

Early Learning Commission

Review of Decisions Policy

NSW Early Learning Commission

Version 2.0

29 April 2026



Early Learning
Commission

Acknowledgement of Country

The Early Learning Commission acknowledges the Traditional Custodians of the lands where we work and live. We celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

We pay our respects to Elders past, present and emerging and acknowledge the Aboriginal and Torres Strait Islander people that contributed to the development of this Policy.

We advise this resource may contain images, or names of deceased persons in photographs or historical content.

Review of Decisions Policy

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1 Purpose

The NSW Early Learning Commission (the Commission) regulates more than 6,000 Early Childhood Education and Care (ECEC) services in NSW so that children attending those services receive safe and high-quality care.

The protection of the rights and best interests of each child and the children attending education and care services must be the paramount consideration in giving effect to the National Law, including in making decisions or otherwise exercising functions under this Law. The protection of the rights and best interests of each child and the children attending education and care services prevails over the financial interests of approved providers; and other fiduciary duties owed by persons with management or control of education and care services.

The Commission expects all services to deliver safe, high-quality education and care and takes strong regulatory action where these expectations are not met. The Commission adopts a prevention-led and risk-informed approach to regulation to protect children from harm and acts with integrity, confidence and courage to ensure children's safety.

The purpose of this policy is to specify the statutory rights of a person affected by a decision made under the National Quality Framework to have that decision reviewed. It also explains how the Commission manages applications for review of a decision made under the National Quality Framework.

Many administrative decisions in the public sector, or the processes used to reach those decisions, are open to challenge by persons affected by those decisions.

These challenges are often referred to as 'review' or 'appeal' rights and may include:

- A statutory right to have a decision reviewed internally and/or externally;
- A judicial review;
- A review by an Ombudsman.

The Children (Education and Care Services) National Law (NSW) 2010 (the "National Law"), provides for an internal review of certain decisions to be conducted by the Regulatory Authority responsible for the decision, and an external review of certain decisions to be conducted by the relevant court or tribunal, which in NSW is the NSW Civil and Administrative Tribunal.

2 Scope

The NSW Early Learning Commission is the Regulatory Authority for regulating the ECEC sector in New South Wales (NSW). The Commissioner has delegated the exercise of powers and functions to officers within the Commission in accordance with the Commissioner's delegations.

The Commission exercises its regulatory functions under the following legislation:

National Legislation

- *Children (Education and Care Services) National Law (NSW) 2010* (the 'National Law')

- [Education and Care Services National Regulations \(NSW\) \(2025 SI 601a\)](#) (the ‘National Regulation’)

NSW State-based Framework:

- [Children \(Education and Care Services\) Supplementary Provisions Act 2011](#)
- [Children \(Education and Care Services\) Supplementary Provisions Regulation 2024](#)

Most education and care services for children around Australia are regulated under the National Quality Framework. Service types covered by the National Quality Framework are regulated under the National Law and National Regulations. These services include Family Day Care, Long Day Care, Out of School Hours Care and Preschools. The National Quality Framework also includes the [National Approved Learning Frameworks](#) and the [National Quality Standards](#) against which education and care services are assessed and rated. The [Guide to the National Quality Framework](#) is designed to support education and care providers, educators and authorised officers understand and apply the requirements of the National Quality Framework.

Occasional care services, Multifunctional Aboriginal Children’s Services (MACS) and Mobile services are out of scope of the NQF and are regulated under the state-based framework. These types of services are referred to as ‘state regulated’ services. In NSW, this means they can expect the same regulatory oversight as other services. National Law Alignment Provisions are applicable to NSW state regulated education and care services.

This policy applies to decisions made by the Commission that are subject to internal review under section 190 of the National Law.

This policy does not apply to the handling of complaints in relation to education and care services or the conduct of the Commission, or to internal reviews of the way in which a complaint was handled. For further details relating to complaints, refer to the [Complaint Handling Policy](#).

3 Guiding Principles

The Commission’s over-arching principles for the exercise of its powers and functions are set out in the [Guiding Principles policy](#).

In exercising its powers and functions, the Commission must have regard to the objectives and guiding principles set out in section 3 of the National Law. Further, in accordance with section 3A of the National Law, the rights and best interests of each child attending ECEC services are the paramount consideration. The Commission ensures this paramountcy principle informs all its decisions and the exercise of all functions under the National Law.

The Commission is also guided by the [Child Safe Standards](#), which are regulated by the NSW Office of the Children’s Guardian, and is committed to upholding the safety of children through its regulatory decision making.

4 Policy

4.1 Policy statement

This policy sets out:

- Who may apply for a review;
- Which decisions are eligible for internal review under the National Quality Framework;
- Which decisions are eligible for external review under the National Quality Framework and the process and available outcomes of external reviews;
- Any differences between the rights of review in respect to providers and services regulated under the National Quality Framework and those regulated under the State based framework.

A person affected by the Commission's decision may have rights to two different types of review under the National Law:

- Internal review – by the Commission
- External review – by a relevant court or tribunal. In NSW, the relevant court or tribunal for reviews is the NSW Civil and Administrative Tribunal (NCAT).

4.2 Ensuring that the correct and preferable decision has been made

To guarantee fair treatment of persons affected by a decision, the objective of a merits review is to ensure that administrative decisions in relation to which review rights are provided are correct and preferable. “Correct” means that a decision is made according to law. “Preferable” means that, where there is a range of equally lawful decisions, the decision made is the best decision based on the relevant facts and the information available to the internal reviewer at the time of the internal review. This may mean that, although the original decision may have been correct and preferable at the time it was made, it may no longer be the preferable decision at the time of the internal review.

4.3 Quality, consistency and accountability

Merits reviews aim to improve the quality, accountability and consistency of decision makers by:

- Prompting them to look closely at the relevant criteria for making decisions and the information that must be considered in reaching that decision;
- Requiring them to properly justify recommendations and decisions;
- Monitoring the quality of decisions by ensuring that legal, policy, and practice requirements have been complied with, and that decisions are able to withstand scrutiny;
- Applying review decisions to future cases by using the reasons as guidance for the assessment or determination of similar issues.

4.4 Internal Review

4.4.1 Who may apply for internal review of a decision

Any person who is ‘the subject of a reviewable decision’ may apply to the Commission for an internal review of that decision (s.191(1)).

4.4.2 Decisions eligible for internal review

The decisions made by the Commission, which may be subject to internal review are set out in section 190 of the National Law. They are also displayed in the table below.

Decisions to do any of the following are internally reviewable:

Section of National Law	Decision Type
19(1)	Impose a condition - Provider approval at the time it is granted
51(5)(b)	Impose a condition - Service approval at the time it is granted
15(1)(b)	Refusal of Application – Provider
48(1)(b)	Refusal of Application – Service
22(3)(c)	Refusal of Application – Amendment of Provider Approval
54(6)(c)	Refusal of Application – Amendment of Service Approval
65(1)(b)	Refusal of Consent – Transfer of Service
92(1)	Revoke a Service Waiver
23(1)	Amendment – Provider Approval, including the imposition of a condition after the approval has been granted
55(1)	Amendment – Service Approval, including the imposition of a condition after the approval has been granted
28(1)	Suspend a Provider Approval without a ‘show cause notice’
73	Suspend a Service Approval without a ‘show cause notice’
176(2)	Compliance Action - Issue a Compliance Direction
177(2)	Compliance Action - Issue a Compliance Notice
178	Suspend a person
178A	To issue a supervision direction
178D	To direct a nominated supervisor of an education and care service to complete training
178E	To direct a staff member of, or a volunteer at, an education and care service to complete training

Under the *Children (Education and Care Services) Supplementary Provisions Act 2011* (the Supplementary Provisions) a person affected by a decision made under the National Law Alignment Provisions has the same rights to a review of decisions as set out under section 190 of the National Law.

Despite the above, section 192(2) of the National Law provides that the following decisions are not reviewable decisions for internal review if made on the grounds the person or education and care service the subject of the decision poses an unacceptable risk to the safety of children —

- a. a decision to cancel a provider approval under section 31(1)(b);
- b. a decision to refuse to grant a service approval under section 49(1)(a);
- c. a decision to cancel a service approval under section 77(a).

4.4.3 Applying for an internal review

A person who is the subject of a reviewable decision for internal review may apply in writing for a review of the decision under section 191 of the National Law. If a review is requested, the decision will continue to apply while the review is underway (191(2A)). An application should be submitted online using the National Quality Agenda Information Technology System (NQA ITS) portal for in-scope services. An application not submitted through NQAITS is only accepted in exceptional circumstances. The application must be made:

- Within 14 days of the day on which the person is 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 (s191(2)(b)).

Out-of-scope services (or State regulated services) may submit an application for internal review via post or email. Mobile and Occasional Care services are the only service types regulated under the State Law.

Applications made outside of the 14 day timeframe are only accepted in exceptional circumstances.

The information that must be included in an application for internal review is outlined as follows:

- The name of the applicant;
- Contact details for the applicant, including an address for service of the decision;
- The provider approval number or service approval number to which the reviewable decision relates;
- The full name of the person to whom the provider approval or service approval was granted;
- A statement setting out:
 - The details of the decision or the part of the decision with respect to which review is sought;
 - How the decision affects the applicant;
 - The grounds for seeking a review of the decision;

- Any information that the applicant considers relevant to the review. (Reg 186 of the National Regulations).

4.4.4 Assessing an application for internal review

When the Commission receives an application for internal review, an appropriate officer checks that:

- The Commission has the power to conduct a review of the decision, i.e. that the decision is a reviewable decision as stated under section 190 of the National Law.
- The application is complete and includes all required information. If the application is not complete, the Commission asks the applicant to provide the missing information within a specified timeframe.
- The application has been submitted within the relevant timeframe, or exceptional circumstances exist where an application has been submitted just outside of the relevant timeframe.

Where the Commission has requested further information to support the application but does not receive the information within the relevant timeframe, the Commission conducts the review based on the information available.

4.4.5 Allocating the review

The Commission allocates a valid and complete application for internal review to a suitably delegated staff member to conduct the review.

The requirements for a reviewing officer are:

- They are not a person who was involved in the assessment or investigation of the person or service to whom or which the decision relates.
- They act fairly and without bias in making a decision, including ensuring that they do not decide a case in which they have a direct interest or conflict of interest.
- They have access to all relevant information, including information submitted by the applicant in the review application, and all information used by the decision maker in making the original decision.
- They have relevant knowledge of administrative processes.
- They have an understanding of the National Law and National Regulations.
- They clearly document their recommendation and the reasons for that recommendation.

4.4.6 Timeframe for conducting the review

The reviewing officer must determine the application within 30 days of an application being made. This time period may be extended by up to 30 days:

- If a request for further information is made; or
- By agreement between the applicant and the reviewer. Any such agreement is documented in writing.

The timeframe for assessing an application does not commence until the Commission has received all prescribed information and has determined that the application is valid.

4.4.7 Conducting a review

The reviewing officer ensures that their decision is in accordance with the principle of making the correct and preferable decision. This involves a reconsideration of the entire decision, with full attention given to all relevant law, facts and policies. This may also involve a consideration of new evidence. In some cases, this may mean that a decision made during a merits review is based on factors that were not present at the time of the original decision. For this reason, a different decision following a merits review does not necessarily indicate that the original decision was incorrect.

When conducting a review, the reviewing officer considers the administrative law principles and:

- Considers the facts;
- Assesses the evidence;
- Ensures the rules of procedural fairness are observed;
- Applies the facts to the relevant law, policy or procedure.

A reviewing officer does not consider complaints made about the conduct of Commission staff as part of an internal review. Any such complaint is referred to the appropriate area for management in accordance with the [Complaint Handling Policy](#).

4.4.8 The facts

A consideration of the facts involves the following:

- Determining the material facts that are necessary for a decision. The legislation itself often sets out the factual matters that must be considered. For example, the material facts in relation to the grant of a provider approval, are that the provider and, where relevant, its persons with management or control, are fit and proper.
- Taking into account the relevant facts, which are facts affecting the assessment of the probability that a material fact exists. For example, to determine whether an applicant for provider approval is fit and proper, the reviewing officer may need to make findings about relevant facts such as the applicant's criminal history.
- Discarding facts which are not relevant to the decision.
- Determining the facts in issue. This is a fact about which there is disagreement or insufficient evidence to satisfy the reviewing officer that the fact exists. To ascertain the facts or to make a decision on facts in issue, the reviewing officer may request further information from the applicant or the staff involved in making the original decision. Generally, this should be done if evidence that is relevant to their decision is available. If the applicant fails to provide the information within the timeframe requested, the assessment will continue but the reviewing officer may be unable to make the findings of material fact that will support a favourable decision.
- Basing findings in relation to facts on evidence that is relevant and logically capable of supporting the findings.

4.4.9 The evidence

Evidence is information in the form of documents such as application forms, emails, photographs and file notes, oral information and other material that can be used to demonstrate the existence of a fact or the truth of something.

Where evidence is provided orally, such as during an interview or phone call, the reviewing officer seeks consent to record the conversation so that information provided by an applicant is accurately captured for later consideration. Where consent is not provided, the reviewing officer makes a file note or written record of the interview or call at the time or soon afterwards.

Reviewing officers can accept most forms of evidence as they are not bound by the rules of evidence that govern the admission and evaluation of evidence by courts. However, when assessing the evidence, the reviewing officer gives consideration to principles of fairness and reliability.

Reviewing officers will:

- Give adequate weight to a matter of great importance but not give excessive weight to a relevant factor of no great importance. Assessment of the weight of evidence involves the application of logic, common sense and experience.
- Determine whether the evidence is sufficient to prove a fact in accordance with the standard of proof. For internal reviews, the standard applied is the civil standard. i.e. on the balance of probabilities. A fact is proved to this standard if the reviewing officer is reasonably satisfied it is more likely than not that the fact is true.

4.4.10 Making a decision

After considering the facts, the evidence and the principles of procedural fairness, the reviewing officer applies the facts to the relevant law and/or policies, procedures and delegations applicable to the matter under review. This includes a consideration of the objectives and guiding principles of the National Quality Framework.

When considering the objectives and guiding principles of the National Quality Framework, the reviewing officer gives paramount consideration to the safety, health and wellbeing of children. In line with the child-paramountcy principle, decisions are assessed according to the level of risk to children's safety, health and overall wellbeing, recognising that children's interests must be placed above all other considerations.

Depending on the circumstances and the decision under review, the reviewing officer may also consider several other factors. These include, but are not limited to:

- The number and ages of the children to be educated and cared for;
- The physical space and design of the education and care service premises;
- The condition and location of the education and care service premises;
- The policies and procedures of the provider;
- The compliance history of the applicant and/or its persons with management or control;
- The applicant's understanding of the role and responsibilities of an approved provider; including knowledge of the National Law and National Regulations;
- The nature of care to be provided, for example, long day care or out of school hours care;
- The demand for education and care services in the area;
- The staffing and supervision arrangements in place;
- Any strategies the provider may have implemented to mitigate a potential risk.

The reviewing officer also takes into account whether:

- The original decision maker had the necessary delegation (or power) to make the decision;
- The original decision was consistent with the application of legislation, policy and procedures;
- The original decision involved a poor interpretation of legislation, policy or procedures;
- The procedures used to reach the original decision were fair and correct;
- There is additional relevant information available that was not present at the time of the original decision.

4.4.11 The scope of the decision

The decision maker may:

- Confirm the original decision; or
- Make any other decision that they think is appropriate.

4.4.12 Documenting the decision

Accounting for a decision is an important part of an internal review and is one of the basic principles of good administration. Full and accurate records must be kept to provide detailed reasons for the decision. These reasons will also assist in understanding the rationale for the decision if the decision is later challenged.

The reviewing officer documents the reasons for the decision, which are not merely a re-statement of the relevant legislation or policy. Reasons include:

- The original decision under review;
- The decision made as a result of the review;
- The name and designation of the reviewing officer;
- The sources of information/evidence relevant to the decision;
- The material questions of fact which arise from the evidence;
- Findings on questions of facts, including whether the evidence was accepted or rejected;
- The reviewing officer's understanding of the applicable law and any issues of law which arise, including opinions or views on such issues of law;
- Conclusions derived from the facts and the law.

Regulation 228(6) of the National Regulation provides that the Commission may publish information about an enforcement action for which an application for internal or external review can be made under the Law, section 191 or 193 before the end of a period, set out in sub regulations (2)–(5), if the Commission is satisfied that publishing the information is in the public interest.

4.4.13 Notifying the applicant

The Commission notifies the applicant in writing of the outcome of their application for internal review. The contents of the notification include:

- The identity of the decision maker;

- The date of the decision and, if relevant, the date from which it operates or the period in which it is effective;
- The authority under which the decision was made, for example, a section of the National Law;
- The decision and reasons for the decision. The reasons need not be as full an account as contained in the internal decision document;
- The applicant’s right of further review and any time periods within which the applicant must exercise those rights.

4.5 External review

4.5.1 Who may apply for external review of a decision

Any person who is ‘the subject of a reviewable decision’ may apply for external review of that decision. (s193).

4.5.2 Decisions eligible for external review

The decisions of the Commission which are externally reviewable are set out in section 192 of the National Law.

All internally reviewable decisions (for these, see the table above titled ‘Decisions that may be internally reviewed’) that have gone through an internal review process are eligible for external review except for decisions to:

- Issue a compliance direction
- Issue a compliance notice.

In addition, section 192 of the National Law specifies that the following decisions, which are not internally reviewable, are eligible for external review:

Decisions that may be externally reviewed	
Section of the National Law	Decision type
27	Suspend a provider approval (after a show cause process)
33	Cancel a provider approval (after a show cause process)
72	Suspend a service approval (after a show cause process)
79	Cancel a service approval (after a show cause process)

Despite the above, section 192(2) of the National Law provides that the following decisions are not reviewable decisions for external review if made on the grounds the person or education and care service the subject of the decision poses an unacceptable risk to the safety of children –

- d. a decision to cancel a provider approval under section 31(1)(b);

- e. a decision to refuse to grant a service approval under section 49(1)(a);
- f. a decision to cancel a service approval under section 77(a).

For out-of-scope services, the same decisions as those listed in the table above are externally reviewable.

Decisions suspending or cancelling the service approval of an associated children's service are not eligible for external review under the National Quality Framework. An associated children's service is an out-of-scope service that is on the same premises as an National Quality Framework service, where the approved provider holds one service approval to cover both services.

4.5.3 Grounds for external review

The National Law does not stipulate or limit the grounds on which a person can apply for external review.

4.5.4 Timeframe for submitting application for external review of a decision

A person must apply for an external review of the decision within 30 calendar days after being notified of the decision. (s193(2))

4.5.5 Relevant decision-makers for external reviews

An application for external review must be made to 'the relevant court or tribunal'. (s.193(1)). Under the National Law, in NSW, the 'relevant court or tribunal' for reviews is the NCAT.

The NCAT conducts merits reviews. This means it takes a fresh look at the matter, fully considering all relevant facts, policies and law. New evidence may be considered, if it is relevant. This could mean that a decision made during the external review is based on factors that were not present at the time of the original decision or internal review. In undertaking a merits review, NCAT must give paramount consideration to the safety, health and wellbeing of children in accordance with the child-paramountcy principle and assess any new or existing information through that lens.

4.5.6 Outcomes of an external review

Where an external review is conducted under the National Law, section 193(3) of the National Law specifies that the reviewer may:

- confirm the Commission's decision;
- amend the Commission's decision; or
- replace the Commission's decision with its own, new decision.

In determining an outcome the reviewer may consider any decision of a tribunal or court in another state or territory, made under the National Law.

5 Enquiries

For enquiries about this policy, please contact the NSW Early Learning Commission Information and Enquiries team 1800 619 113 (toll free) or information@earlylearningcommission.nsw.gov.au

6 Approval

Approved by: Taryn Dilly / Cassandra May

Designation: A/Deputy Commissioner, NSW Early Learning Commission

Dated: 29 April 2026

7 Document history

Table 1. Document information

Document title	Review of Decision Policy
Document type	Policy
Version number	Version 2.0

For external distribution, please remove the remainder of the Document History section (Table 2 onwards) and this instruction text.

8 Terms and definitions

Table 7. Terms and definitions

Term	Definition
Application of Exceptional Circumstances	There is no absolute definition of exceptional circumstances. Under the National Law, the notion of exceptional circumstances applies to a range of situations, such as family day care venues or temporary relocations. The Commission considers whether or not exceptional circumstances exist on a case-by-case basis. Exceptional circumstances are limited to circumstances that are unusual, not typical, or unable to be foreseen or planned for in advance.

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