

2023–2024

Annual Report

Education and Care Services
Ombudsman and National
Education and Care Services
Freedom of Information & Privacy
Commissioners



National Education & Care Services
FOI & Privacy Commissioners & Ombudsman

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National Education & Care Services

FOI & Privacy Commissioners & Ombudsman

Letter of Transmittal

3 December 2024

The Hon Jason Clare MP
Minister for Education
Chair
Education Ministers Meeting

Dear Minister

In accordance with regulations 198, 207 and 221 of the *Education and Care Services National Regulations*, we are pleased to present to the Education Ministers Meeting the annual report for the Education and Care Services Ombudsman, the National Education and Care Services Freedom of Information Commissioner and the National Education and Care Services Privacy Commissioner for the period 1 July 2023 to 30 June 2024. This annual report is the 13th such report since the establishment of the roles in January 2012.

During the reporting period, the 3 positions were held initially by Mr Alan Grinsell-Jones from 1 July 2023 to 31 December 2023. We were appointed for a period of 3 years from 1 January 2024.

The annual report has been prepared to meet the requirements for the annual reports set out in the *Education and Care Services National Regulations*.

We note that regulations 198, 207 and 221 of the *Education and Care Services National Regulations* require the Education Ministers Meeting to arrange for the tabling of this annual report in the Commonwealth, State and Territory Parliaments.

Yours sincerely

Jackie Wilson
Education and Care Services Ombudsman
National Education and Care Services
Privacy Commissioner

Christopher Matthies
National Education and Care Services
Freedom of Information Commissioner

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About the Commissioners

The ECS Commissioners

The Education and Care Services Ombudsman, the National Education and Care Services Freedom of Information Commissioner and the National Education and Care Services Privacy Commissioner (collectively the ECS Commissioners) are independent statutory offices established under national applied laws – the Education and Care Services National Law (National Law) and the *Education and Care Services National Regulations* (National Regulations).

The ECS Commissioners' positions were established in 2012 as part of reforms by the then Council of Australian Governments to create a national uniform regulatory and quality assurance system for early childhood education and care services across Australia.

The system is referred to as the National Quality Framework (NQF). It applies to most long day care, family day care, outside school hours care, and preschool/kindergarten services in Australia.

The Ombudsman and Commissioner positions are established and operate independently of each other for the purposes of the National Law. The Education Ministers Meeting, attended by the Australian, state and territory government ministers responsible for education, makes the appointments to the positions.

Legislative framework

The ECS Commissioners operate within the legislative framework of the national applied laws.

Victoria passed the *Education and Care Services National Law Act 2010* (Vic) which contains the National Law. Each state and territory passed legislation applying the law to their jurisdiction, or enacted corresponding legislation, with some variations to accommodate local requirements.

The Ministerial Council made the National Regulations which support the National Law. They include the National Quality Standard and rating system for services.

Sections 263 and 264 of the National Law apply the Commonwealth *Privacy Act 1988* (Privacy Act) and *Freedom of Information Act 1982* (FOI Act) as laws of participating jurisdictions for the purposes of the NQF. In applying these Commonwealth laws, the states and territories set aside their own privacy and information access laws for the purposes of the NQF.

Section 282 of the National Law in combination with regulation 222 of the National Regulations applies the Commonwealth *Ombudsman Act 1976* to the Australian Children's Education and Care Quality Authority (ACECQA).

The National Law and the National Regulations modify the 3 Commonwealth Acts for the purposes of the NQF.

The regulated education and care sector

The National Law established ACECQA and early childhood education and care Regulatory Authorities in each of the 8 Australian states and territories (collectively the NQF agencies) to implement and manage the national regulatory system.

ACECQA supports the implementation of the NQF and works with all governments and the sector to provide guidance, resources and services to improve outcomes for children in education and care services. State and territory Regulatory Authorities are responsible for granting education and care provider and service approvals, undertaking quality assessment and rating of services, and ensuring services meet their obligations under the National Law and National Regulations.

The 8 state and territory Regulatory Authorities are identified in their respective jurisdictional legislation. In most cases the Regulatory Authority is defined as the person heading the government department or agency that has responsibility for early childhood education and care.

Administrative units within the relevant departments carry out the day-to-day functions of the Regulatory Authorities. Details of the Regulatory Authorities are set out at **Appendix 1** to this Report.

The Regulatory Authorities were regulating and supporting a total of 17,705 approved education and care services and 7,210 approved providers across Australia under the NQF as at 1 July 2024¹.

The vast majority of these services – 98% – were centre-based services. They include most long day care, preschool and outside school hours care services that are delivered at a centre. The data does not include Tasmanian preschools /kindergartens and most preschools/ kindergartens in Western Australia that are outside the scope of the NQF, as well as other services not regulated under the National Law.

The remainder of the services were family day care services delivered through a network of educators operating from residences and other approved venues. They are sometimes known as family day care schemes and they are administered and supported by central coordination units.

Roles of the ECS Commissioners

The ECS Commissioners are responsible for overseeing:

- how ACECQA and the Regulatory Authorities apply the Privacy Act and FOI Act, and
- administrative actions taken by ACECQA.

We support public confidence in the integrity and fairness of the agencies responsible for the regulation and quality assurance of early childhood education and care services in Australia by:

- providing independent, fair and accessible complaint-handling, investigation, review and advisory services, particularly in relation to the protection of privacy and information access rights, and
- working with the NQF agencies to support their decision-making and practices.

More information about the specific functions of each of the ECS Commissioners is set out in this report.

¹ ACECQA, *NQF Snapshot Q2 2024*, August 2024

Commissioners' review

Reflections on 2023–2024

Appointment of 2 Commissioners

As was noted in last year's annual report, the Education Ministers Meeting agreed in February 2023 to change the model of having one person appointed to all 3 ECS Commissioner roles to appointing 2 people to the roles: one person as both the Ombudsman and the Privacy Commissioner and one person as the Freedom of Information Commissioner (FOI Commissioner).

This reflected a need for additional resourcing to deal with the number of complaints and applications for review of decisions received by the office as well as a reconsideration of how best to organise and support the work of the Commissioners going forward.

A merit-based process to select the Commissioners was undertaken in the first half of the reporting period leading to our appointments from 1 January 2024. The appointments are part time, 2 days per week.

We are very grateful to Mr Grinsell-Jones, the previous interim holder of the roles, for his assistance in supporting the transition to the new Commissioners.

Stakeholder engagement

Following our appointments, we made it a priority to seek to develop relationships with our key stakeholders. In particular, we wanted to enhance our understanding of the sector and the current operating environment for the agencies we oversee.

In addition to meeting with the Australian Government Department of Education, we held in-person or virtual meetings with ACECQA and most Regulatory Authorities before the end of the reporting period. We will seek to further strengthen these relationships in 2024–2025.

In our roles, we perform functions and exercise powers under the Ombudsman Act, Privacy Act and FOI Act for the purposes of the NQF that are otherwise performed and exercised by the Commonwealth Ombudsman, Australian Information Commissioner, Privacy Commissioner and FOI Commissioner. During the reporting period, we met with the Commonwealth Ombudsman and officers from the Office of the Australian Information Commissioner to enhance mutual understanding of our respective roles and explore opportunities for information sharing and collaboration.

The Regulatory Authorities are subject to the jurisdiction of state and territory ombudsmen in relation to the actions they take in areas other than FOI and privacy. Most are also part of larger state or territory government departments which have commensurate responsibilities under their own jurisdiction's FOI and privacy legislation and are subject to local oversight arrangements. During the reporting year, we met with the NSW Information and Privacy Commissioner to discuss our mutual roles. We intend to engage with other relevant oversight authorities in 2024–2025.

Workload

The ECS Commissioners received a modest number of complaints and applications for review during 2023–2024 at a level broadly consistent with previous years.

More information about the complaints and applications, and how they were handled, is set out below in the sections relating to the work of each of the Commissioners.

Complaints and enquiries outside jurisdiction

As in previous years, the office received a steady stream of complaints and enquiries during the reporting period that fell outside the formal jurisdiction of the ECS Commissioners.

A significant proportion of the 37 complaints and enquiries (40%) received concerned issues about child care fees. The next largest proportion (27%), a reduction from the previous financial year, were about individual service provider behaviour including mandatory reporting and the standard of supervision and care in services.

In all cases, complaints and enquiries outside jurisdiction were redirected to relevant bodies.

General enquiries were also made to the office about its operations.

Key themes emerging

The early childhood education and care sector is experiencing a significant increase in complaints. For NQF agencies this is resulting in an increase in the volume of complaints and workload pressures. We are mindful of this when we are dealing with NQF agencies.

Matters before the ECS Commissioners also highlighted some challenges faced by Regulatory Authorities in having to apply the Commonwealth FOI and privacy legislation. Most of the NQF agencies are part of larger state or territory government departments and rely on the services of general departmental FOI and privacy officers who must apply their own jurisdiction's legislation to other aspects of the department's operations.

Consultations with the Regulatory Authorities indicate that there have been improvements in this area with several jurisdictions developing internal policies and procedures to better support the work of these teams in applying the correct legislation and sharing this information across jurisdictions. The FOI and Privacy Commissioners propose to continue to gradually build a suite of resources in consultation with NQF agencies to

better support them in carrying out their responsibilities under the Commonwealth Acts.

Reform in the sector

Significant reform continues to take place in the early childhood education and care sector which has direct relevance and impact on the NQF agencies. Outlined below are some of the key reforms where work has progressed in 2023–2024.

Productivity Commission inquiry into Australia's early childhood education and care system

In February 2023, the Australian Government requested the Productivity Commission to inquire into Australia's early childhood education and care system. This inquiry included centre-based day care, preschools, family day care, outside school hours care and in-home care. The Productivity Commission considered cost and availability barriers that affect access to services, and ways to support better outcomes for children and families. A draft report was released on 23 November 2023 and the final report – [*A path to universal early childhood education and care*](#)² – was released on 18 September 2024.

Child safety review

The NQF is designed to support early childhood education and care services in meeting their obligations to provide a child safe environment. In May 2023, the Australian Government Department of Education engaged ACECQA to undertake a [*Review of Child Safety Arrangements under the National Quality Framework*](#)³ to ensure that the NQF system remains contemporary and fit for purpose. On 23 February 2024, Education Ministers agreed in principle to the recommendations within their remit subject to expert advice, consultation and regulatory impact

² The report can be accessed at www.pc.gov.au/inquiries/completed/childhood/report.

³ Information about the review can be accessed at www.acecqa.gov.au/child-safety-review.

assessment. They have tasked officials to oversee implementation of actions arising from the Review and work is currently underway.

Review of the Privacy Act 1988

The Australian Government commenced a review of the Privacy Act in 2020 led by the Australian Government Attorney-General's Department. The Government published the [Privacy Act Review Report](#)⁴ on 16 February 2023 and released its response on 28 September 2023. A range of privacy reforms are proposed, including:

- providing individuals with greater transparency and control over their information through improved notice and consent mechanisms
- requiring entities to be accountable for handling information within community expectations and enhancing requirements to keep information secure and destroy it when no longer needed
- strengthening the enforcement powers of the Australian Information Commissioner.

The Privacy and Other Legislation Amendment Bill 2024 containing a first tranche of reforms was passed by the Australian Parliament on 28 November 2024.

The Privacy Commissioner will continue to monitor progress on reforms and advise Education Ministers and NQF agencies in due course about implications, if any, for the NQF agencies.

Management of the office

Supply of services

The ECS Commissioners are supported in their role by the Education Ministers' company, Education Services Australia (ESA). This is primarily by way of the provision of financial and ICT services.

During the reporting period, the ECS Commissioners entered into a new service agreement with ESA for the period from 1 July 2024 to 30 June 2026.

The ECS Commissioners would like to acknowledge the support and assistance provided by ESA staff, particularly during our onboarding.

Budget and audited financial report

The annual budget for the ECS Commissioners was increased to \$400,000 in 2023–2024 from \$200,000 in previous reporting periods. This was agreed by the Education Ministers as part of the change to a 2-appointee model for the office.

The financial report for 2023–2024 has been prepared by auditors PKF Melbourne and the audit statement is at **Appendix 2** to this Report. PKF are also the auditors for Education Services Australia.

The fees and retainer payable to the Commissioners continued to comprise the largest component of expenditure in the reporting year (70%). Costs paid for external legal advice and assistance in relation to matters before the Commissioners, while lower than in 2022–2023, constituted the next largest expenditure item (14%). The service fee payable to ESA (5%) and modest costs for the financial audit, maintaining the website, phones and travel made up the bulk of the remainder of the office costs.

As the 2 new Commissioners were only appointed from 1 January 2024, expenditure was lower than would have been the case had we been appointed for the full year. The office ended 2023–2024 with a surplus. This offers the opportunity for the office to undertake some strategic projects of value identified through consultation with stakeholders.

⁴ The report can be accessed at www.ag.gov.au/rights-and-protections/publications/privacy-act-review-report.

Looking ahead to 2024–2025

The most recent Strategic Plan for the office was for the period July 2021 to July 2024. It is set out at **Appendix 3** to this Report. A Service Charter developed and introduced for the office in June 2016 was last updated in 2022.

A priority for the Commissioners in the next reporting period will be to complete reviews of these key documents. We commenced initial consultation with stakeholders during the reporting year on the Strategic Plan.

We will undertake further consultation in 2024–2025 as we refine our objectives, priorities and service standards. Bearing in mind that the 2 Commissioner roles are part time, our aim will be to maintain accessible, quality and timely service delivery in carrying out our complaint-handling and review responsibilities while also seeking to undertake targeted work at a systemic level to support better practice as part of promoting privacy and information access rights more broadly.

The Commissioners will also continue to work with the Early Childhood Policy Group and provide input into early childhood education and care reforms as well as advise on any changes to Commonwealth FOI and privacy legislation which have direct relevance and impact.

Ombudsman

Functions of the Ombudsman

The Education and Care Services Ombudsman has the power to investigate, either in response to a complaint received or on the Ombudsman's own motion, administrative actions taken by an employee, agent, staff member or contractor of ACECQA. Administrative actions are any action taken, or not taken, in relation to ACECQA's duties, functions or powers.

The Ombudsman may make findings and recommendations for actions to be taken or decisions to be made by ACECQA but may not override the decisions of ACECQA.

The Ombudsman does not have powers in relation to how state and territory Regulatory Authorities exercise their powers or functions under the National Law. Complaints about Regulatory Authorities are directed to the Ombudsman in the state or territory in which the regulatory authority is located.

As reported previously, the appropriate body to approach continues to be a source of confusion for complainants approaching the Ombudsman for services. Advice included on the office website aims to mitigate this confusion.

Activity in 2023–2024

During the 2023–2024 reporting period, 2 formal complaints were received by the office of the Ombudsman in relation to the administrative actions of ACECQA. The complaints concerned qualification assessments made by ACECQA.

Educators with a local or overseas education and care qualification not listed on the approved qualifications list can apply to ACECQA to have it assessed for equivalence to allow them to work in education and care services in Australia. Before the Ombudsman considers a complaint about a decision made by ACECQA, the complainant is encouraged to contact ACECQA and seek an internal review in the first instance unless there are exceptional circumstances.

In relation to both of the complaints received in 2023–2024, the complainant had not contacted ACECQA and sought an internal review. This advice was provided to both complainants and no further action was taken.

Privacy

Functions of the Privacy Commissioner

The National Education and Care Services Privacy Commissioner has the power to investigate complaints about whether an NQF agency has interfered with an individual's privacy, including by breaching the Australian Privacy Principles (APPs) or in relation to a notifiable data breach.

The Privacy Commissioner may also conduct own motion investigations into whether the NQF agencies are complying with their obligations under the Privacy Act. The Commissioner may make various enforceable determinations resulting from these investigations.

Each of the NQF agencies is bound by, and must comply with, the requirements of the Privacy Act in relation to how they collect, use, store and otherwise handle personal information about individuals.

Activity in 2023–2024

Complaints

The 2022–2023 Annual Report reported that one privacy decision had been referred to the jurisdiction's relevant administrative tribunal by the complainant. This matter was discontinued at the tribunal in 2023–2024.

In the 2023–2024 reporting period, 4 privacy complaints were received by the Privacy Commissioner. Three complaints related to delays in an NQF agency carrying out its responsibilities. These complaints were discontinued as part of a settlement at the jurisdiction's relevant administrative tribunal. Preliminary inquiries commenced in relation to the fourth complaint during the reporting period.

Data breach notifications

Under the Notifiable Data Breaches Scheme, NQF agencies are required to tell the Privacy Commissioner about a data breach that is likely to cause serious harm.

When a data breach occurs, it is expected that an agency try and reduce the chance that an individual experiences harm. This could include seeking to recover the records, shutting down a system that was breached or stopping a practice that led to the breach

Generally, an agency has 30 days to assess whether a data breach is likely to result in serious harm.

During 2023–2024 the Privacy Commissioner did not receive any data breach notifications from NQF agencies.

Advice, guidance and monitoring

Australian Privacy Principles Guidelines

The Privacy Commissioner has adopted, by written instrument, the Australian Information Commissioner Australian Privacy Principles Guidelines⁵ for use by the NQF agencies in carrying out their responsibilities under the Privacy Act. The 13 APPs set out standards, rights and obligations about:

- the collection, use and disclosure of personal information
- an organisation or agency's governance and accountability
- integrity and correction of personal information
- the rights of individuals to access their personal information.

⁵ Guidelines issued under section 28(1)(a) of the *Privacy Act 1988*.

The Privacy Act applies the APPs to an APP entity which is defined in section 6 of the Act as an agency or organisation. Regulation 199 of the National Regulations modifies the Privacy Act to provide that it applies only to the NQF agencies: ACECQA and the state and territory Regulatory Authorities. APPs 1 to 6, 8 and 10 to 13 apply to agencies. APPs 7 and 9 only apply to organisations and hence they do not apply to the NQF agencies.

The NQF agencies must ensure that their handling of personal information is in accordance with the requirements of the APPs, including having an APP Privacy Policy in place as required by APPs 1.3 and 1.4.

The formal adoption of the APP Guidelines is intended to ensure consistency in the interpretation and application of the legislation across agencies that are subject to the Privacy Act and to remove any uncertainty for NQF agencies or the public as to the expectations of the Privacy Commissioner in the application of the Acts.

A copy of the instrument adopting the APP Guidelines is at **Appendix 4** of this Report.

Freedom of Information

Functions of the Freedom of Information Commissioner

The FOI Act gives the public a right to access documents held by the NQF agencies subject to defined exceptions and exemptions. Each of the NQF agencies is bound by, and must comply with, the requirements of the FOI Act.

The functions of the FOI Commissioner include:

- reviewing decisions made by the NQF agencies under the FOI Act
- monitoring, investigating and reporting on compliance by the NQF agencies with the FOI Act, including in response to a complaint or on the Commissioner's own motion, and
- providing information, advice, assistance and training on matters relevant to the operation of the FOI Act.

Activity in 2023–2024

Overview of FOI activity in NQF agencies

Each year, the FOI Commissioner reports on the operation of the FOI Act. Each of the NQF agencies gives the FOI Commissioner data on a range of matters, including:

- the number of requests for access to documents received and finalised, and the outcomes of finalised requests
- the exemptions applied in decisions made on FOI requests
- the time taken to make decisions
- the amount of charges notified and collected for processing FOI requests
- applications for amendment or annotation of personal information
- requests for internal review of decisions under the FOI Act.

Data by agency for the reporting period is set out in **Appendix 5** to this Report.

Requests for access to documents

Number of requests received and finalised

In summary, the 9 NQF agencies collectively received 106 new FOI requests in 2023–2024, 45% more than in the last reporting period (73) and 22% more than in 2021–22 (87). The largest increases in requests in 2023–2024 were experienced by ACECQA, New South Wales, Queensland and Western Australia.

Of the 106 requests received, 80 (75%) were predominantly for a person's own personal information.

The NQF agencies finalised 98 requests in 2023–2024, 36% more than in the last reporting period (72) and 18% more than in 2021–22 (83). Of the requests finalised in this reporting period:

- full access was granted in relation to 7% of requests (11% in 2022–23)
- partial access was granted in relation to 59% of requests (67% in 2022–23)
- access was refused in full in 23% of requests (6% in 2022–23), and
- the request was withdrawn in 10% of requests (17% in 2022–23).

See Table 1 in Appendix 5 for more information.

Application of exemptions in decisions

An agency must give access to a document unless it decides it is exempt. Exempt documents or parts thereof fall into 2 categories:

- exempt under one of 10 provisions in Division 2 of Part IV of the FOI Act, or
- conditionally exempt under one of 8 provisions in Division 3 of Part IV and the agency has decided disclosure would, on balance, be contrary to the public interest.

Redactions may be applied to parts of a document to enable its partial release.

NQF agencies applied exemptions or conditional exemptions in 62 decisions made in relation to FOI requests in 2023–2024: 4 exemption and 4 conditional exemption provisions were applied. More than one exemption may be applied in a single decision and conditional exemptions are counted even if the agency ultimately decided to release information because that would not be contrary to the public interest. All agencies except for the Northern Territory relied on an exemption or conditional exemption in at least one decision.

The exemptions and conditional exemptions applied in 2023–2024 in order of frequency were as follows:

- section 47F conditionally exempts all or part of a document where disclosure of personal information would be unreasonable: applied in 89% of the 62 decisions
- section 47E conditionally exempts all or part of a document where disclosure would, or could reasonably be expected to, prejudice or adversely affect an agency's operations or management of personnel: applied in 56% of the 62 decisions
- section 47G conditionally exempts all or part of a document where disclosure of information about the business or professional affairs of a person, organisation or undertaking would or could have specified adverse effects: applied in 29% of the 62 decisions
- section 37 exempts all or part of a document where disclosure would, or could reasonably be expected to, affect enforcement of the law or protection of public safety: applied in 18% of the 62 decisions
- section 47C conditionally exempts all or part of a document containing information about the deliberative processes of an agency: applied in 13% of the 62 decisions

- section 42 exempts documents where legal professional privilege applies: applied in 8% of the 62 decisions
- section 45 exempts documents containing material obtained in confidence: applied in 6% of the 62 decisions, and
- section 38 exempts documents to which statutory secrecy provisions apply: applied in 3% of the 62 decisions.

See Table 2 in Appendix 5 for more information.

Timeliness of decision-making

In general, an agency is required to notify an applicant of a decision on an FOI request no later than 30 calendar days after receiving a request. However:

- the agency may extend that period by agreement with the applicant and to undertake consultation with a third party
- the processing period is suspended while an agency consults an applicant about whether a practical refusal reason exists or about applying a charge
- an agency can apply to the FOI Commissioner for more time to process a request when the request is complex or voluminous.

The applicable time period for deciding a request takes into account any extensions or suspensions of the processing period.

In relation to the 88 decisions made to grant or refuse access to documents during the reporting period, the NQF agencies reported that 83 were made within the applicable timeframe (94%), 4 were made up to 30 days late (5%) and 1 was made more than 90 days late. These results were similar to 2022–2023 and reflect that FOI requests are generally being processed in a timely manner.

See Table 3 in Appendix 5 for more information.

Charges

While there is no charge to make a request under the FOI Act, an NQF agency has discretion as to whether or not to impose a charge for processing a request to access certain types of documents under the *Freedom of Information (Charges) Regulations 1982* (Cth). A charge can be imposed for the staff time involved in processing a request (other than the first 5 hours of decision-making time) and certain other costs such as preparing a transcription, photocopying and postage. No fees can be charged in relation to a request for a person's own personal information.

Only New South Wales and Victoria notified the imposition of charges in the total amount of \$463 for the reporting period. They collected a total of \$304. This is similar to the amount of \$292.92 that was collected in 2022–2023.

Charges are not frequently imposed by the NQF agencies. In part, this can be explained by the high proportion of requests that are for a person's own personal information.

See Table 3 in Appendix 5 for more information.

Requests for internal review of decisions on FOI requests

If a person is not satisfied with a decision made by an agency on an FOI request, they may apply to the agency for internal review of the decision or to the FOI Commissioner.

In 2023–2024, the NQF agencies received 4 requests for internal review and also finalised 4 requests. Of the requests finalised, the agency varied their original decision in 2 cases, giving access to more information. The decision was affirmed in the other 2 cases.

See Table 4 in Appendix 5 for more information.

Applications for amendment or annotation of personal information

As was the case in 2022–23, no applications for amendment or annotation of personal information were reported for 2023–2024. Nor were there any requests for internal review of decisions in relation to such applications.

Extension of time requests

As noted above, if an agency is unable to process an FOI request within the statutory processing period, the agency may ask the applicant to agree to extend the time by a maximum further period of 30 days. If that occurs, the agency or minister must notify the FOI Commissioner of the agreement to extend the statutory processing time as soon as practicable (section 15AA of the FOI Act).

An agency can also apply to the FOI Commissioner for an extension of the processing period:

- if they believe that processing a request will take longer than the statutory timeframe because it is voluminous or complex in nature (section 15AB of the FOI Act), or
- if they have been unable to process an FOI request, amendment application or internal review application within the relevant statutory timeframe and are deemed to have made a decision refusing the FOI request (sections 15AC, 51DA and 54D of the FOI Act).

In relation to extension of time applications that may require a decision by the FOI Commissioner, the following number of applications were received by the office in 2023–2024:

- section 15AB – 4
- section 15AC – 3.

Two of the applications were found not to require a decision. Extensions of time were granted in relation to the other 5 applications. Decisions were made within 7 calendar days for 4 of the applications and within 16 calendar days for the other application.

Complaints to the FOI Commissioner

The FOI Commissioner received 2 complaints in 2023–2024 with respect to how an NQF agency carried out its responsibilities under the FOI Act.

One complaint was withdrawn. In relation to the second complaint, the FOI Commissioner clarified that the complainant was in fact seeking review of a deemed refusal of an FOI request.

Reviews of NQF agency decisions

A person who is dissatisfied with a decision made by an NQF agency in relation to a request for access to documents or an application to amend or annotate personal information can apply to the FOI Commissioner to review the decision. The person may apply for review of a primary decision or a decision on internal review. The FOI Commissioner can affirm or vary the decision of an NQF agency or set aside the decision and substitute a new decision.

The FOI Commissioner generally conducts reviews of decisions on the papers. The FOI Act requires that each party be given a reasonable opportunity to present their case. The aim is to finalise reviews within 4 months of application. However, additional time can be required depending on the complexity of the particular case.

At the beginning of the reporting period, there were 2 applications for review on hand.

- One application was finalised by way of a decision on 11 October 2023. The FOI Commissioner varied the agency's decision, giving the applicants access to additional material.

This was a complex review involving approximately 1,250 pages of documents and was finalised in 10 months and 12 days.

- The second application was withdrawn by the applicants.

The FOI Commissioner received 3 new applications for review of decisions in 2023–2024.

- One application was finalised by way of a decision on 27 November 2023. The FOI Commissioner varied the agency's decision, giving the applicant access to some additional material. The review was finalised in 2 months and 4 days.
- The remaining 2 applications were not yet finalised at the end of the reporting period.

The FOI Commissioner's decisions made during the reporting period have been published on the ECS Commissioners' website.

Reviews of FOI Commissioner decisions

Parties to an FOI Commissioner review have the right to appeal the Commissioner's decision to the relevant administrative appeals tribunal in each jurisdiction.

An application for review of the decision made by the FOI Commissioner on 11 October 2023 was lodged with the jurisdiction's relevant administrative tribunal. However, the application was withdrawn on 24 January 2024.

Advice, guidance and monitoring

Advice

The FOI Commissioner engaged with officers in NQF agencies in relation to a range of matters relating to administration of the FOI Act during the report period. The Commissioner also provided information and assistance to members of the public in relation to matters falling within the Commissioner's jurisdiction.

Freedom of Information Guidelines

The FOI Commissioner has formally adopted, by written instrument, relevant sections of the Australian Information Commissioner Freedom of Information Guidelines⁶ on the interpretation, operation and administration of the FOI Act. NQF agencies must have regard to the Guidelines in performing functions and exercising powers under the FOI Act: section 93A. The Guidelines apply as amended from time to time.

The formal adoption of the Guidelines is intended to ensure consistency in the interpretation and application of the legislation across all agencies that are subject to the FOI Act and to remove any uncertainty for NQF agencies or the public as to the expectations of the FOI Commissioner in the application of the two Acts.

The FOI Commissioner monitors updates made to the Guidelines by the Australian Information Commissioner and provides information to the NQF agencies to ensure they are aware of relevant changes in undertaking their responsibilities under the FOI Act.

A copy of the adopting instrument is at **Appendix 6** of this Report.

Monitoring activities

No specific compliance review or other monitoring activities were undertaken during the reporting period.

⁶ Guidelines issued under section 93A of the FOI Act.

Appendices

[Appendix 1: State and Territory Regulatory Authorities and administrative units](#)

[Appendix 2: Audited Financial Report 2023 – 2024](#)

[Appendix 3: Strategic Plan 2021–2024](#)

[Appendix 4: Guideline adopting parts of the Australian Information Commissioner Australian Privacy Principles Guidelines at 30 June 2023](#)

[Appendix 5: ACECQA and Regulatory Authorities' Freedom of Information Statistics](#)

[Appendix 6: Instrument adopting parts of the Australian Information Commissioner Freedom of Information Guidelines at 30 June 2023](#)

State and Territory Regulatory Authorities and administrative units

Jurisdiction	State/territory National Law/Application Acts	Section of state/territory legislation defining the Regulatory Authority for the purposes of the National Law	Regulatory Authority administrative units
ACT	<i>Education and Care Services National Law (ACT) Act 2011</i>	Section 10 – the director-general [of the Education Directorate]	Children’s Education and Care Assurance, Education and Care, Regulation and Support, Education Directorate
NSW	<i>Children (Education and Care Services National Law Application) Act 2010</i>	Section 9 – the Secretary of the Department of Education	NSW Early Childhood Education and Care Regulatory Authority, Department of Education
NT	<i>Education and Care Services (National Uniform Legislation) Act 2011</i>	Section 9 – the Chief Executive Officer [of the Department of Education]	Quality Education and Care Northern Territory, Department of Education
QLD	<i>Education and Care Services National Law (Queensland) Act 2011</i>	Section 14 – the chief executive [of the Department of Education]	Early Childhood Regulatory Authority, Department of Education
SA	<i>Education and Early Childhood Services (Registration and Standards) Act 2011</i>	Section 13(9) – the Education and Early Childhood Services Registration and Standards Board of South Australia	Education Standards Board
TAS	<i>Education and Care Services National Law (Application) Act 2011</i>	Section 9 – the Secretary of the department responsible for the administration of the <i>Education Act 2016</i>	Education and Care Unit, Department for Education, Children and Young People
VIC	<i>Education and Care Services National Law Act 2010</i>	Section 8 – the Secretary of the Department of Education	Quality Assessment & Regulation Division, Department of Education
WA	<i>Education and Care Services National Law (WA) Act 2012</i>	Section 8 – the chief executive officer of the department principally assisting in the administration of the <i>Child Care Services Act 2007</i>	Education and Care Regulatory Unit, Department of Communities

Audited Financial Report 2023–2024



Education
Services
Australia

Annual Financial Statements for the Education and Care Services Ombudsman, the National Education and Care Services Freedom of Information Commissioner and the National Education and Care Services Privacy Commissioner

Statement of Funding and Expenditure for the period 1 July 2023 - 30 June 2024

	Actual	Budget	Variance
	\$	\$	\$
Funding			
FY23-24 Funding	400,000	400,000	-
	400,000	400,000	-
Expenditure			
Domestic Travel account for Projects	2,115	4,000	1,885
Contingency	-	205,747	205,747
Website Development & Hosting Cost	7,932	36,000	28,068
Retainer	30,294	30,000	(294)
Service Fee	10,000	10,000	-
Sundry	5,523	15,700	10,177
Telephone	2,780	1,300	(1,480)
Audit Fees	5,250	3,000	(2,250)
Project Legal fees	26,928	25,000	(1,928)
Salary & On Costs	108,626	127,500	18,874
	199,447	458,247	258,800
Surplus/(Deficit)	200,553		
Prior years unspent funding	58,535		
Total Balance of funds remaining	259,088		

The accompanying notes form part of this financial statement.

**Annual Financial Statements for the Education and Care Services Ombudsman,
the National Education and Care Services Freedom of Information Commissioner and
the National Education and Care Services Privacy Commissioner**

Statement of Financial Position as at 30 June 2024

CURRENT ASSETS	\$
Cash at bank	259,088
Total Current Assets	<u>259,088</u>
 Total Non-Current Assets	 <u>-</u>
 TOTAL ASSETS	 <u><u>259,088</u></u>
 CURRENT LIABILITIES	
Income received in advance	259,088
Total Current Liabilities	<u>259,088</u>
 NON-CURRENT LIABILITIES	
 Total Non-Current Liabilities	 <u>-</u>
 TOTAL LIABILITIES	 <u><u>259,088</u></u>
 NET ASSETS	 <u><u>-</u></u>

The accompanying notes form part of this financial statement.

Notes to the annual financial statements for the year 1 July 2023 to 30 June 2024

Note 1: Basis of Preparation

The financial statements for the year ended 30 June 2024 are drawn up as a special purpose report to fulfil the requirements of regulations 198, 207 and 221 of the Education and Care Services National Regulations under the Education and Care Services National Law.

Basis of preparation

The financial statements have been prepared on an accruals basis and are based on historical costs. All amounts are presented in Australian dollars which is the Office's functional and presentation currency, unless otherwise noted.

Significant accounting policies

The significant accounting policies that have been used in the preparation of these financial statements are summarised below.

(i) Funding

Funding is measured at the fair value of the consideration received or receivable and is recognised as it becomes due for payment. All amounts are stated net of any applicable goods and services tax (GST).

(ii) Operating expenses

Operating expenses are recognised upon utilisation of the service or at the date of their origin. All amounts are stated net of any applicable goods and services tax (GST).

(iii) Cash and Cash Equivalents

Cash comprises the portion of Education Services Australia Limited's operating bank account balance attributed to this funding agreement that has been received but not yet spent.

(iv) Other liabilities

At 30 June 2024, amounts shown as Other Liabilities represent the un-spent portion of all Funding received or receivable. It is possible that on completion of project work, balances that have not been fully expended could be returned to the Department of Education.



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Independent Auditor's Report to the Education and Care Services Ombudsman, the National Education and Care Services Privacy Commissioner and the National Education and Care Services Freedom of Information Commissioner

Opinion

We have audited the accompanying financial statements of the Education and Care Services Ombudsman, the National Education and Care Services Privacy Commissioner and the National Education and Care Services Freedom of Information Commissioner (collectively referred to as 'the NCES Commissioners'), which comprises the Statement of financial position as at 30 June 2024, the Statement of funding and expenditure for the year then ended 30 June 2024 and the notes to the financial statements comprising a summary of material accounting policies. The Statement of Funding and Expenditure is represented by a surplus of \$200,553 and a total balance of funds remaining of \$259,088 at 30 June 2024.

In our opinion, the Statement of Funding and Expenditure presents fairly, in all material respects, the funding received and subsequent expenditure in accordance with the Service Agreement ('the Agreement').

Basis for Opinion

We conducted our audit in accordance with Australian Auditing Standards. Our responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Report* section of this report.

We are independent of Education Services Australia and the NECS Commissioners in accordance with the ethical requirements of the Accounting Professional and Ethical Standards Board's *APES 110 Code of Ethics for Professional Accountants* ('the Code') that are relevant to our audit of the Statement of Funding and Expenditure in Australia, and we have fulfilled our other ethical responsibilities in accordance with the Code.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Emphasis of Matter – Basis of Accounting and Restriction on Distribution and Use

The accompanying financial statements has been prepared for distribution to the Department of Education. We disclaim any assumptions of responsibility for any reliance on the financial statements or on the information to which it relates to any persons other than Education Services Australia and the Department of Education, or for any purpose other than that for which it was prepared. Our opinion is not modified in respect of this matter.

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Responsibility of Management and the Directors (together referred to as Management) for the Acquittal Statement

Education Services Australia's management is responsible for the preparation of the financial statements in accordance with the requirements of the Agreement. This responsibility includes determining that the basis of accounting is an acceptable basis for the preparation of the financial statements in the circumstances and also includes such internal control as is determined necessary to enable the preparation of the financial statements that is free from material misstatement, whether due to fraud or error.

Auditor's Responsibility for the Audit of the Financial Report

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not a guarantee that an audit conducted in accordance with Australian Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statement.

As part of an audit in accordance with Australian Auditing Standards, we exercise professional judgement and maintain professional scepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the Statement of Funding and Expenditure, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Education Services Australia Management.

We communicate with the Education Services Australia Management regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

Independence

In conducting our audit we have met the independence requirements of the Australian professional accounting bodies.



A handwritten signature in black ink that reads "PKF". The letters are stylized and connected, with a long, sweeping underline that extends to the right.

PKF Melbourne

20 August 2024

A handwritten signature in black ink that reads "Ken Weldin". The signature is written in a cursive style, with the first name "Ken" and the last name "Weldin" clearly legible.

Kenneth Weldin

Partner



National Education & Care Services
FOI & Privacy Commissioners & Ombudsman

Strategic Plan 2021–2024

The Strategic Plan covers the period July 2021–July 2024. It presents a three-year outlook and identifies key challenges, proposed responses and measures of success for the period.

The powers, functions and jurisdiction of the Commissioners and Ombudsman are well defined by legislation; the roles are part-time. The objectives of the office and many of the strategies remain constant over the years. The focus is on quality, timely service delivery and support for agencies and the public.

Setting

The Education and Care Services Ombudsman and the National Education and Care Services Freedom of Information and Privacy Commissioners are independent, statutory officers appointed by the Education Ministers' Meeting (formerly the Council of Australian Governments (COAG) Education Council) under national applied laws legislation - the *Education and Care Services National Law*. The Ombudsman and Commissioner positions are established and operate independently of each other for the purposes of the National Law. One person has been appointed to the three roles. The three positions are collectively referred to as the ECS Commissioners throughout this Plan.

The roles were established in 2012 as part of reforms by COAG to create a national uniform regulatory and quality assurance system for education and care services across Australia under the National Quality Framework for Early Childhood Education and Care (the NQF). In order to implement the system, the National Law established the Australian Children's Education and Care Quality Authority (ACECQA) and early childhood education and care Regulatory Authorities in each of the 8 Australian states and territories - collectively referred to throughout this Plan as the NQF agencies.

ACECQA works with all governments to provide guidance, resources and services under the NQF to support the education and care sector to improve outcomes for children. State and territory Regulatory Authorities are responsible for granting education and care service and provider approvals, carrying out the quality assessment and rating of services, and ensuring services meet the requirements of the National Law and National Regulations.

The role of the office is to provide ombudsman, privacy and freedom of information oversight of the NQF agencies. Ombudsman services are provided with respect to the administrative actions of ACECQA, and freedom of information and privacy complaint, review and investigation services are provided in relation to actions taken in these areas by each of the state and territory Regulatory Authorities and ACECQA. The ECS Commissioners also play an important role in promoting public and service provider confidence in the integrity of the public administration and regulation of early childhood education and care in Australia.

Legislative Framework

The ECS Commissioners operates within a complex legislative framework. Victoria passed the *Education and Care Services National Law Act 2010*, (the National Law) and each state and territory passed legislation applying the National Law, or enacted corresponding legislation, with some variations to accommodate local requirements. The *Education and Care Services National Regulations 2011* amplify the National Law. The National Law confers specified jurisdiction on the ECS Commissioners that is derived from the following Commonwealth Acts as in force from time to time: *Ombudsman Act 1976*, *Freedom of Information Act 1982*, and *Privacy Act 1988*. These Commonwealth Acts are modified by the *Education and Care Services National Regulations 2011* to apply in participating states and territories and to ACECQA for the purposes of the National Quality Framework.

Vision

To support public confidence in the accountability and fairness of the administration of the national regulatory and quality assurance system for early childhood education and care in Australia.

Purpose

To provide independent, fair and accessible complaint-handling, review, investigation and advisory services in relation to the protection of privacy and information access rights, and to work with the NQF agencies to support their decision making and practices.

Guiding Principles

Fairness and Impartiality

We are independent and impartial. We respond to complaints respectfully and without bias and we give everyone the chance to have their say. We do not act as an advocate for any party.

Integrity and Respect

We are open, honest and transparent in our actions and decisions. We take actions and make decisions based on our independent assessment of the facts, the law and the public interest. We maintain high professional standards when delivering our services and we treat complainants and agencies with dignity and respect.

Accessibility and Responsiveness

We are responsive and adapt our approaches to meet people's individual needs. Our services are free, and we strive to ensure everyone can access and use our information and services. We respond to complaints quickly. If we are unable to assist, we explain why and try to suggest alternative actions. We are committed to making our written material easy to read and understand, and to developing simple processes that are easy to navigate. We help people to clarify the details of their complaints to enable a speedy resolution.

Proportionality and Value-adding

We establish processes and seek resolutions that are appropriate to the complaint and ensure complainants are given realistic expectations about what can be achieved. We aim to identify practical solutions to problems, resolve issues by mediation and conciliation wherever possible, and bring about improvements in the processes of the NQF agencies where necessary.

Key challenges for the period

Key challenges facing the office during the period are:

- Establishing stronger relationships with other complaint handling bodies to ensure sharing of information and consistency of practice where appropriate.
- Ensuring the role of the office is known, understood and valued by stakeholders and the public.
- Developing resources to support the NQF agencies in their responsibilities under the FOI and Privacy Acts.
- Ensuring effective policies, procedures and systems are in place to support the work of the office.

Objectives*

* The objectives, strategies and performance indicators refer to each of the Commissioners' and Ombudsman's roles unless otherwise identified. The term "legislation" refers collectively to the legislation identified under *Legislative Framework* above.

1. Provide independent, fair and timely complaint handling and review services Outcome Independent and accessible complaint, review and investigation that is recognised as fair and reasonable by those involved. Strategies Provide timely and effective assessment and investigation of complaints and requests for FOI Decision Review. Establish comprehensive case and knowledge management systems to support timely, accurate decision-making. Resolve complaints using flexible approaches. Engage with NQF agencies to support their understanding of their responsibilities under the legislation and the role and investigation and review processes of the office. Key performance indicators Percent of receipt of complaints/review requests acknowledged within 3 working days (100%). Percent of preliminary assessments of complaints/review requests completed within 10 days (Target 100%).	2. Empower individuals to resolve complaints with the NQF agencies and through the ECS Commissioners' office. Outcome Individuals have the support, advice and information necessary to manage their complaints with the NQF agencies and the ECS Commissioners. Strategies Identify, and provide information to, key early childhood education and care stakeholders about the role and jurisdiction of the office and the obligations of NQF agencies under the legislation. Provide information and assistance to the community and NQF agencies through the inclusion of online resources and relevant external links on the office website, and the enquiry service line. Support NQF agencies to provide clear information about the rights of clients to seek review of their decisions or complain about their actions. Redirect premature complaints made to the office back to the NQF agencies in the first instance when appropriate. Refer complaints not within the jurisdiction of the ECS Commissioners to other relevant bodies.
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Percent of FOI Reviews finalised within 4 months (Target 100%). Percent of complaints open after 12 months from lodgement (Target 0%). Percent of ECS Commissioners decisions upheld following any Tribunal or Court review (100%).	Key performance indicators Number of new resources developed and made publicly available. Level of stakeholder awareness of the role and jurisdiction of the office Level of client satisfaction with online resources.
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3. Support NQF agencies to exercise their responsibilities under the legislation. Outcome The office's investigations and advisory services and materials assist the NQF agencies to meet their legislated obligations. Strategies Develop, or identify external, resources and guidance material to assist the NQF agencies to fulfil their obligations under legislation. Conduct as necessary assessments of the NQF agencies compliance their legislated obligations. Work with the NQF agencies to rectify any identified systemic weaknesses in decision-making, processes or practices. Key performance indicators Resources and guidance material provided to agencies over the period. Assessments of NQF agencies' compliance under the legislation. Level of agency satisfaction with resources and assistance provided by the office.	4. Ensure appropriate policies, processes and systems are in place to support the work of the ECS Commissioners. Outcome Robust case and document management systems, up to date policies, and comprehensive quality information and guidance materials available to the public and the NQF agencies. Strategies Maintain and upgrade the office website at www.necsopic.edu.au including ongoing content review and updates, additional resource materials, links to other complaint handling bodies, and the incorporation of feedback mechanisms. Maintain and refine the complaints and knowledge management systems. Identify and fill gaps in office policies and resource material. Develop client satisfaction measurement tools. Key performance indicators Website information is current and relevant to identified needs. Complaints and knowledge management systems effectively support the responsibilities of the ECS Commissioners. Office policies are up to date and new policies are developed where gaps identified.
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Success

We are successful when we:

- ❖ Undertake our responsibilities in an efficient and timely manner
- ❖ Provide individuals with information and support to enable them to confidently pursue a complaint, or seek a review through the office or with the NQF agencies
- ❖ Provide information and resources that assist agencies to fulfil their obligations under the legislation and encourage sound practice
- ❖ Settle complaints informally through advice, consultation and mediation wherever possible
- ❖ Increase public trust and confidence in the protection of their personal information by the NQF agencies and their rights to access information held by those agencies
- ❖ Establish and maintain positive relationships with key stakeholders
- ❖ Establish effective relationships with other complaint-handling bodies as necessary including ensuring consistency of practice with the Australian Information Commissioner where appropriate.
- ❖ Provide an effective referral system for general enquiries.

Accountability

The ECS Commissioners are formally accountable to the Education Ministers' Meeting and submit reports as necessary to the senior officials' group of the EMM (the Australian Education Senior Officials Committee – AESOC). Information about the performance of the Commissioners is also publicly available in our annual reports which are available on our website and tabled in each of the Commonwealth, State and Territory Parliaments.

The Freedom of Information Commissioner is required to make public NECS FOI Commissioner Review decisions and the Privacy Commissioner is required to keep a register of any Commissioner Determinations and make it publicly available. In both cases these will be published on the office website.

We aim to keep individuals and agencies within our jurisdiction informed about actions and outcomes through appropriate communication

Strategic Plan Review

Progress against the Strategic Plan will be monitored during the period and the Plan will be updated if necessary and reviewed in June 2024.

Updated: October 2022.

NECS Privacy Commissioner Guideline 1

Guideline adopting parts of the AIC Australian Privacy Principles Guidelines

Terms

The following terms and acronyms are used in this Guideline:

ACECQA means the Australian Children’s Education and Care Quality Authority.

APP Guidelines or the **Australian Privacy Principles Guidelines** mean the Australian Privacy Principles Guidelines issued by the Australian Information Commissioner under s28 of the *Privacy Act 1988* (Cth).

Australian Information Commissioner or the Information Commissioner, or AIC means the Australian Information Commissioner as defined in the Privacy Act and the *Australian Information Commissioner Act 2010* (Cth).

ECS Agency/ies means ACECQA and/or the Regulatory Authorities of the participating jurisdictions.

ECSNL means the *Education and Care Services National Law* as set out in the following provisions:

In respect of Australian Capital Territory - the Schedule to the *Education and Care Services National Law Act 2010* (Vic) as adopted by the *Education & Care Services National Law (ACT) Act 2011*.

In respect of New South Wales - the Schedule to the *Education and Care Services National Law Act 2010* (Vic) as adopted by the *Children (Education and Care Services National Law Application) Act 2010* (NSW).

In respect of Northern Territory - Schedule to the *Education and Care Services National Law Act 2010* (Vic) as adopted by the *Education and Care Services (National Uniform Legislation) Act 2011*.

In respect of the Queensland - the Schedule to the *Education and Care Services National Law Act 2010* (Vic) as adopted by the *Education and Care Services National Law (Queensland) Act 2011*.

In respect of South Australia – the Schedule 1 to the *Education and Early Childhood Services (Registration and Standards) Act 2011*.

In respect of Tasmania - the Schedule to the *Education and Care Services National Law Act 2010* (Vic) as adopted by the *Education and Care Services National Law (Application) Act 2011*.

In respect of Victoria – the Schedule to the *Education and Care Services National Law Act 2010* (Vic).

In respect of Western Australia - the Schedule to the *Education and Care Services National Law (WA) Act 2012*.

ECSNL Regulations means the *Education and Care Services National Law Regulations*.

Privacy Act means the *Commonwealth Privacy Act 1988*.

NECS Privacy Commissioner means the National Education and Care Services Privacy Commissioner.

NECS Privacy Guideline mean this Guideline.

OAIC means the Office of the Australian Information Commissioner

Regulatory Authority means the State or Territory early childhood education and care Regulatory Authority of each participating jurisdiction under the *Education and Care Services National Law*.

Preamble

Section 263 of the ECSNL applies the Commonwealth *Privacy Act 1988* (with modifications) as a law of a participating jurisdiction for the purposes of the National Quality Framework.

Section 263(2)(b) of the ECSNL modifies the Privacy Act so that a reference to the *Information Commissioner* is to be construed as a reference to the *National Education and Care Services Privacy Commissioner*.

Section 263(2)(c) of the ECSNL provides that the Privacy Act applies with any other modifications made by the ECSNL Regulations. Regulation 199(a) and (b) of the ECSNL Regulations provide that the Privacy Act only applies to the National Authority (which is ACECQA) and to the Regulatory Authority of each participating jurisdiction. In this Guideline, ACECQA and the Regulatory Authorities are referred to collectively as the ECS Agencies.

The Australian Privacy Principles (APPs) set out in Schedule 1 of the Privacy Act are legally binding principles which are the cornerstone of the privacy protection framework in the Act. The APPs set out standards, rights and obligations in relation to handling, holding, accessing and correcting personal information.

There are 13 APPs. The Privacy Act applies the APPs to APP entities; an APP entity is defined in s6 of the Act as an *agency* or organisation. National Education and Care Services regulation 199 states that the Privacy Act only applies to *agencies* - that is the NQF agencies, ACECQA and the state and territory regulatory authorities. APPs 1 to 6, 8, and 10 to 13 apply to agencies. The Privacy Act states that APPs 7 and 9 only apply to organisations and hence they do not apply to the NQF agencies.

Section 28(1)(a) of the Privacy Act (as modified by the ECSNL) enables the NECS Privacy Commissioner to issue guidelines to ECS Agencies on the Privacy Act for the purpose of the ECSNL.

The Australian Information Commissioner administers the Privacy Act in respect to APP entities, which cover most Australian Government agencies and some private sector organisations. Under s28(1) of the Privacy Act, the AIC has issued guidelines to the Australian Privacy Principles set out in Schedule 1 of the Privacy Act. The APP Guidelines outline:

- the mandatory requirements in the APPs;
- the AIC's interpretation of the APPs, including the matters that the AIC may take into account when exercising functions and powers relating to the APPs;
- examples that explain how the APPs may apply to particular circumstances; and
- good privacy practice to supplement compliance with the mandatory requirements.

The APP Guidelines have traditionally been referenced by the ECS Agencies in applying the Privacy Act for the purposes of the ECSNL, and by the NECS Privacy Commissioner when exercising functions under that Act.

Purpose of this NECS Privacy Commissioner Guideline

The purpose of this NECS Privacy Commissioner Guideline is to:

- i. provide clarification as to the guidelines on the implementation of the Australian Privacy Principles that apply for the purposes of the ECSNL;
- ii. ensure consistency in the interpretation and application of the Privacy Act; and
- iii. remove any uncertainty for agencies or the public as to the expectations of the Office of the NECS Privacy Commissioner in the application of the Privacy Act for the purposes of the ECSNL.

Adoption of Parts of the APP Guidelines

1. Pursuant to section 28(1)(a) of the Privacy Act (as modified by the ECSNL), and **subject to the matters stated in paragraphs 2 to 18 below**, I hereby adopt the following Parts of the APP Guidelines as NECS Privacy Guidelines for the purposes of the ECSNL.

General matters Chapters A, B and C

Part 1	Consideration of personal privacy information
Part 2	Collection of personal information
Part 3	Dealing with personal information
Part 4	Integrity of personal information
Part 5	Access to, and correction of, personal information

2. The APP Guidelines being adopted are those published in the combined July 2019 edition of the APP Guidelines, available at <https://www.oaic.gov.au/privacy/australian-privacy-principles-guidelines/>
3. Revisions by the Australian Information Commissioner to the July 2019 edition of the APP Guidelines will be considered and, if relevant, included in updates to this NECS Privacy Commissioner Guideline. Pending any such updates, ECS Agencies should consider whether any revisions to the APP Guidelines are relevant, and if so, should be applied for the purposes of the ECSNL.
4. References in the APP Guidelines to the Australian Information Commissioner exercising a power or performing a duty or function should generally be read to mean the NECS Privacy Commissioner exercising the power or performing the duty or function in relation to the ECS Agencies.
5. ECS Agencies must note that the APP Guidelines are not legally binding and do not constitute legal advice about how an ECS Agency should comply with the Australian Privacy Principles in particular circumstances. ECS Agencies may wish to seek independent legal advice where appropriate.

Exclusions - tax file numbers, credit reporting, and emergencies and disasters

6. ECSNL Regulations 196(d) and 201(o) exclude the following matters from the functions of the NECS Privacy Commissioner. Accordingly, the APP Guidelines on those matters are excluded from this NECS Privacy Guideline. The excluded matters comprise the following:
 - (a) ECSNL regulation 196(d) excludes matters relating to tax file numbers (set out in s17 and s18 of the Privacy Act);

- (b) ECSNL regulation 196(d) excludes matters relating to credit reporting (set out in s19 to s21W of the Privacy Act);
- (c) ECSNL Regulation 201(o) excludes matters relating to emergencies and disasters (set out in s80F to s80T of the Privacy Act).

Exclusions – medical research, health information and genetic information

- 7. The making of guidelines about medical research, health information and genetic information are also excluded from the functions of the NECS Privacy Commissioner by ECSNL Regulation 201(q). Accordingly, this NECS Privacy Guideline does not adopt the APP Guidelines on those matters.
- 8. ECS Agencies will nevertheless have to comply with the Privacy Act provisions on medical research, health information and genetic information, where those provisions apply to *Agencies, APP entities, or Entities*. For example, APP 3.3(a)(i) deals with the collection of *sensitive information* by an *agency*, and sensitive information is defined in s6 of the Privacy Act to include *health information*. ECS Agencies should therefore have regard to the APP Guidelines on medical research, health information and genetic information where the Privacy Act provisions (as modified by the ECSNL) apply to them. (See paragraphs 11 to 15 of this Guideline for more details).

Exclusion – Privacy Regulations made under the Privacy Act

- 9. ECSNL Regulation 203 states that the regulations made under the Privacy Act do not apply. Accordingly, any APP Guidelines which implement or rely on those regulations do not apply to this NECS Privacy Guideline.

Exclusion – paragraphs A29 to A32 of the APP Guidelines

- 10. Paragraphs A29 to A32 of the APP Guidelines are to be disregarded. Those paragraphs note that the *ACT Information Privacy Act 2014* regulates how personal information is handled by ACT public sector agencies, and that under an arrangement between the ACT Government and the Australian Government, the Australian Information Commissioner is exercising some of the functions of the ACT Information Privacy Commissioner.

Provisions of the Privacy Act applying to an Agency, APP Entity or Entity will also apply to ECS Agencies.

- 11. ECSNL Regulation 199 states that the Privacy Act only applies to *agencies*, and the *agencies* are the *National Authority* and *each Regulatory Authority of a participating jurisdiction*. The Privacy Act uses the following definitional terms:
 - (a) **Agency** - which is defined in s6 of the Privacy Act to mean a Minister, or a Department (and includes a long list of other Government bodies).
 - (b) **APP entity**, which is defined in s6 of the Privacy Act to mean 'an **agency** or organisation'.
 - (c) **Entity** - which is defined in s6 of the Privacy Act to mean 'an **agency**, organisation or small business operator.

- (d) **Organisation** - which is defined in s6C of the Privacy Act to include a number of bodies, but most relevantly a person or body that is not a **small business**, namely a business that has an annual turnover of \$3million or less.
12. In applying ECSNL Regulation 199, ECS Agencies should note the following:
- (a) The Privacy Act applies different parts of the Act to different bodies.
 - (b) Not all of the Privacy Act applies to **Agencies**.
 - (c) The definitions in the Privacy Act of *APP entity* and *entity* **include** an *Agency*.
13. The sections of the Privacy Act that apply to an Agency, APP Entity or Entity, will also apply to ECS Agencies. For example:
- (a) Section 13(a) of the Privacy Act states that an act of an **APP entity** is an interference with the privacy of an individual if it breaches an Australian Privacy Principle, or breaches a registered APP code that binds that entity. As the definition of an APP entity includes an Agency, that section will apply to ECS Agencies.
 - (b) Section 15 of the Privacy Act states an APP entity must not do an act, or engage in a practice, that breaches an Australian Privacy Principle. As the definition of an APP entity includes an Agency, that section will apply to ECS Agencies.
 - (c) Section 16A of the Privacy Act lists some permitted general situations in relation to the collection, use or disclosure of personal information. The situations are listed in a table to that section, and column 1 of that table lists the entities that are given the relevant permissions. Items 1 to 6 list an *APP entity*. As the definition of an APP entity includes an Agency, those items will apply to ECS Agencies. Item 7 lists the Defence Force, which will not include an ECS Agency.
 - (d) The above points are illustrative examples only and are not intended as an exhaustive list of the sections of the Privacy Act that apply to the ECS Agencies.
14. The sections of the Privacy Act which **do not** apply to an Agency, APP Entity or Entity, will **not** apply to ECS Agencies. Whilst the following examples refer to the credit reporting matters excluded by ECSNL regulation 196(d) - and discussed in paragraph 6 above – they provide appropriate examples to illustrate this definition:
- (a) Part 111A of the Privacy Act (comprising s19 to 20ZA) applies to *credit reporting bodies*. Those bodies are defined in s6 to mean an organisation, or an agency prescribed by regulations (ie by the Privacy Regulations (Cth)) that carries on a credit reporting business. The first body is not an Agency. The second body (an agency prescribed by the regulations) will not include an ECS Agency, because (as stated earlier in paragraph 6) ECS regulation 203 states the Privacy Regulations do not apply.
 - (b) Division 3 of Part 111A of the Privacy Act (comprising sections 21 to 21W) applies to *credit providers*. Those bodies are defined in s6G to 6K to mean an organisation, a small business operator, or an agency prescribed by regulations. The first two bodies are not an Agency. For the same reason expressed in the previous example, the third body will not include an ECS Agency, because ECS regulation 203 states the Privacy Regulations do not apply.

- (c) The above points are illustrative examples only and are not intended as an exhaustive list of the sections of the Privacy Act that do not apply to the ECS Agencies.
15. The approach in paragraphs 11 to 14 to determining the provisions of the Privacy Act which do, and do not, apply to the ECS Agencies also applies to the application of the Australian Privacy Principles listed in Schedule 1 to the Privacy Act. For example:
- (a) **Most** of the Australian Privacy Principles are expressed to impose obligations on *APP entities*. As the definition of an APP entity includes an Agency, those Principles which impose obligations on APP entities also apply to ECS Agencies.
 - (b) **Some** of the Australian Privacy Principles are expressed to **only apply to an organisation**. Some examples are APPs 3.2, 6.4 and 12.8, which only apply if the APP entity is an *organisation*. Similarly, APP 7 deals with direct marketing and only applies to *organisations*, as does APP 9 which deals with *government related identifiers*. The definition of organisation falls outside the meaning of agency, and therefore those APPs **do not** apply to ECS Agencies.

Further modifications made by the ECSNL Regulations

16. In applying the APP Guidelines, ECS Agencies will need to be mindful of all the modifications made to the Privacy Act by the ECSNL Regulations, and in particular the following.
- (a) As required by ECSNL Regulation 201(i), a reference to a contracted service provider is to be applied as if it were a reference to a person who provides goods or services under a contract with the National Authority or a Regulatory Authority (of a participating jurisdiction), or a subcontract for that contract.
 - (b) As required by ECSNL Regulation 201(j), a reference to a Commonwealth contract, a government contract or a State contract, is to be applied as if it were a reference to a contract under which goods or services are to be, or were to be, provided to the National Authority or a Regulatory Authority (of a participating jurisdiction).
 - (c) As required by ECSNL Regulation 201(h), a reference to the Ombudsman is to be applied as if it were a reference to the ECS Ombudsman.
 - (d) As required by ECSNL Regulation 201(p), the provisions relating to transferring complaints to the Ombudsman do not apply to complaints made about a Regulatory Authority of a participating jurisdiction.
 - (e) As required by ECSNL Regulation 201(e), a reference to the Administrative Appeals Tribunal is to be applied as if it were a reference to a *relevant administrative tribunal*. (Note: ECS Regulation 202 lists the relevant administrative tribunal of the participating jurisdictions).
 - (f) As required by ECSNL Regulation 201(f), a reference to the Federal Court is to be applied as if it were a reference to the Supreme Court of a participating jurisdiction.
 - (g) As required by ECSNL Regulation 201(g), a reference to the Federal Magistrates Court is to be applied as if it were a reference to the Magistrates Court or Local Court of a participating jurisdiction. (Note: Federal Magistrates Courts have been renamed Federal Circuit Courts.)

References in APP Guidelines to other OAIC guides and material.

17. The guides and material referred to in the APP Guidelines form part of this NECS Guideline. For example, footnote 1 to the APP Guidelines on APP1 refers to the *OAIC Guide to Undertaking Privacy Impact Assessments*, and footnote 2 refers to the *OAIC Data Breach preparation and Response*. The relevant guides and material can be found on the OAIC website at <https://www.oaic.gov.au> under the *Privacy Tab*.
18. The adoption of the APP Guidelines is not intended to preclude the NECS Privacy Commissioner from issuing further guidance material to ECS Agencies on the operations of the Privacy Act (as modified) as necessary.

Lesley Foster

National Education and Care Services Privacy Commissioner

Document Currency

This Guide will be reviewed as necessary and at the latest every 6 months and may, by instrument in writing, be varied, amended, or revoked.

This version	Reviewed June 2023
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ACECQA and Regulatory Authorities' Freedom of Information Statistics

This appendix sets out information about activity under the FOI Act in ACECQA and each of the state and territory Regulatory Authorities, including information about:

- requests for access to documents
- applications for internal review of FOI decisions, and
- applications for amendment of personal records.

Table 1 sets out information about the number of requests for access to documents received and finalised by ACECQA and each Regulatory Authority for the last 3 years as well as the outcomes of finalised requests.

Table 1 –Volume of FOI requests and outcomes by agency, 2021–2022 to 2023–2024^a

Year	ACECQA	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	TOTAL
2021–2022										
No. on hand at 1 July	0	1	7	0	1	0	0	0	2	11
No. received	6	3	44	0	15	0	0	12	7	87
No. finalised	6	3	47	0	10	0	0	9	8	83
No. granted in full	0	1	5	0	3	0	0	0	0	9
No. granted in part	1	1	30	0	5	0	0	7	0	44
No. refused in full	0	0	7	0	0	0	0	1	8	16
No. withdrawn ^a	5	1	5	0	2	0	0	1	0	14
2022–2023										
No. on hand at 1 July	0	1	3 ^b	0	6	0	0	2 ^b	1	13
No. received	1	3	43	0	10	3	1	8	4	73
No. finalised	1	2	37	0	14	2	1	10	5	72
No. granted in full	0	0	4	0	1	0	1	2	0	8
No. granted in part	0	2	23	0	10	2	0	6	5	48
No. refused in full	0	0	3	0	0	0	0	1	0	4
No. withdrawn ^a	1	0	7	0	3	0	0	1	0	12
2023–2024										
No. of hand at 1 July	0	2	9	0	2	1	0	0	0	14
No. received	6	3	56	1	15	3	2	8	12	106
No. finalised	6	4	47	1	16	4	2	7	11	98
No. granted in full	0	1	3	0	0	1	1	0	1	7
No. granted in part	2	3	29	0	6	3	1	5	9	58
No. refused in full	1	0	11	1	8	0	0	1	1	23
No. withdrawn ^a	3	0	4	0	2	0	0	1	0	10

^a This includes requests that are withdrawn by the applicant as well as requests taken to be withdrawn when the applicant fails to respond to a request consultation process (s 24AB(7)) or to a charge notice (s 29(2)).

^b The information included in this table is based on returns provided by the agencies. Discrepancies may arise between years.

Table 2 sets out information about the number of times an exemption or conditional exemption under Divisions 2 and 3 of Part IV of the *Freedom of Information Act 1982* was applied by ACECQA and each Regulatory Authority in decisions made on requests for access to documents in 2023–2024. Exemptions or conditional exemptions were applied in 62 decisions during the reporting period.

Table 2 – Exemptions applied by agencies in FOI decisions, 2023–2024

Section of the FOI Act	Exemption/Conditional Exemption Claimed	No. of times applied	% of times applied	% of decisions (62) in which applied
Section 37	Documents affecting enforcement of law and protection of public safety	11	8%	18%
Section 38	Documents to which secrecy provisions of enactments apply	2	1%	3%
Section 42	Documents subject to legal professional privilege	5	4%	8%
Section 45	Documents containing material obtained in confidence	4	3%	6%
Section 47C	Deliberative processes	8	6%	13%
Section 47E	Certain operations of agencies	35	25%	56%
Section 47F	Personal privacy	55	40%	89%
Section 47G	Business (other than documents to which section 47 applies)	18	13%	29%
TOTAL		138	100%	

Table 3 sets out information about the time taken by ACECQA and each Regulatory Authority to make decisions on FOI requests and the amount of charges that they collected in 2023–2024.

Table 3 – Time taken to make FOI decisions and charges collected, 2023–2024

Jurisdiction	Time taken to make FOI decisions						Charges collected \$
	Within applicable time period ^a	< 30 days over time period	31–60 days over time period	61–90 days over time period	> 90 days over time period	Total	
ACECQA	3	0	0	0	0	3	\$0.00
ACT	4	0	0	0	0	4	\$0.00
NSW	42	1	0	0	0	43	\$240.00
NT	1	0	0	0	0	1	\$0.00
QLD	14	0	0	0	0	14	\$0.00
SA	4	0	0	0	0	4	\$0.00
TAS	2	0	0	0	0	2	\$0.00
VIC	2	3	0	0	1	6	\$64.00
WA	11	0	0	0	0	11	\$0.00
TOTAL	83	4	0	0	1	88	\$304.00

^a In general, an agency must notify an applicant of a decision on a request within 30 calendar days after receiving a request (s 15(5)(b) of the FOI Act). However, the agency may extend that by agreement with the applicant (s 15AA), or to undertake consultation with a third party (ss 15(6)-(8)). The processing period is also suspended while an agency consults an applicant to decide if a practical refusal reason exists (s 24AB(8)) and pending the applicant paying all or part of a notified charge or the agency varying the decision that a charge is payable (s 31). An agency can also apply to the Information Commissioner for more time to process a request when the request is complex or voluminous (s 15AB).

Table 4 sets out information about the volume and outcome of requests for internal review of decisions made about FOI requests as well as information about the number of applications made to ACECQA and each of the Regulatory Authorities in 2023–2024 to amend or annotate personal information.

Table 4 – Internal review of FOI request decisions and applications to amend or annotate personal information, 2023–2024

Jurisdiction	Internal review of decisions about FOI requests				No. of applications to amend or annotate personal information	
	No. received	No. finalised	No. decisions changed	No. decisions not changed	No. received	No. finalised
ACECQA	0	0	N/A	N/A	0	0
ACT	0	0	N/A	N/A	0	0
NSW	1	2	1	1	0	0
NT	0	0	N/A	N/A	0	0
QLD	0	0	N/A	N/A	0	0
SA	0	0	N/A	N/A	0	0
TAS	0	0	N/A	N/A	0	0
VIC	1	0	N/A	N/A	0	0
WA	2	2	1	1	0	0
TOTAL	4	4	2	2	0	0

There were no applications for internal review of decisions about amending or annotating personal information received or finalised in 2023–2024.

NECS FOI Commissioner Instrument 01/V2

Instrument adopting parts of the Australian Information Commissioner Freedom of Information Guidelines

Terms

The following terms and acronyms are used in this Instrument:

ACECQA means the Australian Children’s Education and Care Quality Authority.

AIC FOI Guidelines mean the Guidelines issued by the Australian Information Commissioner under s93A of the *Freedom of Information Act 1982* (Cth).

ECS Agency/ies means ACECQA and/or the state and territory Regulatory Authorities of the participating jurisdictions.

ECSNL means the *Education and Care Services National Law* as set out in the following provisions:

In respect of the Australian Capital Territory - the Schedule to the *Education and Care Services National Law Act 2010* (Vic) as adopted by the *Education & Care Services National Law (ACT) Act 2011*.

In respect of New South Wales - the Schedule to the *Education and Care Services National Law Act 2010* (Vic) as adopted by the *Children (Education and Care Services National Law Application) Act 2010* (NSW).

In respect of the Northern Territory - the Schedule to the *Education and Care Services National Law Act 2010* (Vic) as adopted by the *Education and Care Services (National Uniform Legislation) Act 2011*.

In respect of Queensland - the Schedule to the *Education and Care Services National Law Act 2010* (Vic) as adopted by the *Education and Care Services National Law (Queensland) Act 2011*.

In respect of South Australia – Schedule 1 to the *Education and Early Childhood Services (Registration and Standards) Act 2011*.

In respect of Tasmania - the Schedule to the *Education and Care Services National Law Act 2010* (Vic) as adopted by the *Education and Care Services National Law (Application) Act 2011*.

In respect of Victoria – the Schedule to the *Education and Care Services National Law Act 2010* (Vic).

In respect of Western Australia - the Schedule to the *Education and Care Services National Law (WA) Act 2012*.

ECSNL Regulations means the *Education and Care Services National Law Regulations*.

FOI Act means the Commonwealth *Freedom of Information Act 1982*.

Information Commissioner as defined in the FOI Act and the *Australian Information Commissioner Act 2010* (Cth) means the Australian Information Commissioner.

Instrument as defined by clause 12 of Schedule 1 of the ECSNL includes a statutory instrument.

NECS FOI Commissioner means the National Education and Care Services Freedom of Information Commissioner.

Regulatory Authority means the state or territory early childhood education and care Regulatory Authority of each participating jurisdiction under the Education and Care Services National Law.

Statutory Instrument as defined by clause 12 of Schedule 1 of the ECSNL means an instrument (including a regulation) made or in force under or for the purposes of this Law, and includes an instrument made or in force under any such instrument.

Preamble

Section 264 of the *Education and Care Services National Law* applies the Commonwealth *Freedom of Information Act 1982* (with modifications) as a law of a participating jurisdiction for the purposes of the National Quality Framework. Section 264(2)(b) of the ECSNL modifies the FOI Act so that a reference to the *Information Commissioner* is to be construed as a reference to the *National Education and Care Services Freedom of Information Commissioner*. Section 264(2)(c) of the ECSNL provides that the FOI Act applies with any other modifications made by the *Education and Care Services National Law Regulations*. Regulation 208 of the ECSNL Regulations provides that the FOI Act only applies to the National Authority (which is the Australian Children’s Education and Care Quality Authority) and to the education and care Regulatory Authority of each participating jurisdiction.

In this Instrument, ACECEQA and the Regulatory Authorities are referred to collectively as the ECS Agencies.

Section 93A (1) of the Commonwealth *Freedom of Information Act 1982* (as modified by the ECSNL) enables the NECS FOI Commissioner, by instrument in writing, to issue guidelines for the purposes of the FOI Act. The same section provides that ECS Agencies must have regard to any such guidelines when exercising their functions or powers under the FOI Act.

Clauses 24 (1) & (2) of Schedule 1 of the ECSNL allows a statutory instrument made under that Law to apply, adopt or incorporate (with or without modification) the provisions of another document (whether of the same or a different kind) as in force at a particular time, or as in force from time to time.

The Australian Information Commissioner administers the FOI Act in respect to Commonwealth Government agencies. Under s 93A of the FOI Act the Australian Information Commissioner has issued guidelines that provide information and guidance on the interpretation, operation, and administration of the FOI Act. A copy of the Guidelines is at <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/> The AIC FOI Guidelines have traditionally been referenced by the ECS Agencies in determining FOI access applications and by the NECS FOI Commissioner when undertaking Commissioner Reviews.

Purposes of this Instrument

The purposes of this Instrument are to:

- (i) provide clarification as to the guidelines that apply for the purposes of the ECSNL in relation to ECS Agencies exercising their functions under the Commonwealth *Freedom of Information Act 1982* in respect of freedom of information requests received by the Agencies;
- (ii) ensure consistency in the interpretation and application of the Commonwealth *Freedom of Information Act 1982*; and
- (iii) remove any uncertainty for agencies or the public as to the expectations of the Office of the NECS FOI Commissioner in the application of the Commonwealth *Freedom of Information Act 1982*.

Adoption of Parts of the Australian Information Commissioner FOI Guidelines

Pursuant to section 93A of the FOI Act (as modified by the ECSNL) I hereby make this Instrument adopting the following Parts of the AIC FOI Guidelines:

Part 1	Introduction
Part 2	Scope of application of the FOI Act
Part 3	Processing and deciding on requests for access
Part 4	Charges for providing access
Part 5	Exemptions
Part 6	Conditional exemptions
Part 7	Amendment and annotation of personal records
Part 9	Internal Agency review of decisions
Part 10	Review by Information Commissioner
Part 11	Complaints and Investigations
Part 12	Vexatious applicant declarations
Part 14	Disclosure Log
Part 15	Reporting to the extent that agencies are required to provide an annual FOI statistical return
Glossary	To the extent of references to terms used in the abovementioned Parts.

ECS Agencies should note that the above parts of the AIC FOI Guidelines are hereby adopted *as in force from time to time*. This is effected pursuant to clause 24(2) of Schedule 1 of the ECSNL, which provides that if a statutory instrument applies, adopts or incorporates the provisions of a document, the statutory instrument applies, adopts or incorporates the provisions *as in force from time to time*, unless the statutory instrument otherwise expressly provides.

In adopting the above parts of the AIC FOI Guidelines, references in the Guidelines to the Australian Information Commissioner exercising a power or performing a duty or function generally should be read to mean the NECS FOI Commissioner exercising such power or performing such a duty or function in relation to the ECS Agencies.

In applying the above Guidelines, ECS Agencies will need to be mindful of the modifications made to the FOI Act by the ECSNL Regulations, and in particular regulations 209 and 210. For example, page 43 of Part 3 of the above Guidelines refer to third party applications to the AAT or the Federal Court. The modifications made by the ECSNL regulation 209(d) require the reference to the Federal Court to mean the relevant jurisdiction's Supreme Court, and ECSNL regulation 210 requires the reference to the AAT to mean the relevant jurisdiction's administrative tribunal.

ECS Agencies must have regard to the above parts of the AIC FOI Guidelines when exercising their responsibilities under the FOI Act.

Lesley Foster

National Education and Care Services Freedom of Information Commissioner

Document History

This Instrument is reviewed as necessary and at the latest every 6 months and may, by instrument in writing, be varied, amended, or revoked.

This version	Reviewed June 2023
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