

This fact sheet outlines the process for the publication of enforcement actions taken against approved providers, approved services, and individuals under the *Education and Care Services National Law Act 2010*.

National Quality Framework

The National Quality Framework includes:

- A national legislative framework that consists of the *Education and Care Services National Law Act 2010* (National Law) and *Education and Care Services National Regulations* (National Regulations)
- A National Quality Standard
- An assessment and rating system
- A Regulatory Authority in each state
- The Australian Children's Education and Care Quality Authority (ACECQA).

The National Law and National Regulations are available at www.acecqa.gov.au/national-quality-framework/legislation/.

The Regulatory Authority

In Victoria the Regulatory Authority is the Department of Education and Early Childhood Development (the Department). The Department has the primary responsibility for the administration of the National Quality Framework and the National Law including, but not limited to, the following:

- issuing approvals and supervisor certificates
- conducting assessment and rating visits against the National Standards
- monitoring service compliance and enforcing the National Law and National Regulations
- receiving and investigating complaints and notifications

Authority to publish enforcement actions

Under the National Law and Regulations (section 270 and regulation 227), the Department is able to publish on their internet site certain enforcement actions taken against approved providers, approved services or individuals. Under the National Law, the Department has a range of statutory enforcement actions that can be taken where there has been a non-compliance with the legislation.

The enforcement actions that can be published are:

- prosecution for an offence against the Law or Regulations leading to a conviction or finding of guilt or plea of guilt
- enforceable undertakings
- compliance notices
- suspension or cancellation of a provider approval, service approval or supervisor certificate (other than a voluntary suspension or surrender)
- an amendment made to a provider approval, service approval or supervisor certificate for purposes of enforcement.

What information can be published?

Under regulation 227(3), National Regulations, the following details can be published:

- the nature of the enforcement action
- the details of the person in relation to whom the enforcement action was taken, including –
 - the name and provider approval number of the approved provider
 - for centre-based service - the address of the service and the name by which the service is known.
 - for family day care service - the address of the service, unless the address is also the home address of a family day care educator; and the name by which the service is known.
 - for an individual - the name of the individual and the individual's supervisor certificate number, if relevant.
- the reason for taking the enforcement action, including details of the breach or alleged breach and the provision that was breached or alleged to be breached
- details of the enforcement action taken.

In addition, under section 180(7), of the National Law, the Department can publish on its website an enforceable undertaking accepted under section 180.

Also refer to the list of enforcement actions currently published at:

www.education.vic.gov.au/childhood/providers/regulation/pages/enforcementaction.aspx.

Information that cannot be published

Information that will not be published includes information that could:

- identify an individual other than an approved provider or certified supervisor, or a person who is being prosecuted for an offence under the National Law (section 270(6))
- identify or lead to the identification of a child (regulation 227(4))

When will information be published?

Information will not be published until the approved provider or certified supervisor:

- is advised of the decision to publish (this is usually included in the letter advising of the enforcement action); and
- the applicable review period under the National Law has elapsed (see below).

Review Process

If the enforcement action is a reviewable decision under sections 190-191 (internal review by the Department) or 192-193 (external review by the Victorian Civil and Administrative Tribunal (VCAT)) the information cannot be published until the end of the period in which an application for review of the enforcement action can be made (regulation 228).

Enforcement actions that can be published that are subject to internal review include:

- amendment to or imposition of a condition on a provider approval, a service approval or a supervisor certificate.
- suspension of a –
 - provider approval (section 28);
 - service approval (section 73); or
 - a supervisor certificate (section 126). This applies to suspension without a show cause notice.
- issue of a compliance notice.

A person can seek internal review of the decision in relation to the enforcement action within 14 days after the day on which they are notified of the decision; or if the person is not notified of the decision, within 14 days after the person becomes aware of the decision.

Enforcement actions that can be published that are subject to external review are:

- Amendment to, or imposition of a condition on, a provider approval, a service approval or a supervisor certificate
- Suspension of a –
 - provider approval (sections 27-28);
 - service approval (sections 72-73); or
 - a supervisor certificate (sections 125-126).
- Cancellation of a –
 - provider approval (section 33);
 - service approval (sections 79 or 307); or
 - a supervisor certificate (section 125).

A person can seek external review of the decision within 30 days after the day on which they are notified of the decision.

The processes for seeking review are outlined in sections 191 (internal reviews) and 193 (external reviews). The form for seeking an internal review is *AR01 Application for internal review of reviewable decision* and can be accessed at:

http://acecqa.gov.au/storage/1-AR01_ApplicationForInternalReviewOfReviewableDecision_v4.pdf.

How long will the information remain on the internet site?

A person or an approved provider subject to the enforcement action may apply to the Department requesting the removal of information from the internet site if circumstances have demonstrably changed.

A decision to remove information will be determined on its own merits and based on the written submission put forward.

How will the information be made available to parents who don't have access to the internet?

Parents who do not have access to the internet are able to request a copy of the enforcement action information by emailing: licensed.childrens.services@edumail.vic.gov.au

Further information

The Department can be contacted at:

Phone: 1300 307 415

Email: licensed.childrens.services@edumail.vic.gov.au

Web: www.education.vic.gov.au/childhood/providers/regulation