

Published enforcement action – policy and procedure

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 Regulation Framework.

1. Policy

Quality Education and Care NT (QECNT), as the Regulatory Authority in the Northern Territory, is responsible for the administration of the National Quality Framework (NQF), which includes monitoring education and care services compliance with the *Education and Care Services National Law Act 2010* (National Law) and Education and Care Services National Regulations (National Regulations).

When non-compliance is identified, the Regulatory Authority will take appropriate enforcement action to address the risk to the health and safety of children and to mitigate the risk of the non-compliance reoccurring.

Enforcement actions may be published when non-compliance is particularly serious or high risk, or where there has been a pattern of repeated non-compliance.

Publishing enforcement actions of this nature meets the objectives of the NQF by:

- promoting continuous improvement in the provision of quality education and care services
- improving public knowledge, and access to information, about the quality of education and care services.

2. Purpose

This policy details the legislation, circumstances and principles that will guide the Regulatory Authority when considering whether to publish enforcement action taken under the National Law.

The procedures detail the process required to publish an enforcement action.

This will ensure that the Regulatory Authority is fair and consistent in its decision to publish enforcement action taken.

3. Scope

The policy applies to the decision and process of publishing an enforcement action taken under the National Law by the Regulatory Authority.

4. What enforcement action may be published

The Regulatory Authority may publish details of enforcement action taken under the National Law if the enforcement action was taken in response to identified non-compliance which posed a serious risk to the health, safety or wellbeing of children or where there has been a pattern of repeated non-compliance.

Pursuant to section 270 of the National Law and regulation 227 of the National Regulations, the Regulatory Authority may publish information about enforcement actions taken under the National Law including:

- a prosecution for an offence leading to a conviction or finding of guilt or a plea of guilt
- the acceptance by the Regulatory Authority of an enforceable undertaking
- the giving of a compliance notice
- the suspension or cancellation of a provider approval or service approval

- an amendment made to a provider approval or service approval for purposes of enforcement
- the giving of an emergency action notice under section 179 of the Law.

5. What information can be published

When publishing enforcement action taken under the National Law, regulation 227 of the National Regulations allows the Regulatory Authority to state:

- the nature of the enforcement action
- the reason for taking the enforcement action, including details of the breach or alleged breach of the National Law or National Regulations
- the details of the person in relation to whom the enforcement action was taken
- information which identifies a person with management or control of an education and care service where enforcement action has been taken against the approved provider and if the Regulatory Authority is satisfied that it is in the public interest to do so
- details of the specific enforcement action taken, including steps that may need to be taken to comply with the provision of the National Law or National Regulation.

6. What cannot be published

Enforcement actions the Regulatory Authority cannot publish include:

- infringement notices
- compliance directions
- direction to exclude inappropriate persons from service premises
- notice to suspend education and care by a family day care educator
- prohibition notices.

Additionally, pursuant to section 270(6) of the National Law, the Regulatory Authority cannot publish information that that could identify or lead to the identification of an individual other than:

- an approved provider or nominated supervisor
- a person who is being prosecuted for an offence against this Law
- if the Regulatory Authority is satisfied that it is in the public interest to do so, a person with management or control of an education and care service.

The Regulatory Authority will never publish information that could identify or lead to the identification of a child.

7. Timing of publication

Where a person is eligible to apply for an internal or external review of an enforcement action, information may be published after the end of the period for requesting a review, if no request for a review is made. For an internal review, this period is 14 calendar days after the person is notified of the enforcement action or after they become aware of the decision if they are not notified. For an external review, this period is 30 calendar days after the person is notified of the enforcement action or outcome of an internal review.

If an application for internal or external review is made and withdrawn before a decision is made, the regulatory authority may publish the information on or after the day on which the application is withdrawn.

If an application is made for an external review, the Regulatory Authority may publish the information on or after the day on which the review is decided, if the enforcement action is confirmed or amended or another enforcement action is substituted.

8. Procedure

If non-compliance at an education and care service has been identified, an authorised officer will assess the matter to determine what action should be taken to address the risk to the health and safety of children and to mitigate the risk of the non-compliance reoccurring and make recommendations about that action.

The authorised officer will send the recommendations to an assistant director QECNT (assistant director) to approve.

If it is recommended that enforcement action be taken, this will be reviewed and approved, as appropriate, by an assistant director.

After authorising enforcement action to be taken under the National Law, the assistant director will consider the facts of the specific matter before them, the compliance history of the service, and willingness of the approved provider to comply, to determine if the enforcement action should be published in accordance with this policy.

The assistant director will then seek permission in writing from the director QECNT (director) for approval to publish the enforcement action. The following information must be provided to the director:

- the nature of the enforcement action
- the reason for taking the enforcement action, including details of the breach or alleged breach of the National Law or National Regulations
- the details of the person in relation to whom the enforcement action was taken
- where enforcement action has been taken against the approved provider and if the Regulatory Authority is satisfied that it is in the public interest to do so, information which identifies a person with management or control of an education and care service
- details of the specific enforcement action taken, including steps that may need to be taken to comply with the provision of the National Law.

In deciding whether the enforcement action should be published, the director will consider if:

- the enforcement action has been taken to address non-compliance that poses a serious or high risk to the health, safety and wellbeing of children, or where there has been a pattern of repeated non-compliance
- where a person is eligible to apply for an internal or external review of an enforcement action, information will only be published after the end of the period for requesting a review, if no request for a review is made.
- it is in the public interest to publish the enforcement action
- publishing is lawful in accordance with the National Law

- publishing does not breach privacy legislation or confidentiality
- published information would not prejudice the potential for enforcement action against a regulated entity and their right to a fair trial
- publishing would not delay, or otherwise impede, resolution of a compliance issue
- publishing is in the public interest, and in the interest of the education and care service sector.

The director will inform the assistant director in writing that the request has been approved or denied and the reasons for the approval or denial.

If approved, the assistant director will advise the authorised officer to complete the:

- template for publishing to the website
- letter template advising the person to whom the enforcement action applies, that the enforcement action will be published on the website.

The authorised officer will send these templates to the assistant director who will forward these and the approval documents from the director to the senior regulatory project and engagement manager.

The senior regulatory project and engagement manager will log a job via the Jira system / IT Customer Portal, to ensure the template for publishing to the web is uploaded as appropriate.

Once reviewed and approved by the assistant director, the authorised officer will send the letter to inform the person, to whom the enforcement action applies, that the enforcement action will be published on the website.

If the request to publish enforcement actions is denied, follow record keeping requirements, refer to section 9 Record keeping.

9. Record keeping

All records in relation to the decision to publish enforcement action will be stored on the records management system (TRM) approved for use by the Regulatory Authority.

Authorised officers will store the following documents within the education and care service file of the matter the enforcement action relates to:

- request from assistant director to director to publish enforcement action
- written correspondence from the director to approve or deny the request to publish enforcement action
- filled out template for publishing to the website
- email chain that contains the above approvals and template for publishing to the website
- letter to whom the enforcement action applies.

The senior regulatory project and engagement manager will create and maintain a digital box within TRM that will hold each approval and all website updates for each year.

10. Right of review

While there is no legislative right of review, the person, to whom the enforcement action applies, may write to the director to have the decision to publish the enforcement action reviewed.

The director will respond within 5 business days of the decision to either continue to publish the enforcement action, or alternatively revoke the decision to publish the enforcement action.

11. Roles and responsibilities

11.1. Authorised officers – must do actions

If non-compliance at an education and care service has been identified, assess the matter to determine what action should be taken to address the risk to the health and safety of children and to mitigate the risk of the non-compliance reoccurring and make recommendations about that action

The authorised officer will send the recommendations to an assistant director to approve.

If it was recommended that enforcement action be taken and the director determines the enforcement action should be published, the authorised officer will complete a template for publishing to the website and letter template advising the person to whom the enforcement action applies, that the enforcement action will be published on the website. These will be sent to the assistant director.

Once reviewed and approved by the assistant director, the authorised officer will send the letter to inform the person, to whom the enforcement action applies, that the enforcement action will be published on the website.

The authorised officer will ensure that all documentation in relation to the decision to publish is recorded in TRM.

11.2. Assistant director – must do actions

If an authorised officer recommends that enforcement action be taken, this will be reviewed and approved, as appropriate, by an assistant director.

After authorising enforcement action to be taken under the National Law, the assistant director will consider the facts of the specific matter before them, the compliance history of the service, and willingness of the approved provider to comply, to determine if the enforcement action should be published in accordance with this policy.

The assistant director will then seek permission in writing from the director for approval to publish the enforcement action.

If approved, the assistant director will advise the authorised officer to complete the:

- template for publishing to the website
- letter template advising the person to whom the enforcement action applies, that the enforcement action will be published on the website.

The authorised officer will send these templates to the assistant director who will forward these and the approval documents from the director to the Senior Regulatory Project and Engagement Manager.

- The assistant director will review and approve, as appropriate, the letter to inform the person, to whom the enforcement action applies, that the enforcement action will be published on the website, and send this to the authorised officer to send out.

11.3. Director – must do actions

- The director will decide whether the enforcement action should be published, taking into consideration the items listed in this document.
- The director will inform the assistant director that the publishing of the enforcement action has been approved, the reasons for the approval.
- If the person, to whom the enforcement action applies, writes to the director to have the decision to publish the enforcement action reviewed, the director will review the decision to publish and determine within 5 business days either continue to publish the enforcement action, or alternatively revoke the decision to publish the enforcement action. The director will notify the person in writing of this decision.

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 outcome 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.
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.
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.

Term	Definition
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.
Person with management or control (PMC)	<p>A PMC takes 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.
Quality Education and Care NT	The Regulatory Authority in the Northern Territory empowered under the National Law to administer the NQF.
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 is the Regulatory Authority for education and care services.

Term	Definition
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 policy

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>
- *Information Act 2002* - <https://legislation.nt.gov.au/en/Legislation/information-act-2002>
- *Privacy Act 1988 (Cth)* - Australian Privacy Principles – <https://www.oaic.gov.au/privacy/australian-privacy-principles>

13.2. Policy

- QECNT policies - <https://education.nt.gov.au/committees-regulators-and-advisory-groups/quality-education-and-care-nt>

Acronyms	Full form
ACECQA	Australian Children’s Education and Care Quality Authority
NQF	National Quality Framework
NQS	National Quality Standard
NT	Northern Territory
QECNT	Quality Education and Care NT
TRM	Territory Records Management

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Approved by	Laura Lymer, Acting Executive Director, Quality Standards and Regulation
Date approved	28 February 2025
TRM number	50:D24:70931

Version	Date	Author	Changes made
1	February 2025	Quality Education and Care NT	First version