures and Complaints fact sheet.

1. Policy

Quality Education and Care Northern Territory (QECNT) is the Regulatory Authority in the Northern Territory (NT) responsible for the administration of the National Quality Framework (NQF), which consists of the *Education and Care Services National Law 2010* (National Law) and Education and Care Services National Regulations (NSW) (National Regulations), approved learning frameworks and the National Quality Standard (NQS).

As part of its functions, the Regulatory Authority is required to receive and investigate complaints arising under the National Law. We may also receive complaints about any aspect of the services provided by the Regulatory Authority.

According to Australian Children's Education and Care Quality Authority (ACECQA), a complaint is an expression of dissatisfaction made to or about an organisation related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.

The Regulatory Authority must appropriately manage complaints in accordance with best practice and ensuring the public interest is upheld in an ethical, impartial and apolitical manner.

2. Purpose

The Complaints policy has been developed to provide guidance on:

- the types of complaints that can be received, managed or investigated by the Regulatory Authority
- how the Regulatory Authority manages complaints
- resolution of complaints and review options.

3. Scope

This policy applies to complaints received about:

- education and care services in the NT to which the National Law applies and includes centre-based services, long day care, outside school hours care, preschools, and family day care services
- the Regulatory Authority's staff
- the Regulatory Authority's policies, processes, decisions or communications to the sector or the public.

This policy does not apply to complaints about education and care services that are declared out of scope services or education and care services that are excluded under the section 5(1) of the National Law.

4. Complaint management

4.1. Principles

The Regulatory Authority's over-arching principles for implementing its functions are set out in the Regulatory Authority's Regulation framework. Specific principles that apply to complaint management include:

- Risk based and proportionate - the Regulatory Authority prioritises effort and resources to areas where, based on the available evidence, the potential benefits and risks are more significant.
- Transparent and accountable - the Regulatory Authority will be fair, transparent and accountable in exercising its functions to encourage public confidence and provide certainty to regulated entities.
- Efficient and timely - the Regulatory Authority is committed to providing all affected parties with regular updates on the progress of a matter and aims to provide an outcome within a reasonable amount of time.
- Confidentiality - the Regulatory Authority values privacy and is committed to protecting personal and sensitive information collected and held in performing its functions and activities.
- Independence - the exercise of powers and decision-making processes will be conducted without any actual and perceived conflicts of interest.

4.2. Privacy and confidentiality

Everyone has the right to complain, and to feel safe when making a complaint. The Regulatory Authority will take all reasonable steps to ensure that complainants are not adversely affected because of a complaint made by them or on their behalf. We make the complaint process safe by maintaining confidentiality, within the limits of the law, and involving complainants as far as practicable in decisions about how their complaint will be handled.

The Regulatory Authority will maintain confidentiality where practicable, however there may be situations where the Regulatory Authority will need to share information about a complaint with relevant parties like the Department of Territory Families, Housing and Communities, the Office of the Children's Commissioner, and Northern Territory Police (NT Police).

A complainant may elect to remain completely anonymous or ask that their identity be withheld in certain circumstances. Our ability to undertake a fair and thorough assessment of anonymous complaints may be limited if the department is unable to contact the complainant for further information or to discuss the complaint. If anonymity is requested and contact information is not provided, an outcome of the complaint or investigation may not be provided.

The Regulatory Authority is bound by Australian Privacy Principles under the *Privacy Act 1988* (Cth), which govern standards, rights and obligations around the collection, use and disclosure of personal information.

Where a request for information is lodged under the *Information Act 2002* or the *Freedom of Information Act 1982* (Cth), the Regulatory Authority may be required to disclose information regarding a complaint. This could include information about the process of an investigation or information about the overall complaint handling process.

4.3. Timeframes

The Regulatory Authority will acknowledge a complaint within 3 working days. This can be done in person, by telephone, email or formally in writing.

The severity and complexity of the complaint will inform the timeframe in which a complainant can expect an outcome. The Regulatory Authority will ensure a complainant receives regular updates until the complaint is considered finalised. Where there is an anticipated delay, the Regulatory Authority will inform the complainant and other parties and provide reasons for the delay.

At times, the Regulatory Authority may need to conduct a formal investigation to resolve a complaint and it can take a significant amount of time to gather evidence, conduct interviews and weigh the information against the allegations to provide a fair and transparent outcome to all parties. In this context, the Regulatory Authority will not be able to provide an accurate timeframe on the finalisation of a complaint.

If a complaint is escalated to NT Police prior to it being investigated by the Regulatory Authority, the Regulatory Authority may pause its investigative process until NT Police completes its investigation of the same matter. Once concluded, the Regulatory Authority may commence or continue its own investigation of the matter.

The Regulatory Authority aims to provide an outcome within a reasonable amount of time to affected parties and will keep the complainant and respondent informed throughout the process.

Complaints are considered resolved when the Regulatory Authority has, to the best of its ability, acknowledged, assessed, and provided a resolution to the complainant.

At the conclusion of a complaint a complainant will receive a formal outcome letter, except in the case of when anonymity was requested and contact information was not provided.

4.4. Unreasonable conduct

The Regulatory Authority is accessible and responsive to anyone who wants to make a complaint. However, people behaving unreasonably in their dealings with the Regulatory Authority can significantly affect authorised officers' wellbeing and the progress and efficiency of the Regulatory Authority's functions and impact the timely resolution of the complaint.

The Regulatory Authority will take decisive action to manage any unreasonable conduct connected with complaints. Unreasonable complainant conduct is behaviour which raises health, safety, and wellbeing issues for the Regulatory Authority and the authorised officers.

Unreasonable conduct can be categorised as:

- unreasonable persistence including continued, incessant, and unrelenting conduct by a complainant that has a disproportionate and unreasonable impact on our organisation, staff, services, time, or resources
- unreasonable demands made by a complainant that have a disproportionate and unreasonable impact on our organisation, staff, services, time, or resources
- unreasonable lack of cooperation when a complainant is unwilling or unable to cooperate with us, our staff, or our complaints process, resulting in a disproportionate and unreasonable use of our services, time, or resources

- unreasonable arguments which include any arguments that are not based on reason or logic, that are incomprehensible, false, or inflammatory, trivial, or delirious, and that disproportionately and unreasonably impact upon our organisation, staff, services, time, or resources.

The Regulatory Authority has zero tolerance for harm, abuse or threats directed towards authorised officers and will take proactive and decisive action in response to such behaviour.

5. Complaints in scope

As part of its functions, the Regulatory Authority is required to receive and manage complaints arising under the National Law.

This includes complaints about education and care services in the NT to which the National Law applies including centre-based services, long day care, outside school hours care, preschools, and family day care services.

Complaints may also be made about:

- the approved provider or persons with management or control (PMC) of the education and care service
- a staff member, educator or volunteer at an education and care service
- matters relating to safety, health and wellbeing of children being educated and cared for by an education and care service
- non-compliance with the National Law and National Regulations.

If the Regulatory Authority receives information that suggests that the safety, welfare or wellbeing of a child may be compromised, it must also make referrals to other relevant agencies including but not limited to the Department of Territory Families, Housing and Communities or NT Police.

The Regulatory Authority may also receive complaints about any aspect of the services provided by the Regulatory Authority, including:

- the conduct of authorised officers
- concerns about the process undertaken during an investigation
- the Regulatory Authority policies or procedures
- decisions made by the Regulatory Authority.

6. Complaints out of scope

The Regulatory Authority cannot manage complaints about education and care services that are declared out of scope services or education and care services that are excluded under the section 5(1) of the National Law.

Additionally, we cannot receive or investigate complaints about:

- the fees charged by education and care services
- the level of government preschool program funding allocated for an education and care service

- an unsuccessful government grant funding application lodged by an approved provider
- hiring, firing or human resource issues within the education and care service
- the Child Care Subsidy (CCS), including any issues relating to applications and eligibility
- educator or other sector relevant employment conditions, including remuneration.

Where a complaint is not within the scope of the Regulatory Authority, the complainant will be informed, and every effort will be made to refer the matter to the appropriate authority.

7. Approved provider obligations

Under the National Law and National Regulations approved providers have several obligations they are required to abide by in respect of complaints, such as:

- pursuant to section 172 of the National Law and regulation 173 of the National Regulations, services are required to display prescribed information such as the name and telephone number of the person at the service to whom complaints may be addressed and the contact details of the Regulatory Authority
- section 174(2)(b) of the National Law requires an approved provider to notify the Regulatory Authority in writing within 24 hours of any complaints alleging that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the approved education and care service; or that the National Law has been contravened. As a part of the notification an approved provider should include strategies or steps taken to address that complaint
- regulation 168(2) of the National Regulations requires an approved provider to have policies and procedures for dealing with complaints including matters relating to the provision of a complaint handling system at the service that is child focused; and the management of a complaint that alleges a child is exhibiting harmful sexual behaviours.

8. Family day care educator and approved provider obligations

In addition to the above approved provider obligations, approved providers of family day care service and educators of a family day care service, have obligations they are required to abide by in respect of complaints, such as:

- Section 174A(b) of the National Law requires a family day care educator who educates and cares for children as part of a family day care service must notify the approved provider of the service of any complaints alleging that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the educator; or that the National Law has been contravened.
- Regulation 143B of the National Regulations requires an approved provider of a family day care service must take reasonable steps to ensure that any complaints alleging that the National Law or National Regulations has been contravened or that a serious incident has occurred or is occurring while a child was or is being educated and cared for by a family day care educator is adequately addressed.

9. Complaints about education and care services

Any person can make a complaint about an approved provider, an education and care service and a staff member, educator or volunteer at an education and care service.

These complaints may concern an incident at the service, the service's operations including physical environment, quality of education, interactions between staff and children or other non-compliance with the National Law and National Regulations.

Complaints can be raised directly with the approved provider or the education and care service.

Alternatively, the complainant may contact the Regulatory Authority directly with the complaint if:

- there is dissatisfaction with service provided by an approved provider or education and care service
- attempts to resolve a matter with the service is not to the satisfaction of the complainant
- a complainant does not feel comfortable raising the matter directly with the service or approved provider.

The Regulatory Authority can receive a complaint via email, phone or through the National Quality Agenda IT System (NQA ITS). Complainants may wish to remain anonymous, and all efforts will be made to honour that request even if contact details have been provided. Where a complaint appears to naturally identify a complainant by its nature, the Regulatory Authority will discuss this with the complainant.

Any of the Regulatory Authority's staff members can receive a complaint which will be recorded in the NQA ITS. This generates a reference number that will be used to refer to the complaint from there on.

Complaints are then subject to a triage process that may include follow up contact with complainants, if contact numbers are provided. Through this process the Regulatory Authority will risk assess and prioritise complaints to ensure an appropriate response, proportionate to any risks, is taken.

Once a complaint has been received and confirmation of receipt sent to the complainant, the complaint will be reviewed within 7 days to determine whether further investigation of the complaint is required.

A complaint may raise issues that require immediate action, including issuing an emergency action notice, a compliance notice or direction or making a report to another branch, division, department, or body.

For further information on the management of complaints, refer to the Complaints procedure.

10. Complaints about the Regulatory Authority

Complaints about the Regulatory Authority's policies, decisions, processes, or actions of authorised officers can be submitted by members of the public, approved providers, services, or educators, by either phone or by email.

The Director of the Regulatory Authority will initially triage these types of complaints, however the officer responsible for managing complaints about the Regulatory Authority is the Executive Director, Quality Standards and Regulation (ED-QSR). The external management of the complaint will ensure the integrity of the complaints process is maintained and is conducted in a fair, transparent and impartial manner.

A complaint about the Regulatory Authority received from the Office of the Ombudsman NT or Office of the Independent Commissioner Against Corruption, will be sent directly to the Chief Executive of the Department of Education and Training (department), who is also the Regulatory Authority. The Chief Executive will delegate the complaint to an appropriate delegate to manage the complaint.

10.1. Internal reviews conducted within the department

If a complainant is not satisfied with how their complaint has been dealt with by the Regulatory Authority they can request for it to be reviewed internally.

The review will be conducted by a senior delegate who was not the subject of the complaint and was not involved in managing the complaint. The Director of the Regulatory Authority will determine the appropriate person to internally review the matter, in consultation with ED-QSR where relevant.

If the complainant is still unsatisfied following the internal review, a request for review can be made to an external body such as the Office of the Ombudsman NT.

10.2. External reviews conducted external to the department

The Office of the Ombudsman NT is responsible for investigating complaints made about the Regulatory Authority in an independent and impartial manner. Section 282 of the National Law allows for the *Ombudsman Act 1976* (Cth) to be applied to the actions and decisions of the Regulatory Authority.

If, upon receipt of the outcome letter, a complainant believes that the Regulatory Authority has not adequately or appropriately investigated the complaint to the best of its ability, including by the internal review process explained in section 10.1 above, a review of the Regulatory Authority's investigation process can be requested by lodging a complaint with the Office of the Ombudsman NT.

The Ombudsman reviews the process by which the decision was reached not the decision itself. The Ombudsman may deal with a complaint made about any decision, recommendation, action, or inaction by the regulatory authority within the Ombudsman's jurisdiction. The Ombudsman will generally not accept a complaint before the Regulatory Authority has had reasonable opportunity to address the complaint.

11. Other types of complaints

11.1. Complaints about privacy

Section 263 of the National Law provides individuals with the right to complain to the National Education and Care Services Privacy Commissioner (NECS Privacy Commissioner) if they feel that the regulatory authority has mishandled their personal information.

A complainant can contact the NECS Privacy Commissioner at www.necsopic.edu.au.

11.2. Independent Commissioner Against Corruption (ICAC)

The Office of the Independent Commissioner Against Corruption (OICAC) deals with complaints about improper conduct in public administration in the NT. Integrity bodies have a common purpose to protect public interest, prevent improper conduct within the public sector and guide the conduct of public bodies and public officers.

For information on complaints that may meet the definition of reporting requirements to ICAC see the ICAC website at <https://icac.nt.gov.au/>.

12. Definitions

Term	Definition
Australian Children's Education and Care Quality Authority (ACECQA)	ACECQA is a national body and works with all governments to provide guidance, resources, and service to support the sector to improve outcomes for children.
Approved provider	A person who holds a provider approval under the National Law. A provider approval authorises a person to apply for one or more service approvals and is valid in all jurisdictions. This can be an individual, a body corporate, an eligible association, a partnership, or an entity such as a local council. The approved provider can have service approvals for multiple services in one, or multiple jurisdictions.
Authorised Officer	A person authorised to be an Authorised Officer under Part 9 of the National Law. Authorised officers are appointed by the Regulatory Authority under the provisions of the National Law to carry out the functions of monitoring, assessing and rating licensed approved education and care services in their jurisdiction.
Complaint	An implied or expressed statement of dissatisfaction where a response is sought, reasonable to expect or legally required. This includes a grievance, expression of dissatisfaction, or written allegation.
Delegate	A person specified by the Chief Executive to exercise a power or function under section 262(1) of the National Law.
Education and care service	Refers to any service providing or intended to provide education and care on a regular basis to children under 13 years of age. See section 5 of the National Law for services that are excluded from this definition.
Educator	An individual who provides education and care for children as part of an education and care service.
Family day care service	An education and care service that is delivered through the use of two or more educators to provide education and care to children and operates from two or more residences. Family day care educator is engaged by or registered with a family day care service to provide education and care for children in a residence or at an approved family day care venue.
National Law	Refers to the <i>Education and Care Services National Law Act 2010</i> , enacted by <i>Education and Care Services (National Uniform Legislation) Act 2011</i> in the NT, which sets a national standard for children's education and care across Australia.
National Quality Agenda IT System (NQA ITS)	The NQA ITS is a web-based information system to assist state and territory regulatory authorities and ACECQA to manage the approval, monitoring and quality assessment of children's education and care

Term	Definition
	services. The system also enables services, providers and educators to submit application and notification forms online to regulatory authorities and ACECQA.
National Quality Framework (NQF)	The NQF is a national benchmark for early childhood education and care and outside school hours care services in Australia. Services are assessed and rated by their Regulatory Authority against the NQS and given a rating for each of the 7 quality areas and an overall rating based on these results.
National Quality Standard (NQS)	<p>The NQS is prescribed by the National Regulations and sets a national benchmark for early childhood education and care and outside school hours care services in Australia.</p> <p>Services are assessed and rated by their Regulatory Authority against the NQS, and given a rating for each of the 7 quality areas and an overall rating based on these results.</p>
National Regulations	Refers to the Education and Care Service National Regulations (NSW). They outline the legal obligations of approved providers, nominated supervisors, and educators and explain the powers and functions of the state and territory regulatory authorities and ACECQA.
Nominated supervisor	In relation to an education and care service, means a person who is nominated by the approved provider of the service under Part 3 of the National Law to be a nominated supervisor of that service; and unless the individual is the approved provider, has provided written consent to that nomination.
Persons with management or control (PMC)	<p>PMCs take part in the decision-making or management of the provider. They:</p> <ul style="list-style-type: none"> • are a member of the group that makes executive or legal decisions on behalf of the provider • have authority, responsibility, or significant influence over planning, directing or controlling the provider • are in charge of the day-to-day operations of the provider • are in charge of the day-to-day operations of a service.
Regulatory Authority	Refers to a person declared by a law of a participating jurisdiction to be the regulatory authority for that jurisdiction or for a class of education and care services for that jurisdiction. In the Northern Territory, the Chief Executive of the Department of Education and Training is the regulatory authority for education and care services.
Serious incident	<p>Regulation 12 of the National Regulations defines a serious incident as:</p> <ul style="list-style-type: none"> • the death of a child • any incident involving serious injury or trauma to a child occurring while that child is being educated and cared for by an education

Term	Definition
	<p>and care service which a reasonable person would consider required urgent medical attention from a registered medical practitioner; or for which the child attended, or ought reasonably to have attended, a hospital</p> <ul style="list-style-type: none"> • any incident involving serious illness of a child occurring while that child is being educated and cared for by an education and care service for which the child attended, or ought reasonably to have attended, a hospital • any emergency for which emergency services attended • missing child • child locked in or out of the service premises.
Service approval	<p>An approved provider may apply to the Regulatory Authority for a service approval, which authorises the approved provider to operate a specific education and care service at a specified location.</p> <p>The Regulatory Authority cannot grant a service approval if the applicant does not have a provider approval, or if the Regulatory Authority is satisfied the operation of the service would constitute an unacceptable risk to the safety, health or wellbeing of children.</p>

13. Related legislation and resources

13.1. Legislation

- *Education and Care Services (National Uniform Legislation) Act 2011* is the legislation that adopts the National Law. The Schedule to the *Education and Care Services National Law Act 2010 (Vic)* sets out the National Law - <https://legislation.nt.gov.au/Legislation/EDUCATION-AND-CARE-SERVICES-NATIONAL-UNIFORM-LEGISLATION-ACT-2011>
- *Education and Care Services National Law Act 2010 (VIC)*- <https://www.legislation.vic.gov.au/in-force/acts/education-and-care-services-national-law-act-2010/020>
- *Education and Care Services National Regulations (NSW)* - <https://legislation.nsw.gov.au/view/html/inforce/current/sl-2011-0653>
- *Freedom of Information Act 1982 (Cth)* - <https://www.legislation.gov.au/C2004A02562/latest/text>
- *Independent Commissioner Against Corruption Act 2017* - <https://legislation.nt.gov.au/Legislation/independent-commissioner-against-corruption-act-2017>
- *Information Act 2002* - <https://legislation.nt.gov.au/en/Legislation/information-act-2002>
- *Ombudsman Act 1976 (Cth)* - <https://www.legislation.gov.au/C2004A01611/latest/text>
- *Ombudsman Act 2009* - <https://legislation.nt.gov.au/en/Legislation/ombudsman-act-2009>
- *Privacy Act 1988 (Cth)* - Australian Privacy Principles - <https://www.oaic.gov.au/privacy/australian-privacy-principles>

13.2. Resources

- Australian Children’s Education and Care Quality Authority (ACECQA) website –
- ACECQA Complaints guidelines - <https://www.acecqa.gov.au/sites/default/files/2021-06/DealingWithComplaintsGuidelines.pdf>
- National Quality Standard - <https://www.acecqa.gov.au/nqf/national-quality-standard>
- Guide to the National Quality Framework - <https://www.acecqa.gov.au/nqf/about/guide>
- Office of the Independent Commissioner Against Corruption NT – <https://icac.nt.gov.au/>
- Ombudsman NT - <https://ombudsman.nt.gov.au/home>
- National Education and Care Services – FOI and Privacy Commissioner and Ombudsman - <https://necopic.edu.au/>

Acronyms	Full form
ACECQA	Australian Children’s Education and Care Quality Authority
CCS	Child Care Subsidy
ED-QSR	Executive Director Quality Standards and Regulation
ICAC	Independent Commissioner Against Corruption
NQF	National Quality Framework
NQS	National Quality Standard
NT	Northern Territory
QECNT	Quality Education and Care NT

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