

2026

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

ELEVENTH ASSEMBLY

**2024-2025 Education and Care Services Ombudsman and Privacy and FOI Commissioners
Annual Report**

**Presented by
Yvette Berry MLA
Minister for Education and Early Childhood
May 2026**

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2024–2025

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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Table of Contents



National Education & Care Services FOI & Privacy Commissioners & Ombudsman

LETTER OF TRANSMITTAL	1
ABOUT THE COMMISSIONERS	3
The ECS Commissioners	3
The regulated education and care sector	3
Roles of the ECS Commissioners	4
COMMISSIONERS' REVIEW	5
Reflections on 2024–2025	5
Management of the office	8
Looking ahead to 2025–2026	9
OMBUDSMAN	10
Functions of the Ombudsman	10
Activity in 2024–2025	10
PRIVACY	11
Functions of the Privacy Commissioner	11
Activity in 2024–2025	11
FREEDOM OF INFORMATION	13
Functions of the Freedom of Information Commissioner	13
Activity in 2024–2025	13
APPENDICES	19
State and Territory Regulatory Authorities and administrative units	20
Audited Financial Report 2024–2025	21
BASIS OF PREPARATION	23
SIGNIFICANT ACCOUNTING POLICIES	23
(I) FUNDING	23

(II) OPERATING EXPENSES	23
(III) CASH AND CASH EQUIVALENTS	23
(IV) OTHER LIABILITIES	23
<i>Opinion</i>	24
<i>Basis for Opinion</i>	24
<i>Emphasis of Matter – Basis of Accounting and Restriction on Distribution and Use</i>	24
<i>Responsibility of Management and the Directors (together referred to as Management) for the Acquittal Statement</i>	25
<i>Auditor’s Responsibility for the Audit of the Financial Report</i>	25
<i>Independence</i>	26
Strategic Plan 2025–2027	27
Who we are and what we do	27
Purpose	28
Guiding Principles	28
Priorities	28
Objectives	29
Stakeholder engagement	30
Accountability	30
Review of Strategic Plan	31
Guideline adopting parts of the AIC Australian Privacy Principles Guidelines	32
National Authority and Regulatory Authorities’ Freedom of Information Statistics	39
Instrument adopting parts of the Australian Information Commissioner Freedom of Information Guidelines	43

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National Education & Care Services FOI & Privacy Commissioners & Ombudsman

Letter of Transmittal

25 February 2026

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 from 1 July 2024 to 30 June 2025. This annual report is the 14th such report since the establishment of the roles in January 2012. During the reporting period, the 3 positions were initially held by Ms Jackie Wilson and Mr Chris Matthies. Ms Darryl Everett was appointed as Freedom of Information Commissioner for a period of 3 years from 30 June 2025 following the departure of Mr Matthies on 27 June 2025.

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

Darryl Everett
National Education and Care Services
Freedom of Information Commissioner

PO Box 177 CARLTON SOUTH VIC 3053 | 03 9910 9868 | enquiry@necsopic.edu.au | www.necsopic.edu.au

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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 and early childhood education and care, 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 National Law sets aside the states' and territories' 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* (Ombudsman Act) 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 as the National Authority and early childhood education and care services 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 18,018 approved education and care services and 7,215 approved providers across Australia under the NQF as at 1 July 2025¹.

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 do not include Tasmanian preschools /kindergartens and most preschools/ kindergartens in Western Australia which are outside the scope of the NQF, as well as other services not regulated under the National Law.

The remainder of the services are 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 2025*, August 2025

Commissioners' review

Reflections on 2024–2025

Stakeholder engagement

In 2024–2025 we continued to strengthen our relationships with our key stakeholders, in particular, to enhance our understanding of the sector and the current operating environment for the agencies we oversee.

We finalised a new Strategic Plan for the office for the period February 2024 to December 2027. It is set out at **Appendix 3** to this Report. Our Service Charter was also reviewed and updated in February 2025. Both documents were finalised following consultation with our key stakeholders.

We also began updating the Commissioners' FOI, Privacy and Ombudsman manuals which are internal resources designed to support the Commissioners in their roles. They were last updated in 2014. The Ombudsman and Privacy manuals were finalised within the financial year and the FOI manual will be completed during 2025–2026.

During the year we had regular contact with the Australian Government Department of Education, ACECQA and many Regulatory Authorities to follow up on individual matters or discuss specific trends/issues. In February 2025 we participated in a meeting of the Early Childhood Policy Group and provided an update on work undertaken in the previous year.

We developed and distributed an NECS Commissioners email update on a 6 monthly basis to keep Regulatory Authorities informed about what we are focusing on, pass on information about significant developments in the FOI and privacy areas and also to draw attention to resources that may be of assistance.

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 continued to engage with officers from the Commonwealth Ombudsman's office and the Office of the Australian Information Commissioner to discuss specific issues, share information and collaborate on matters of mutual interest.

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 ACT Information Privacy Commissioner to discuss our mutual roles. We intend to engage with other relevant oversight authorities in 2025–2026.

Workload

The ECS Commissioners received a significant increase in the number of complaints and applications for review during 2024–2025. The FOI Commissioner experienced a 400% increase in applications for review received compared to the previous reporting period. Similarly the Ombudsman experienced a 600% increase in the number of complaints received compared to the previous reporting period.

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

The office continued to receive a steady stream of complaints and enquiries during the reporting period that were outside the formal jurisdiction of the ECS Commissioners.

We received 54 ex-jurisdiction complaints and enquiries, a significant increase from the previous financial year (46%). A large proportion were unrelated to early childhood education and care (28%). The next largest proportion (20%) were about individual service provider operations including complaints about policies and practices at services. The numbers of complaints about child care fees were comparable (19%), a reduction from the previous financial year.

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

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

The early childhood education and care sector continues to experience a significant increase in complaints, which is unsurprising given the strong focus on child safety and the importance of timely reporting in an environment of significant allegations. We are mindful of the additional workload pressures this has placed on the NQF agencies when we are dealing with them.

Performance against our key performance indicators

In developing our Strategic Plan 2025–2027 we consulted on the key performance indicators which would demonstrate our performance against our 4 key objectives:

1. Provide independent, fair and timely complaint-handling and review services
2. Support individuals and organisations to understand and pursue their rights to complain or seek review in relation to matters under the NQF
3. Support NQF agencies to meet their responsibilities under the legislation, and
4. Contribute to relevant legislative and policy development.

This annual report for the first time includes a table reporting on our performance against the Strategic Plan key performance indicators. Whilst

most of the indicators are readily measurable one will require further consideration to develop a suitable measure. We will monitor progress against the performance indicators and update the performance indicators and Plan if necessary to better reflect our role.

Performance criteria Strategic Plan 2025–2027	2024–2025 result
1. Provide independent, fair and timely complaint-handling and review services	
Acknowledge 100% of complaints and review applications within 5 working days.	88%
Finalise 50% of FOI reviews within 6 months and 100% within 12 months of receipt.	27% finalised within 12 months, with 20% completed within 6 months
Finalise 50% of complaints within 6 months and 100% within 12 months of receipt.	100%
2. Support individuals and organisations to understand and pursue their right to complain or seek review in relation to matters under the NQF	
Review standard complaint and review rights wording once every 12 months <i>Standard wording updated and provided July 2024</i>	complete
Complete a review of the content of the office website once every 12 months. <i>Focus this year on accuracy of contact information, and the restructure of information to improve access of key documents such as Strategic Plan, Service Charter and Annual Reports</i>	ongoing
Respond to 100% of complaints and applications not within the ECS Commissioners' jurisdiction within 10 working days.	100%
3. Support NQF agencies to meet their responsibilities under the legislation	
Respond to 100% of requests from NQF agencies for guidance within 5 working days.	75%
Provide NQF agencies with updates on developments and new resources at least twice every 12 months. <i>6 monthly updates provided by Commissioners</i>	complete
NQF agencies indicate satisfaction with the assistance provided by the office in response to a request for feedback.	Developing a process to measure this new KPI
4. Contribute to relevant legislative and policy development	
Hold a formal consultation meeting with the NQF agencies at least once every 12 months. <i>Met with ECPG and provided an update on the year in review</i>	complete
Number of other stakeholder engagement activities undertaken. <i>Consulted all jurisdictions on the new Strategic Plan 2025-2027, the updated Service Charter and 2023 & 2024 Annual Reports as well as ad hoc engagements</i>	ongoing

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 2024–2025.

Child safety review

Following the [Review of Child Safety Arrangements under the National Quality Framework](#)² undertaken by ACECQA in 2023, Education Ministers agreed to several changes to the Education and Care Services National Regulations and the National Quality Standard (NQS) some of which commenced from 1 September 2025 and others will commence from 1 January 2026. These include policies and procedures for the safe use of digital technologies and online environments and refinements to NQS Quality Areas 2 and 7. Two new Child Safety Guides were released in June 2025 to help providers and services prepare for the changes:

- NQF Online Safety Guide – embedding child safe online environments in education and care services.
- NQF Child Safe Culture Guide – embedding child safe cultures in education and care services.

We provided feedback on the changes to the proposed Regulations and the NQS and were consulted on drafts of the Guides during their development.

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

The final report - [A path to universal early childhood education and care](#)³ – was released on 18 September 2024.

² Information about the review can be accessed at www.acecqa.gov.au/child-safety-review.

³ The report can be accessed at www.pc.gov.au/inquiries/completed/childhood/report.

Review of the *Privacy Act 1988*

Following the [Privacy Act Review Report](#)⁴ and the Government response a range of privacy reforms were proposed.

The Privacy and Other Legislation Amendment Bill 2024 containing a first tranche of reforms was passed by the Australian Parliament on 29 November 2024.

The *Privacy and Other Legislation Amendment Act 2024* (December 2024) introduced a mandate for the Office of the Australian Information Commissioner (OAIC) to develop a Children's Online Privacy Code (the Code), which will put children at the centre of privacy protections in Australia.

The Code will specify how online services accessed by children must comply with APPs and may impose additional requirements, provided they are not inconsistent with the existing principles. Broad consultations have been taking place since January 2025 and will conclude in August 2025. The Code is scheduled to be in place by 10 December 2026, and we will continue to engage in its development.

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 via a service agreement with ESA for the period from 1 July 2024 to 30 June 2026.

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

The ECS Commissioners would like to acknowledge the continued support and assistance provided by ESA staff.

Budget and audited financial report

The annual budget for the ECS Commissioners was \$400,000 in 2024–2025

The financial report for 2024–2025 has been prepared by auditors PKF Melbourne and the audit statement is at **Appendix 2** to this Report. PKF are also the auditors for ESA.

The fees and retainer payable to the Commissioners continued to comprise the largest component of expenditure in the reporting year (65%). Costs paid for project staffing which related to the updating of the Commissioner's FOI, Privacy and Ombudsman manuals constituted the next largest expenditure item (24%). The service fee payable to ESA (5%) and modest costs for the financial audit, external legal advice, maintaining the website, phones and travel made up the bulk of the remainder of the office costs.

The 2024–2025 financial year was the first full year of operations with the 2 Commissioners in place. The office ended 2024–2025 with a small surplus. This offers the opportunity for the office to undertake some strategic projects of value identified through consultation with stakeholders.

Looking ahead to 2025–2026

Consultations with the Regulatory Authorities indicate support for the development of targeted resources to better support them in carrying out their responsibilities under the Commonwealth Acts. We propose to commence this work in 2025–2026 in consultation with NQF agencies.

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

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.

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.

Activity in 2024–2025

During the 2024–2025 reporting period, 14 formal complaints were received by the office of the Ombudsman in relation to the administrative actions of ACECQA. The complaints concerned NQF qualification assessments made by ACECQA (3) and the skills assessment process (11).

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, this is known as an NQF qualification assessment.

ACECQA is also the approved assessing authority for the Early Childhood (Pre-Primary School) Teacher, Child Care Centre Manager and Child Care Worker (group leaders only) occupations under the Skilled Migration Program. It is ACECQA's responsibility to set the Assessment

Standards and complete skills assessments for the applicants applying for a skilled migration visa under these occupations.

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.

Of the 3 NQF qualification assessment complaints, one of the complaints received was withdrawn, preliminary enquiries were undertaken in relation to another complaint and ACECQA's assessment supported. In relation to the third matter the complainant had not contacted ACECQA and sought an internal review. This advice was provided and no further action was taken.

In relation to skills assessments in the period April – June 2025, 11 complaints were received in relation to the new category of Early Childhood (Pre-Primary School) skills assessments a function which ACECQA took over from the Australian Institute for Teaching and School Leadership in December 2024. All of these complaints focused on the significant time delays that complainants were experiencing after lodging their applications and the perceived lack of transparency in the process. ACECQA was advised of the complaints and the issues they raised and two of these complaints were formally sent to ACECQA.

The Ombudsman met with ACECQA several times over this period virtually and sought and received detailed information about waiting times, staffing to support this new function and communication with applicants.

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 2024–2025

Complaints

In the 2024–2025 reporting period, 2 privacy complaints were received by the Privacy Commissioner. Both of these complaints were subsequently withdrawn.

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 tries to 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 2024–2025 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.

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.

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

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 certain exceptions and exemptions specified in the legislation. Each of the NQF agencies is subject to the FOI Act and must comply with its requirements.

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 2024–2025

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

In summary, the 9 NQF agencies collectively received 160 new FOI requests in 2024–2025, 51% more than in the last reporting period (106) and 120% more than in 2022–23 (73). The number of requests received increased in all jurisdictions except Western Australia and for ACECQA.

The largest increases in requests in 2024–2025 were experienced by Queensland (an increase of 23 requests (153%) compared to the last reporting period) and Victoria (an increase of 15 requests (188%)). Requests received by the Australian Capital Territory (9), the Northern Territory (3) and Tasmania (4) in 2024–2025 represented significant proportional increases (200% for each of the territories and 100% for Tasmania) compared to 2023–2024, although the actual numbers remain low.

ACECQA received the same number of requests (6) as in 2023–2024 and Western Australia received 3 fewer requests than last year, a 25% decrease. New South Wales received the highest number of requests (64), an increase of 14%.

Of the 160 requests received, 97 (61%) were predominantly for personal information about the access applicant. That represents a significant decrease from the last reporting period in which the proportion of requests received that were predominantly for personal information about the applicant was 75%.

The majority of requests to agencies in the following jurisdictions were for predominantly personal information about the access applicant: New South Wales (78%), Victoria (70%), Queensland (60%) and Western Australia (55%). In the other 5 jurisdictions the majority of access applications received were for documents containing information other than personal information about the access applicant, with only

24% of requests to the Australian Capital Territory being for predominantly personal information about the access applicant, 17% of requests to ACECQA and none to the Northern Territory, South Australia and Tasmania.

Number of requests finalised

The NQF agencies finalised 143 requests in 2024–2025, 46% more than in the last reporting period (98) and 99% more than in 2022–2023 (72). Of the requests finalised in this reporting period:

- full access was granted in response to 5.6% of requests (7% in 2023–2024)
- partial access was granted in response to 58% of requests (59% in 2023–2024)
- access was refused in full in 15.4% of requests (23% in 2023–2024), and
- 21% of requests were withdrawn (10% in 2023–2024).

See Table 1 in Appendix 5 for more information.

Application of exemptions in decisions

An agency can refuse access to a document or parts of a document, on a number of bases including where: after proper searches, the agency concludes that the requested document does not exist or cannot be found; material contained in the document is not within the scope of the request; the document or parts of the document are 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.

Parts of a document may be redacted to enable its partial release.

Of the 143 access applications finalised in 2024–2025, 105 resulted in decisions to refuse access to

documents in full or in part. NQF agencies applied exemptions or conditional exemptions in 93 of those decisions. In those 93 decisions where exemption was claimed, 8 exemption clauses were relied on: 4 providing unconditional exemption (sections 37, 38, 42 and 45) and 4 conditional exemptions (sections 47C, 47E, 47F and 47G).

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 disclosure would not be contrary to the public interest. All NQF agencies relied on an exemption or conditional exemption in at least one decision.

The exemptions and conditional exemptions applied in 2024–2025 in order of frequency were:

- section 47F conditionally exempts all or part of a document where its release would unreasonably disclose personal information about a person and was applied in 82% (76) of the 93 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 and was applied in 53% (49) of the 93 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 23% (21) of the 93 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 and was applied in 19% (18) of the 93 decisions

- section 47C conditionally exempts all or part of a document containing information about the deliberative processes of an agency and was applied in 6.5% (6) of the 93 decisions
- section 45 exempts documents containing material obtained in confidence and was applied in 6.5% (6) of the 93 decisions
- section 42 exempts documents where legal professional privilege applies and was applied in 4.3% (4) of the 93 decisions
- section 38 exempts documents to which statutory secrecy provisions apply: applied in 3.3% (3) of the 93 decisions.

See Table 2 in Appendix 5.

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 or 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 or where the time has expired.

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

In relation to the 113 decisions made to grant or refuse access to documents during the reporting period, the NQF agencies reported that 91 (81%) were made within the applicable timeframe, 9 (8%) were made up to 30 days late, 6 (5.3%) were between 31 and 60 days late, 4 (3.5%) were

between 61 and 90 days late and 3 (2.6%) were made more than 90 days late.

Although these results reflect that the vast majority of FOI requests are being processed in accordance with statutory timeframes, they also show a reduction in timeliness compared to the previous reporting period, in which 94% of requests were finalised within the applicable time period, 4 requests were less than 30 days late and only 1 was more than 90 days late. It is likely the decrease in timeliness is a consequence of the increased volume and complexity of requests received in the period.

The agencies reporting the more notable reductions in timeliness largely correspond with the agencies that received the largest increases in numbers of requests. For at least one agency increased demand on resources due to having to respond to requirements for production of large volumes of documents in other forums appears also to have been a factor.

See Table 3 in Appendix 5.

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 personal information about the person requesting access.

None of the NQF agencies imposed any charges in the reporting period. This compares to \$304 imposed in 2023–2024 and \$292.92 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 personal information about the applicant.

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 for external review.

In 2024–2025, the NQF agencies received 16 requests for internal review and finalised 15 internal review requests. The agency varied its original decision in 3 (20%) of the 15 internal review matters finalised, giving access to more information in 2 cases and less in 1 case. The original decision was affirmed in the other 12 cases.

The number of internal review requests received represents a substantial increase compared to 2023–2024 in which only 4 requests for internal review were received and finalised. Two of those resulted in different decisions and the decisions on the other 2 requests were affirmed.

See Table 4 in Appendix 5.

Applications for amendment or annotation of personal information

As was the case in 2023–2024, no applications for amendment or annotation of personal information were reported for 2024–2025. It follows that there were also no requests for internal review of decisions in relation to such applications.

Agreed extensions of time

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 (s 15AA of the FOI Act). Twenty-eight notifications under s 15AA were received in the reporting period.

FOI Commissioner Activity

Extension of time requests

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

- if the agency considers that the statutory timeframe is insufficient because the request is voluminous or complex in nature (s 15AB of the FOI Act), or
- if the agency has been unable to process an FOI request, amendment application or internal review application within the relevant statutory timeframe and is deemed to have made a decision refusing the FOI request (ss 15AC, 51DA and 54D of the FOI Act).

The following numbers of applications to the FOI Commissioner for an extension of time for processing an application were received in 2024–2025:

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

It transpired that one of the applications did not require a decision. Extensions of time were granted in response to all 6 of the other applications. Decisions were made within 6 calendar days for 2 of the applications, within 15 calendar days for 3 of the applications and within 22 calendar days for the other application.

Under s 54T of the FOI Act, an access applicant or affected third party can apply to the FOI Commissioner for an extension of time to make an application for FOI Commissioner review of an agency's decision. The FOI Commissioner may extend the time if satisfied that it is reasonable in all the circumstances to do so and may do so even when the statutory period for making an extension application has ended.

One application for an extension of time under s 54T was received in the reporting period. It was refused.

Complaints

The FOI Commissioner received 1 complaint in 2024–2025 with respect to how an NQF agency carried out its responsibilities under the FOI Act.

The complaint concerned the time taken to process an FOI request. Following preliminary enquiries by the FOI Commissioner, the NQF agency concerned provided the applicant with a decision and the complaint was withdrawn.

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.

Requests on hand at commencement of reporting period

At the beginning of the reporting period, there were 2 applications for review on hand. One was finalised by way of a formal decision on 4 February 2025. It was finalised in 15 months and 24 days. The other was withdrawn on 28 November 2024. It was finalised in 12 months and 2 days.

Requests received during reporting period

The FOI Commissioner received 15 new applications for review of decisions in 2024–2025, compared to 3 in 2023–2024, an increase of 400%. Three applicants made 13 of the new review requests. Three were made by 1 applicant in respect of decisions on related requests to 1 agency; 6 were made by another applicant in respect of decisions on related requests to 1 agency; and 4 were made by 1 applicant in respect of decisions made by 4 agencies.

Outcomes of requests received during reporting period

Of the 15 review requests received in the reporting period:

- two applications were withdrawn during the review following the NQF agency in each case making a revised decision s 55G of the FOI Act, resulting in the release of more information
- one was declined as out of time, after a request for an extension of time to make an application for review was refused
- one was finalised by way of a formal decision on 27 June 2025. The FOI Commissioner set aside the agency's decision to refuse access under s 24(1)(b) of the FOI Act on the basis that the work involved in processing the request would substantially and unreasonably divert the agency's resources from its other operations, and required the agency to proceed to deal with the applicant's access request
- the remaining 11 applications were not yet finalised at the end of the reporting period.

The review resulting in a formal decision was finalised in 6 months and 22 days.

Formal decisions by the FOI Commissioner

The two formal decisions made by the former FOI Commissioner during the reporting period

have been published on the NECS Commissioners' website.

Requests on hand at conclusion of reporting period

As at 30 June 2025, the 11 applications still on hand ranged in age from 1 month and 8 days to 10 months and 18 days.

Of the 11 still on hand at the end of the period, 6 are from 1 applicant about decisions of 1 agency and 2 are from another applicant about decisions of another agency. Each group is complex due to the large volume of documents involved in each, the interrelationship between the requests and decisions, the nature of the subject matter of the documents and or the range of exemptions claimed.

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.

No applications for review of a decision made by the FOI Commissioner were lodged in 2024–25.

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 reporting 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 FOI 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: s 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 and the public as to the expectations of the FOI Commissioner in the application of the FOI Act.

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 by the Australian Information Commissioner under section 93A of the FOI Act, accessible at [Freedom of information guidelines | OAIC](#).

Appendices

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

[Appendix 2: Audited Financial Report 2024–2025](#)

[Appendix 3: Strategic Plan 2025–2027](#)

[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 2024–2025



**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 2024 - 30 June 2025**

Funding	Actual \$	Budget \$	Variance \$
FY24-25 Funding	400,000	400,000	-
	400,000	400,000	-
Expenditure			
Domestic Travel account for Projects	644	10,000	9,356
Conference attendance	-	1,500	1,500
Contingency	-	171,101	171,101
Content Outsourcing	9,960	19,800	9,840
Website Development & Hosting Cost	600	2,000	1,400
Retainer	40,000	40,000	-
Service Fee	14,000	14,000	-
Sundry	1,457	6,337	4,880
Telephone	2,027	792	(1,235)
Audit Fees	5,250	5,800	550
Legal fees	5,727	50,000	44,273
Project Staffing	86,000	50,000	(36,000)
Salary & On Costs	189,084	187,200	(1,884)
	354,749	558,530	203,780
Surplus/(Deficit)	45,251		
Prior years unspent funding	259,088		
Total Balance of funds remaining	304,339		

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 2025

CURRENT ASSETS	\$
Cash at bank	304,339
Total Current Assets	<u>304,339</u>
Total Non-Current Assets	<u>-</u>
TOTAL ASSETS	<u><u>304,339</u></u>
CURRENT LIABILITIES	
Income received in advance	304,339
Total Current Liabilities	<u>304,339</u>
NON-CURRENT LIABILITIES	
Total Non-Current Liabilities	<u>-</u>
TOTAL LIABILITIES	<u><u>304,339</u></u>
NET ASSETS	<u><u>-</u></u>

Notes to the annual financial statements for the year 1 July 2024 to**30 June 2025****Note 1: Basis of Preparation**

The financial statements for the year ended 30 June 2025 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 2025, 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.



Appendix 2

PKF Melbourne Audit & Assurance Pty Ltd
ABN 75 600 749 184
Level 15, 500 Bourke Street
Melbourne, Victoria 3000

T: +61 3 9679 2222
F: +61 3 9679 2288
info@pkf.com.au
pkf.com.au

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 2025, the Statement of funding and expenditure for the year then ended 30 June 2025 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 \$45,251 and a total balance of funds remaining of \$304,339 at 30 June 2025.

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 NCES Commissioners. 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 NCES Commissioners, or for any purpose other than that for which it was prepared. Our opinion is not modified in respect of this matter.



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' in a stylized, cursive font.

PKF Melbourne

29 August 2025

A handwritten signature in black ink that reads 'Kenneth Weldin' in a cursive font.

Kenneth Weldin

Partner

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National Education & Care Services
FOI & Privacy Commissioners & Ombudsman

Strategic Plan 2025–2027

This Strategic Plan outlines the purpose, the guiding principles and the priorities of the Education and Care Services Ombudsman (**Ombudsman**), the National Education and Care Services Freedom of Information Commissioner (**FOI Commissioner**) and the National Education and Care Services Privacy Commissioner (**Privacy Commissioner**) for the period from 14 February 2025 to 31 December 2027.

The Plan serves as a guide to what the public and our stakeholders can expect from us as we perform our role of overseeing aspects of the operations of the agencies responsible for administering the National Quality Framework for Early Childhood Education and Care (**NQF**). It sets out how we will perform our roles, measure our performance and engage with our stakeholders as well as how we will monitor the impact of, and seek to contribute to, reforms in relation to FOI, privacy and the early childhood education and care sector.

Who we are and what we do

The Ombudsman, the FOI Commissioner and the Privacy Commissioner (collectively **the ECS Commissioners**) are independent, statutory officers appointed by the [Education Ministers' Meeting](#) 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 form part of the national uniform regulatory and quality assurance system for early childhood education and care services that applies across Australia. The National Law established the Australian Children's Education and Care Quality Authority (**ACECQA**) and early childhood education and care Regulatory Authorities in the 8 Australian states and territories (collectively **the NQF agencies**).

- ACECQA works with all governments and the education and care sector to provide guidance, resources and services to improve outcomes for children under the NQF.
- 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 National Law requires the NQF agencies to apply the Commonwealth *Freedom of Information Act 1982* (**FOI Act**) and the Commonwealth *Privacy Act 1988* (**Privacy Act**) and applies the Commonwealth *Ombudsman Act 1976* (**Ombudsman Act**) in relation to ACECQA. The ECS Commissioners provide independent and impartial oversight of the NQF agencies in relation to how they apply the FOI and privacy laws and how ACECQA carries out its functions. We have the same functions and powers as the Australian Information Commissioner and the Commonwealth Ombudsman.

- The Ombudsman can investigate administrative actions that have been taken, or not taken, by ACECQA (including its contractors) in relation to its duties, functions or powers.
- The FOI Commissioner conducts reviews of FOI decisions made by the NQF agencies and can investigate whether an agency has complied with their responsibilities under the FOI Act.

The Privacy Commissioner can investigate whether an NQF agency has interfered with an individual's privacy by breaching the Australian Privacy Principles or in relation to a notifiable data breach.

The ECS Commissioners can commence an investigation after receiving a complaint or on our own motion.

The ECS Commissioners each operate independently for the purposes of the National Law. Since 2024, one person has been appointed as both the Ombudsman and Privacy Commissioner and one person as the FOI Commissioner.

Purpose

We support public confidence in the integrity, fairness and transparency 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, review and advisory services, primarily in relation to the protection of privacy and information access rights, and
- working collaboratively with the NQF agencies to support their decision-making and practices.

Guiding Principles

Fairness and Impartiality

We deal with complaints and reviews without bias and give everyone a reasonable chance to have their say. We are independent and impartial. We take actions and make decisions based on our independent assessment of the facts, the law and the public interest. 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 maintain high professional standards when delivering our services and we treat all people with dignity and respect.

Accessibility and Responsiveness

We 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, including by making our written material easy to understand and using simple processes that are easy to navigate. We acknowledge applications, complaints and enquiries in a timely manner and finalise complaints and reviews as promptly as the complexity of the matter and fairness to the parties allows. If we are unable to assist, we explain why and try to suggest alternative actions.

Proportionality and Value-adding

We employ processes that are appropriate for the effective and efficient resolution of a complaint or review and ensure complainants and review applicants are given realistic expectations about what can be achieved. We aim to work constructively with the parties and resolve issues by agreement where possible. We aim to bring about improvements in the practices of the NQF agencies where possible, including by sharing what we learn through handling complaints and reviews and by sharing useful resources.

Priorities

The ECS Commissioner roles are undertaken on a part-time basis. Within this context, the key priority for our office is to deal with complaints, reviews and enquiries received from members of the public. Other priorities to be pursued during the period of this Plan are:

- strengthening relationships with the NQF agencies and other sector stakeholders to support the effectiveness of our oversight role
- maintaining the currency and quality of the information we make available to the public and our stakeholders about our role and how we operate

- developing, enhancing and sharing resources to support the NQF agencies in meeting their responsibilities under the FOI Act and Privacy Act.

Objectives

1. Provide independent, fair and timely complaint-handling and review services

Strategies

Implement effective investigation and review processes that are fair and as efficient and informal as a proper consideration of the issues permits.

Tailor complaint-handling processes to each complaint and seek to resolve them using flexible approaches.

Engage with NQF agencies to support their understanding of their role and responsibilities in investigations and reviews.

Engage with complainants and review applicants to ensure the accessibility of processes.

Key performance indicators

Acknowledge 100% of complaints and review applications within 5 working days.

Finalise 50% of FOI reviews within 6 months and 100% within 12 months of receipt.

Finalise 50% of complaints within 6 months and 100% within 12 months of receipt.

2. Support individuals and organisations to understand and pursue their right to complain or seek review in relation to matters under the NQF

Strategies

Support NQF agencies to provide clear information to people about their right to complain about agency actions and seek review of agency decisions.

Maintain current, relevant and easy to understand information and resources on our website about our roles and how we operate and simple ways for people to make complaints or review applications.

Refer people to complain or apply to an NQF agency in the first instance when appropriate or to another body where a complaint or application is not within the jurisdiction of the ECS Commissioners.

Key performance indicators

Review standard complaint and review rights wording once every 12 months to circulate to the NQF agencies.

Complete a review of the content of the office website once every 12 months.

Respond to 100% of complaints and applications not within the ECS Commissioners' jurisdiction within 10 working days.

3. Support NQF agencies to meet their responsibilities under the legislation

Strategies

Provide advice and information to NQF agencies seeking guidance in carrying out their responsibilities.

Identify and share with the NQF agencies relevant information and resources from the Office of the Australian Information Commissioner, the Office of the Commonwealth Ombudsman and other bodies.

Develop and maintain bespoke guidance material and resources for NQF agencies relating to their obligations under FOI and privacy legislation.

Work with the NQF agencies to improve practices in light of any issues identified through investigations and reviews or any compliance assessments undertaken by the ECS Commissioners.

Key performance indicators

Respond to 100% of requests from NQF agencies for guidance within 5 working days.

Provide NQF agencies with updates on developments and new resources at least twice every 12 months.

NQF agencies indicate satisfaction with the assistance provided by the office in response to a request for feedback.

4. Contribute to relevant legislative and policy development

Strategies

Engage with the NQF agencies and other stakeholders to understand the environment in which the NQF agencies operate and keep abreast of trends in the early childhood education and care sector.

Monitor developments relating to the NQF as well as FOI and privacy legislation and policy, consider the implications for the ECS Commissioners and NQF agencies and draw these to the attention of stakeholders.

Respond to requests for feedback in relation to issues arising in the sector and contribute views reflecting knowledge gained in our roles.

Key performance indicators

Hold a formal consultation meeting with the NQF agencies at least once every 12 months.

Number of other stakeholder engagement activities undertaken.

Respond to 100% of requests for feedback in relation to legislative and policy proposals within the requested timeframe.

Stakeholder engagement

The ECS Commissioners seek to establish and maintain positive relationships with key stakeholders in relation to our roles. These include the members of the NQF Regulatory Practice Committee (comprising representatives of the NQF agencies and the Australian Government Department of Education) as well as the Early Childhood Policy Group and other key education and care sector stakeholders. Engagement with stakeholders enhances our understanding of the sector, including the operational environment and needs of the agencies that we regulate. It helps to promote cooperation in carrying out our roles and facilitates work at a systemic level to support better practice in information access and privacy.

We also seek to establish and maintain effective relationships with other similar bodies, particularly the Office of the Australian Information Commissioner and the Office of the Commonwealth Ombudsman which perform and exercise the same functions and powers as the ECS Commissioners with respect to Australian Government agencies. Engagement enhances mutual understanding of our roles, offers opportunities for information sharing and collaboration, and promotes consistency of practice and application of the legislation.

Accountability

The ECS Commissioners are formally accountable to the Education Ministers Meeting. Information about our activities and performance is made publicly available each year in our annual report, including:

- how we performed against our key performance indicators, and

- any modifications we made in applying the FOI Act, Ombudsman Act or Privacy Act which were necessary for the effective administration of these Acts for the purposes of the National Quality Framework.

The report is available on our website and tabled in each of the Commonwealth, State and Territory Parliaments.

The FOI Commissioner is required to make public FOI review decisions and the Privacy Commissioner is required to keep a register of any determinations and make it publicly available. These are published on the office website.

The office also has a Service Charter which sets out the standards of service that people can expect when dealing with the ECS Commissioners and what people can do if they are unhappy with our service or our decisions. It can be found on our website at necsopic.edu.au/about.

Review of Strategic Plan

We will monitor progress against the Strategic Plan and update the Plan if necessary during the period of the Plan to reflect any significant changes in relation to our role or the environment.

This version: 14 February 2025

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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National Authority and Regulatory Authorities' Freedom of Information Statistics

This appendix sets out information about activity under the FOI Act in the National Authority, 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, 2022–2023 to 2024–2025

2022-23	ACECQA	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	TOTAL
On hand at 1 July	0	1	3	0	6	0	0	2	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 ^a	0	0	3	0	0	0	0	1	0	4
No. withdrawn	1	0	7	0	3	0	0	1	0	12
2023-24	ACECQA	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	TOTAL
On hand at 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 ^a	1	0	11	1	8	0	0	1	1	23
No. withdrawn	3	0	4	0	2	0	0	1	0	10

2024-25	ACECQA	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	TOTAL
On hand at 1 July	0	1	18	0	1	0	0	1	1	22
No. received	6	9	64	3	38	4	4	23	9	160
No. finalised	6	6	66	3	35	4	3	11	9	143
No. granted in full	1	0	2	0	3	0	1	0	1	8
No. granted in part	0	5	46	3	15	3	2	5	4	83
No. refused in full ^a	2	0	10	0	6	1	0	0	3	22
No. withdrawn	3	1	8	0	11	0	0	6	1	30

^aThis 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)).

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 2024–2025. Exemptions or conditional exemptions were applied in 93 decisions during the reporting period.

Table 2 – Exemptions applied by agencies in FOI decisions, 2024–2025

Section of the FOI Act	Exemption/Conditional Exemption Claimed	No. of times applied	% of exemptions applied	% of decisions (93) in which applied
Section 37	Documents affecting enforcement of law and protection of public safety	18	10%	19%
Section 38	Documents to which secrecy provisions of enactments apply	3	1.75%	3%
Section 42	Documents subject to legal professional privilege	4	2.25%	4.5%
Section 45	Documents containing material obtained in confidence	6	3%	6.5%
Section 47C	Deliberative processes	6	3%	6.5%
Section 47E	Certain operations of agencies	49	27%	53%
Section 47F	Personal privacy	76	41.5%	82%
Section 47G	Business (other than documents to which section 47 applies)	21	11.5%	22.5%
TOTAL		183	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 2024–2025.

Table 3 – Time taken to make FOI decisions and charges collected 2024–2025

Jurisdiction	Time taken to make FOI decisions						Charges collected \$
	Within applicable time period	< 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	2	2	0	0	1	5	\$0.00
NSW	57	1	0	0	0	58	\$0.00
NT	2	1	0	0	0	3	\$0.00
QLD	10	5	6	2	1	24	\$0.00
SA	4	0	0	0	0	4	\$0.00
TAS	3	0	0	0	0	3	\$0.00
VIC	2	0	0	2	1	5	\$0.00
WA	8	0	0	0	0	8	\$0.00
TOTAL	91	9	6	4	3	113	\$0.00

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 (s15AB). These figures are for requests that were finalised by a decision and do not include requests that were withdrawn.

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 2024–2025 to amend or annotate personal information.

Table 4 – Internal review of FOI request decisions and applications to amend or annotate personal information, 2024–2025

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	1	0	N/A	N/A	0	0
ACT	1	1	1	0	0	0
NSW	6	6	0	6	0	0
NT	1	1	1	0	0	0
QLD	6	6	1	5	0	0
SA	0	0	N/A	N/A	0	0
TAS	0	0	N/A	N/A	0	0
VIC	0	0	N/A	N/A	0	0
WA	1	1	0	1	0	0
TOTAL	16	15	3	12	0	0

There were no applications for internal review of decisions about amending or annotating personal information received or finalised in 2024–2025.

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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