Annual Report

1 July 2014 to 30 June 2015

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1 Commissioner's Foreword and Overview

I am pleased to present the COAG Education Council with the 2014/15 Annual Report on the exercise of my functions as the Education and Care Services Ombudsman, National Education and Care Services Freedom of Information and Privacy Commissioners.

I note from the National Quality Framework report published in August 2015 that close to two-thirds (9347) of education and care services across Australia have now been assessed and received a quality rating. Of those services assessed and rated, I am extremely pleased that 66% are meeting or exceeding the National Quality Standard. While there is no doubt room for improvement, I believe these figures are indicative of the overall high standard of education and care services that are offered by educators and providers who operate within the National Quality Framework.

I am also pleased at the enormous success of the Australian Children's Education and Care Quality Authority ("**ACECQA**") National Workshops supporting services in Quality Area 1 – Education Program and Practice which concluded in August 2015. The workshops were attended by more than 4000 educators and providers from around Australia over a period of almost 12 months. It is encouraging to see that the workshops were conducted in partnership with Regulatory Authorities and the Professional Support Coordinators Alliance.

The high level of attendance at the National Workshops, including the collaboration between the various bodies responsible for administering the National Quality Framework, demonstrates a firm commitment to ensuring the highest possible standards of education and care services are achieved through actively supporting educators and service providers. These workshops are also a wonderful opportunity for educators to network, share experiences and have any of their questions answered. I believe these workshops will continue to provide invaluable support to those within the National Quality Framework and I look forward to the workshop series in 2015/16.

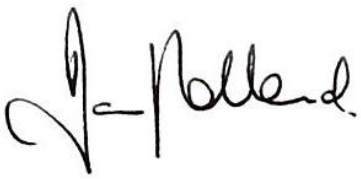
It is interesting to note that in the 2014/15 year neither my office nor any of the relevant administrative tribunals of participating jurisdictions under the National Quality Framework received applications for review of decisions made in relation to requests for access under the *Freedom of Information Act 1982* (Cth) (as modified by the *Education and Care Services National Regulations 2011*) ("**FOI Act**"). This is only slightly less than in the 2013/14 year during which my office received 2 applications for review and a relevant administrative tribunal received 1 application.

Given that 24 requests for access were finalised by the ACECQA and Regulatory Authorities during the 2014/15 year, the small number of review applications would indicate that FOI applicants are generally satisfied with decisions being made on their requests. The relatively small number of FOI requests made to the ACECQA and Regulatory Authorities would also tend to show that children, parents and educators are, for the most part, highly satisfied with the level and quality of education and care services provided in each participating jurisdiction under the National Quality Framework. The information I have highlighted above would tend to support this.

In April 2015 I raised concerns with a relevant State government Department ("**Department**") that the *Education and Care Services National Law 2010* ("**National Law**") does not currently provide the National Education and Care Services Freedom of Information Commissioner ("**NECS FOI Commissioner**") with immunity from suit for

actions performed in good faith under the FOI Act. To address this concern, I have requested that the National Law and the *Education and Care Services National Regulations 2011* ("**National Regulations**") be amended to provide the NECS FOI Commissioner with professional indemnity insurance within that role. Following a request from the Department, I provided an outline of the various grounds which I believe support my proposal to amend the National Law and Regulations (as set out in **NECSFOIC Case Study 1**). As at the date of this report I am still awaiting a response from the Department on my proposed amendments to the National Law and Regulations.

Yours sincerely



Ian D Pollerd

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

2 Powers and Responsibilities

2.1 Education and Care Services Ombudsman

The Education and Care Services Ombudsman, National Education and Care Services Freedom of Information Commissioner and National Education and Care Services Privacy Commissioner receive complaints and assist people who may have been treated unfairly or inappropriately by the ACECQA or the State and Territory Government Regulatory Authorities. The Regulatory Authorities approve, monitor and quality assess education and care services for children. The ACECQA promotes a nationally consistent regulatory approach.

The Education and Care Services Ombudsman ("**ECS Ombudsman**") has power to deal with matters falling within the description of action taken by a prescribed authority that relates to a matter of administration[1] where the reference to prescribed authority is limited to the ACECQA.[2]

Complaints about how a Regulatory Authority has exercised its powers or functions under the National Law or Regulations (apart from FOI and privacy matters), should be directed to the Ombudsman in the State or Territory in which Regulatory Authority is located. For example, complaints about the Regulatory Authority in Victoria should be made to the Victorian Ombudsman, complaints about the Regulatory Authority in New South Wales should be made to the Ombudsman in New South Wales.

The ECS Ombudsman has power to deal with matters of administration apart from specific matters relating to freedom of information and privacy. It extends to anything which might be regarded as reasonably incidental to the performance of administrative functions. It does not have to be an allegation of something sufficiently serious to be described as 'maladministration', but merely about any administrative action.

Action taken by the ACECQA (or by an officer or employee) that relates to a matter of administration can include:

- making of a decision or recommendation;
- formulation of a proposal;
- failure or refusal to take any action, to make a decision or recommendation.

ECSO Case Study 1 – Statutory Interpretation query from Regulatory Authority

A Regulatory Authority of a participating jurisdiction raised concerns with the ECS Ombudsman that regulations 219(c)(i) and 219(c)(ii) of the National Regulations may be inconsistent with regulation 219(a) of the National Regulations and s 28(8) of the *Ombudsman Act 1976* (Cth) (as modified by the *Education and Care Services National Regulations 2011*) ("**Ombudsman Act**").

The Regulatory Authority sought guidance on how these provisions interact with each other and whether legislative amendment was required to address any inconsistency.

[1] Section 5(1)(a) and (b), Ombudsman Act.
[2] See combination of s 282, National Law and Reg 222, National Regulations.

For the reasons which are set out below, the ECS Ombudsman concluded there was no inconsistency between the provisions identified and informed the Regulatory Authority accordingly.

Was there an inconsistency between regulations 219(c)(i) and 219(c)(ii) of the National Regulations and s 28(8) of the Ombudsman Act?

Regulations 219(c)(i) and 219(c)(ii) expressly modify the requirements for the removal or suspension of the ECS Ombudsman contained in s 28 of the Ombudsman Act by providing that the ECS Ombudsman may be:

- suspended from office by the Ministerial Council *without* the need for a statement of the need for a statement of the grounds of the suspension to be laid before a House of Parliament;

- removed from office by the Ministerial Council on the ground of misconduct or physical or mental incapacity *without* the need for an address being presented to a House of Parliament.

The Regulatory Authority's concern was that regulations 219(c)(i) and 219(c)(ii) conflicted with s 28(8) of the Ombudsman Act which states that an Ombudsman shall not be removed or suspended from office except as provided for by s 28.

The ECS Ombudsman found that these provisions *did not* conflict for the following reasons:

- by *expressly modifying* the requirements for the removal or suspension of the ECS Ombudsman through the National Regulations, Parliament had demonstrated its intention that s 28 of the Ombudsman Act be read as applying as if those modifications had been made to s 28. That is, s 28(8) requires that removal or suspension can only occur under s 28 as *modified* by the National Regulations.

Was there an inconsistency between regulations 219(c)(i) and 219(c)(ii) of the National Regulations and regulation 219(a) of the National Regulations?

Regulation 219(a) of the National Regulations provides that the Ombudsman Act applies as a law of a participating jurisdiction as modified so that:

- the provisions providing for the appointment of the Ombudsman and the conditions of service of the Ombudsman (other than the provisions providing for the resignation, retirement, suspension or removal of the Ombudsman and the appointment of an acting Ombudsman) do not apply.

The NECS Ombudsman concluded there was no inconsistency between regulations 219(c)(i) and 219(c)(ii) and regulation 219(a), for the following reasons:

- It is a well settled principle of statutory interpretation that where there is a conflict between provisions of a general nature (regulation 219(a)) and provisions of a specific nature (regulations 219(c)(i) and 219(c)(ii)), the specific provisions prevail. Where such provisions exist within the same enactment, it is presumed that a legislative drafter would have intended for general provisions to give way to specific provisions dealing with the same subject matter.

- Therefore, the general provision in regulation 219(a) applying provisions of the Ombudsman Act dealing with the removal or suspension of the ECS Ombudsman did not conflict with the more specific provisions in regulations 219(c)(i) and 219(c)(ii) *modifying* the manner in which removal or suspension is to occur.

In each instance, the ECS Ombudsman found that his interpretation of the relevant provisions was consistent with:

- regulation 223(n) of the National Regulations which allows for any other modifications to the Ombudsman Act which are necessary for its "effective administration" for the purposes of the National Quality Framework; and
- s 282(2)(b) of the National Law which provides that the Ombudsman Act applies as a law of a participating jurisdiction with any other modifications made by the National Regulations.

Accordingly, the ECS Ombudsman concluded that the provisions of the Ombudsman Act relating to suspension or removal as amended by the National Regulations apply within the National Quality Framework such that suspension or removal can only occur in accordance with those provisions as *modified*.

2.2 National Education and Care Services Freedom of Information Commissioner

The NECS FOI Commissioner has power to deal with written complaints about the performance of functions, or the exercise of powers, under the FOI Act by the ACECQA or a Regulatory Authority from a participating jurisdiction.

From 1 January 2012, the FOI Act applies as the law of each State and Territory for the purposes of the National Quality Framework. Each State and Territory has for that purpose adopted in its jurisdiction the FOI Act as modified by the National Regulations.

This means that the FOI Act (as modified) applies to the ACECQA and each Regulatory Authority. Those bodies are bound by and must comply with the requirements of the FOI Act (as modified) when dealing with formal requests for access to documents under freedom of information. Any person has a right to seek from the ACECQA or each Regulatory Authority access to documents of those agencies under the FOI Act.

Under the FOI Act that means that from 1 January 2012 the ACECQA and each of the Regulatory Authorities must do the following:

(a) process requests for access to documents in accordance with the FOI Act;

(b) grant full or partial access to any documents sought under the FOI Act unless they are exempt or contain information that would reasonably be regarded as irrelevant to a request;

(c) in making any decisions under the FOI Act, properly advising applicants of their review rights in any statement of reasons for decision;

(d) conduct any internal review of access refusal decisions in accordance with the FOI Act;

(e) comply with the information publication scheme obligations contained in Part II of the FOI Act;

(f) process requests for amendment to personal information in accordance with the FOI Act;

(g) apply and interpret the provisions of the FOI Act consistent with the objects of the FOI Act;

(h) use their best endeavours to assist the NECS FOI Commissioner to make a decision in relation to any review of reviewable decision;

(i) assist the NECS FOI Commissioner with any preliminary inquiries that might be made in determining whether to entertain any review application or a complaint;

(j) provide an adequate statement of reasons under s 26 of the FOI Act if the NECS FOI Commissioner believes that no statement or an inadequate statement of reasons was provided;

(k) comply with decisions made by the NECS FOI Commissioner (unless review is sought on the merits or an appeal made on a question of law);

(l) comply with any notice to produce or notice to appear issued by the NECS FOI Commissioner under the FOI Act;

(m) implement any recommendations made by the NECS FOI Commissioner as a result of an investigation of a complaint.

NECSFOIC Case Study 1 – request made for professional indemnity insurance

The NECS FOI Commissioner contacted a relevant State government Department ("**Department**") to request that the National Law and National Regulations be amended to provide the NECS FOI Commissioner with professional indemnity insurance within that role.

The Department informed the NECS FOI Commissioner that the amendment sought would require a Treasurer's indemnity and that there were particular requirements which had to be met to establish why such an indemnity should be granted. The Department sought a response from the NECS FOI Commissioner to support his proposal to amend the National Law and National Regulations accordingly.

The NECS FOI Commissioner responded by setting out the various grounds to support his proposal based on each of the Treasury requirements under the headings set out below.

There were extraordinary or exceptional circumstances

The NECS FOI Commissioner noted that the legislative history of the National Law and National Regulations demonstrated an exceptional circumstance of long-term Australia wide governmental support and approval for the National Quality Framework and the bodies established by that framework.

The NECS FOI Commissioner pointed out the unique nature of the National Law noting only 10 instances in which similar uniform legislation had been drafted by a "host" state and then adopted by other states and territories. He also noted that one State had drafted 3 out these 10 pieces of uniform law, one of which was the National Law.

Of the 3 pieces of legislation drafted by that State, only the National Law established a role similar to the Freedom of Information Commissioner.

There were unique risks

The NECS FOI Commissioner noted that while the National Law currently protects the actions of the National Education and Care Services Privacy Commissioner ("**NECS Privacy Commissioner**") and the ECS Ombudsman, it does not similarly protect the actions of the NECS FOI Commissioner.

This inconsistency arose because the National Law and National Regulations does not refer to or adopt the *Australian Information Commissioner Act 2010* ("**AIC Act**") which provides the equivalent Commonwealth FOI Commissioner role with protection from suit for action taken under the FOI Act. On the other hand, the *Privacy Act 1988* (Cth) (*as modified by the Education and Care Services National Law 2011*) ("**Privacy Act**") and Ombudsman Act expressly provide immunity to the NECS Privacy Commissioner and Ombudsman.

The unique risks were highlighted by the extraordinary and highly specialised nature of the NECS FOI Commissioner's role, including his specialised functions and powers to review FOI decisions and complaints, as outlined in the FOI Act.

There was no commercial insurance available, or only on unacceptable terms

The NECS FOI Commissioner contacted several insurance providers to ascertain whether he could obtain commercial insurance, and if so, the terms on which it could obtained.

Although commercial insurance was sought by the NECS FOI Commissioner, it was unable to be commercially sourced for various reasons such as:

- A quote or guidance on the likely cost of insurance for the NECS FOI Commissioner role could not be provided;
- The NECS FOI Commissioner did not meet certain prerequisites;
- An insurer willing to quote on professional indemnity insurance for the NECS FOI Commissioner role could not be sourced;
- The insurance provider did not provide indemnity insurance.

There were circumstances where a public entity was best placed to manage the State's risk

The NECS FOI Commissioner noted that the other two examples of uniform legislation drafted in the State recognised that a public entity was best placed to manage the State's risk and contained provisions which protect people who are exercising legislative functions from being personally liable. The NECS FOI Commissioner noted that in those instances the liability attached to a body instead of to a position or a particular role.

It was inconsistent that liability for action should lie against the FOI Commissioner who sits in an equally exposed role.

The potential benefits of assuming the risk were outweighed by the cost to the state of leaving the risk with the party seeking the indemnity or the cost of transferring it to a third party

The NECS FOI Commissioner noted that although the expected risk of a claim being made against him in the role would be very limited, there would still be a future impact upon the State in being able to recruit persons into the role of the NECS FOI Commissioner if it was known that there was no immunity from liability and that a person holding that position could be personally liable for any mistaken action taken. This would mean that many otherwise suitable applicants might not agree to taking on the role.

Because the phrase used to provide indemnity in the Privacy Act and the AIC Act are substantially similar, the NECS FOI Commissioner suggested that the National Law be amended to provide him with the same protection currently held by the NECS Privacy Commissioner, ECS Ombudsman and the Commonwealth FOI Commissioner.

The NECS FOI Commissioner is currently awaiting a response to his proposal and reasons in support of his proposal from the Department of Finance and Treasury.

2.3 National Education and Care Services Privacy Commissioner

The NECS Privacy Commissioner has power to deal with written complaints made alleging an interference with privacy arising from an alleged breach of the Australian Privacy Principles ("**APPs**") in the Privacy Act by one or more of:

(a) the ACECQA; or

(b) a Regulatory Authority from a participating jurisdiction.[1]

The APPs came into effect on 12 March 2014 following changes made to the Privacy Act by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012*.

An act or practice is an interference with privacy if it breaches any of the APPs. A complaint will be within the privacy jurisdiction of the NECS Privacy Commissioner if it is in writing and alleges such a breach.

From 1 January 2012, the Privacy Act as it exists at any time, applies as the law of each State and Territory for the purposes of the National Quality Framework. Each State and Territory has for that purpose adopted in its jurisdiction the Privacy Act as modified by the National Regulations.

This means that the Privacy Act (as modified) applies to the ACECQA and each Regulatory Authority. Those bodies are bound by and must comply with the requirements of the Privacy Act (as modified) when dealing with personal information (including sensitive information).

[1] See combination of s 263, National Law and r 199, National Regulations.

"Personal information" is defined to mean:

> *"information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion"*

"Sensitive information" is defined to mean personal information that is also information or an opinion about particular matters concerning an individual such as their racial or ethnic origin, political opinions, religious beliefs or sexual orientation (among other things).

Under the Privacy Act that means that from 1 January 2012 the ACECQA and each of the Regulatory Authorities have been affected by requirements in relation to how they collect, use, store and otherwise handle *personal information* about individuals.

They must comply with 11 of the 13 APPs set out in the Privacy Act dealing with:

- open and transparent management of personal information;
- the manner and purpose of collection of personal information;
- the collection and handling of unsolicited personal information;
- notification of the collection of personal information;
- cross-border disclosure of personal information;
- the accuracy of personal information before use;
- secure storage of personal information;
- appropriate use or disclosure of personal information;
- access to and amendment of personal information.

APPs 7 and 9 do not apply to the ACECQA and each of the Regulatory Authorities.

Regulatory Authorities must not do an act or engage in a practice that breaches any of the APPs in relation to personal information about an individual, as that would be an interference with privacy.

In addition, the Privacy Act provides clarification and extension of the law relating to obligations of confidence that might arise in relation to personal information provided to the ACECQA or a Regulatory Authority.

Therefore, the ACECQA and each Regulatory Authority and their officers and employees must become familiar with the requirements of the Privacy Act and the APPs in their handling of personal information under the National Quality Framework.

3 Education and Training

3.1 Educative role and functions

Consistent with my educative role and functions as the ECS Ombudsman, FOI Commissioner and Privacy Commissioners, my office undertook the following activities providing an opportunity to increase public awareness of the role of my office within the National Quality Framework, and to educate administrative tribunals, the ACECQA and Regulatory Authorities on various aspects of their roles within that framework.

Some of the activities were also carried out to ensure that all available information about the National Quality Framework is legally accurate, up to date and easy for the public to understand.

3.2 National Education and Care Services FOI Commissioner

The FOI Act requires an Annual Report to be produced by the NECS FOI Commissioner. The NECS FOI Commissioner must prepare and submit the Annual Report to the COAG Education Council each financial year. The Annual Report must include certain information about the operation of the FOI Act, including information about FOI in administrative tribunals, the ACECQA and the Regulatory Authorities in each participating jurisdiction.

To assist in the finalisation of the Annual Report, the NECS FOI Commissioner prepared and distributed a statistical returns spreadsheet (**Attachment 2**) to be completed by relevant administrative tribunals and a statistical returns spreadsheet (**Attachment 3**) to be completed by the ACECQA and Regulatory Authorities in each participating jurisdiction. The statistical returns spreadsheets were accompanied by explanatory guidelines on how to fill out the spreadsheet and outlining the reasons why the information was required by the NECS FOI Commissioner (**Attachments 4 and 5**).

The statistical returns spreadsheets provided a simple and straightforward means for providing the NECS FOI Commissioner with statistical information on the operation of the FOI Act concerning:

(a) applications for review of decisions made by the ACECQA or a Regulatory Authority under the FOI Act; and

(b) requests for access received by the ACECQA or a Regulatory Authority under the FOI Act.

The statistical returns spreadsheets also provided the NECS FOI Commissioner with an excellent opportunity to exercise his educative role and function by reminding relevant administrative tribunals, the ACECQA and Regulatory Authorities of their role and responsibilities under the FOI Act in the context of the National Quality Framework.

Where requested, the NECS FOI Commissioner responded directly to any additional queries from relevant administrative tribunals and Regulatory Authorities on how to fill out the statistical returns spreadsheet once distributed. In some instances there was some uncertainty expressed about the particular legislation in respect of which the statistical information was sought. The NECS FOI Commissioner was able to address these concerns by explaining how the FOI Act applies as a law of each participating jurisdiction in the context of the National Quality Framework.

I am pleased at how effectively the request for statistical returns information was responded to and the opportunity it presented the NECS FOI Commissioner for making contact with administrative tribunals, the ACECQA and Regulatory Authorities in each participating jurisdiction. I am sure it will continue to prove an effective means not only for increasing awareness of the role of FOI in the context of the National Quality Framework, but also for the collection of statistical information for future Annual Reports.

3.3 National Education and Care Services Privacy Commissioner

The Privacy Act was amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* ("**Amendment Act**") on 12 March 2014. The new amendments included, among other things, the replacement of the Information Privacy Principles by the APPs and the modification of the definition of "personal information" to also include "sensitive information".

To take into account these amendments, the NECS Privacy Commissioner has done the following:

- reviewed and updated the internal privacy complaint handling procedures manual; and
- reviewed and updated the NECS Privacy Commissioner Information Sheet and the summary description of the NECS Privacy Commissioner's functions under the Privacy Act, both of which are available on the Commissioner's website.

3.4 Website Review

The ECS Ombudsman, FOI and Privacy Commissioners' website has been extensively reviewed and updated, including a review of all documents and explanatory information to ensure it is legally accurate, up to date and easily accessible by members of the public. As part of this process, the ECS Ombudsman, FOI and Privacy Commissioners have done the following:

- updated the list of contacts for each Regulatory Authority in the ECS Ombudsman, FOI and Privacy Commissioner Information Sheets (please see point 5 below);
- reviewed and updated the NECS Privacy Commissioner Information Sheet to reflect the amendments made to the Privacy Act by the Amendment Act;
- updated the summary description of the NECS Privacy Commissioner's functions to reflect the amendments made to Privacy Act by the Amendment Act;
- updated the ECS Ombudsman, FOI and Privacy Commissioners' Privacy Statement to reflect the amendments made to the Privacy Act by the Amendment Act;
- updated and amended the contact list for Regulatory Authorities on the website to ensure it is legally accurate and reflects how each Regulatory Authority is identified and referred to in the National Law Adoption Act of their participating jurisdiction.

3.5 Training and Education in 2015/16

While the relatively small number of review applications received under the FOI Act this financial year would indicate overall high levels of satisfaction with the quality of services provided (something which I have highlighted under my Foreword and Overview to this report), I believe this could also indicate more broadly that there needs to be more public education and awareness on the roles of ECS Ombudsman, FOI and Privacy Commissioners, and how they sit within the National Quality Framework.

For example, I note that of the requests for access in 2014/15 the majority were received in Victoria, NSW and Queensland. On the other hand, 2 or less were received in Western Australia, South Australia and the ACT and none received in either the Northern Territory or Tasmania.

I believe that what appears to be a higher level of awareness in some participating jurisdictions is due to the fact that my office is primarily based in Victoria. I also note that Victoria and NSW had a vital role in drafting and implementing the Education and Cares Services National Law and Regulations.

A way to increase awareness in other participating jurisdictions may be for my office to travel to those participating jurisdictions to conduct formal training sessions, presentations or workshops.

While the ACQECA workshops held this year have been highly successful, I also note they have been targeted specifically at educators and service providers. I believe it is vital that similar types of educational programs are also made available to parents and guardians of children who receive education and care services in Australia.

I also note that while the ACECQA workshops have assisted educators and service providers in their provision of quality education and care services, there is little available to assist them in understanding the roles of the ECS Ombudsman, FOI and Privacy Commissioners in relation to those services.

Ideally, any workshops or training sessions run by my office would be aimed at providers *and* recipients of education and care services to increase overall awareness of my office and how it sits within the National Quality Framework. I would also look at meeting with and providing separate workshops for Regulatory Authorities in each participating jurisdiction.

This is something my office will be looking to work towards in the upcoming financial year.

4 Complaints

The complaints received were generally about how the ACECQA assessed qualifications and have now been resolved. **Attachment 1** provides an overview of the complaint resolution process.

5 Freedom of Information

The NECS FOI Commissioner is required each financial year to report on the operation of the FOI Act.

The FOI Act requires the ACECQA, each Regulatory Authority and relevant administrative tribunals to provide information on the number of requests for access to information (**see part 3.2 and Attachments 2-5**).

During the 2014/15 year the ACECQA and Regulatory Authorities received a total of 29 Requests for Access to information of which 1 was granted access in full, 21 granted in part, 3 refused in full, 4 were withdrawn and 1 remains outstanding. I exercised my discretion under s 54D(4) of the FOI Act to grant an extension of time for two Regulatory Authorities to deal with an application for internal review of an original FOI decision beyond the 30 day period contained in s 54C(3) of the FOI Act. The reasons why extensions were sought in each instance were because of limited available resources and staff shortages which the Regulatory Authorities were experiencing at the time.

The 2014/15 figures are similar to those from the 2013/14 year during which the ACECQA and Regulatory Authorities received a total of 24 Requests for Access. Importantly, there were no applications for review made to the NECS FOI Commissioner or to relevant administrative tribunals of decisions on requests received by the ACECQA or Regulatory Authorities during this period.

REQUESTS FOR ACCESS	**July 2014– June 2015**
(a) Regulatory Authority	
NSW – Director-General of the Department of Education and Communities • Number received during the period • Number finalised during the period	 8 8 (6 granted access in part, 1 refused access in full, 1 request withdrawn by the applicant)
VIC – Secretary of the Department of Education and Training • Number received during the period • Number finalised during the period	 6 6 (1 granted access in full, 5 granted access in part)
QLD – The Chief Executive - Department of Education and Training • Number received during the period • Number finalised during the period • Number outstanding at the end of the period	 8 7 (6 granted access in part, 1 request withdrawn by the applicant) 1
WA- Chief Executive Officer of the Department of Local Government and Communities • Number received during the period • Number finalised during the period	 2 2 (2 granted access in part)
SA- Education and early Childhood Services Registration and Standards Board • Number received during the period	 2

• Number finalised during the period	2 (1 granted access in part, 1 refused access in full)
TAS-Department of Education	Nil
ACT- Director General of the ACT Education and Training Directorate Education and Training Directorate • Number received during the period • Number finalised during the period	 1 1 (1 granted access in part)
NT- Chief Executive Officer of the Department of Education	Nil
(b) ACECQA	
• Number received during the period • Number finalised during the period	2 2 (2 withdrawn by the applicant)
APPLICATIONS FOR REVIEW	**July 2014– June 2015**
(c) Administrative Tribunals	
NSW Civil and Administrative Tribunal	Nil
Victorian Civil and Administrative Tribunal	Nil
Queensland Civil and Administrative Tribunal	Nil
State Administrative Tribunal WA	Nil
Administrative and Disciplinary Division of the District Court of SA	Nil
Magistrates Court (Administrative Appeals Division) established under the Magistrates Court (Administrative Appeals Division) Act (Tas)	Nil
ACT Civil and Administrative Tribunal	Nil
Local court established under the Local Court Act of the NT	Nil
(d) NECSFOIC	
• Number received during the period • Number finalised during the period	Nil Nil

6 Financial Statements

The financial report has been audited by Grant Thornton and the audit statement is found at **Attachment 6**.

7 Budget Implications

The office will also monitor the need for investigative staff to assist with the expected increase in the number of complaints and requests for Freedom of Information reviews.

Attachment 1

COMPLAINT RESOLUTION PROCESS

The Education and Care Services Ombudsman, National Education and Care Services Privacy Commissioner, and Freedom of Information Commissioner have established a complaint resolution process to streamline the efficient resolution of complaints received under the *Education and Care Services National Law 2010* ("**National Law**").

Complaint

An approach may be made by telephone or in writing (fax, email, letter, complaint form, etc). If that approach is not a complaint, but something else like an inquiry or request for services, you will be directed as far as practicable to the person or body who may be able to provide the information or services your seek.

About who and what

Education and Care Services Ombudsman ("**ECS Ombudsman**")

The ECS Ombudsman only has power to deal with certain matters relating to the ACECQA. It does not have power to deal with matters relating to a Regulatory Authority apart from specific matters relating to freedom of information and privacy.

National Education and Care Services Freedom of Information Commissioner ("**NECS FOI Commissioner**")

From 1 January 2012, the *Freedom of Information Act 1982* (Cth) ("**FOI Act**") applies as the law of each State and Territory for the purposes of the National Quality Framework. Each State and Territory has for that purpose adopted in its jurisdiction the FOI Act as modified by the *Education and Care Services National Regulations 2011* ("**National Regulations**").

This means that the FOI Act (as modified) applies to the ACECQA and each Regulatory Authority. Those bodies are bound by and must comply with the requirements of the FOI Act (as modified) when dealing with formal requests for access to documents under freedom of information.

This means that any person has a right to seek from the ACECQA or each Regulatory Authority access to documents of those agencies under the FOI Act.

It should be noted that the NECS FOI Commissioner has power to monitor compliance by the ACECQA and the Regulatory Authorities with their obligations under the FOI Act including handling review applications (which may reveal systemic or serious problems in the administration of the FOI Act).

National Education and Care Services Privacy Commissioner ("**NECS Privacy Commissioner**")

From 1 January 2012, the *Privacy Act 1988* (Cth) ("**Privacy Act**") applies as the law of each State and Territory for the purposes of the National Quality Framework. Each State

and Territory has for that purpose adopted in its jurisdiction the Privacy Act as modified by the National Regulations.

This means that the Privacy Act (as modified) applies to the ACECQA and each Regulatory Authority. Those bodies are bound by and must comply with the requirements of the Privacy Act (as modified) when dealing with personal information.

The NECSPC has power to deal with written complaints made alleging an interference with privacy arising from an alleged breach of the Australian Privacy Principles ("**APPs**") in the Privacy Act by one or more of:

(a) the ACECQA; or
(b) a Regulatory Authority from a participating jurisdiction.[1]

The APPs came into effect on 12 March 2014 following changes made to the Privacy Act by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012*.

In writing

A complaint must be writing for it to be considered. If it is not made in writing, reasonable assistance will be provided to you to set out the complaint in writing.

Preliminary inquiries and assessment

A preliminary assessment will be undertaken to determine whether or not to entertain or investigate the complaint (or investigate further). For example, discretion can be exercised not to entertain a complaint if:

- no complaint was first made to the relevant agency;
- the events complained about occurred more than 12 months after you became aware of them;
- the complaint is frivolous, vexatious, misconceived, lacking in substance or not made in good faith;
- another remedy is available elsewhere;
- the agency concerned is dealing with the complaint or has not had an adequate opportunity to deal with it.

In order to do this preliminary assessment, preliminary inquiries may be conducted including:

- contacting you to clarify allegations made or information provided, or obtain documentary evidence (including a copy of any complaint to the agency and any response from the agency);
- researching relevant laws and other information available;
- considering similar cases;
- obtaining legal advice;
- deciding whether the complaint or parts will or will not be investigated;
- contacting the agency to obtain its version of events, additional information or relevant documents;

[1] See combination of s 263, National Law and r 199, National Regulations.

- identifying disagreements in the facts or about the lawfulness or reasonableness of the agency's actions;
- seek information from others if necessary;
- consider and discuss with the agency possible action;
- try to resolve the matter using conciliation or other methods of dispute resolution.

Formal investigation

If a decision is made to investigate, there are some formal steps which must be taken involving notification of the agency concerned. If an adverse finding is likely, the agency concerned will be given an opportunity to make submissions about it.

Investigations are confidentially conducted, but you will be kept reasonably informed of progress and you may be called on to provide further information or evidence. You should be aware that any time it may be determined to not investigate further. If so, you will be informed of the reasons for doing so.

Possible outcomes

The possible outcomes depend on the nature of the subject matter of the complaint.

Privacy

In privacy related complaints, there will be a strong emphasis on attempting to resolve issues using conciliation and other dispute resolution methods. If no resolution is possible, possible outcomes include:

- dismissing the complaint;
- finding the complaint substantiated and one or more of the following:
    - a determination that no further action be taken;
    - a determination that the agency should stop conduct, or engage in particular conduct;
    - a determination that you be awarded compensation for loss or damage (including for injured feelings or humiliation);
- a declaration that you be reimbursed for reasonable expenses incurred in connection with making the complaint;
- an order that an agency correct or amend information in a record.

Freedom of Information

In freedom of information related complaints, there will be a strong emphasis on attempting to resolve issues using conciliation and other dispute resolution methods. If no resolution is possible, possible outcomes include:

- undertake an investigation;
- make recommendations to the agency in light of the outcome of the investigation;
- issue an implementation to force compliance with any such recommendations;
- report to the Ministerial Council on the conduct of the agency and have that report tabled in Parliament.

Other administration

In other administrative action matters the ECS Ombudsman can:

- undertake ongoing discussions with the head of the agency to try to resolve a matter;
- bring evidence of breach of duty or misconduct to the head of the agency or Ministerial Council;
- make a finding of undue delays;
- refer specific questions about exercise of power to appropriate tribunals (or recommend the head of the agency does so);
- make a finding that adverse conduct occurred and report it to the agency and Ministerial Council with a recommendation as to what should occur to rectify it.

Whether to entertain/investigate complaint

Assuming a complaint to be within jurisdiction, in writing, and the subject matter of concern has previously been raised with the respondent, there are circumstances where discretion may be exercised to decline to entertain or investigate a complaint (or investigate further). The basis on which a decision to decline to investigate or investigate further depends on the function being performed, namely, privacy function, Ombudsman function or FOI function (see table below).

When can decline to investigate/entertain complaint

Privacy function	**Ombudsman function**	**Information Commissioner function**
The act or practice complained about is not an interference with privacy of an individual.[3]	The complainant has not complained to the respondent.[4]	The complainant has or had a right to cause the action to be reviewed by the respondent agency, the NECS FOI Commissioner, a court or a tribunal, has not done so and it would be, or would have been, reasonable to do so.[5]
The complaint was made more than 12 months after the complainant became aware of the act or practice.[6]	The ECS Ombudsman is satisfied the complainant became aware of the [administrative] action more than 12 months before the complaint was made.[7]	
The complaint is frivolous, vexatious, misconceived or lacking in substance (see further below).[8]	The ECS Ombudsman is of the opinion that the complaint is frivolous or vexatious or was not made in good faith (see further below).[9]	The complaint is frivolous, vexatious, misconceived, lacking in substance or not made in good faith.[10]
The act or practice is the subject of an application under another Commonwealth, State or Territory law, and the subject-matter of the complaint has been, or is being, dealt with adequately under that law.[11]	The ECS Ombudsman is of the opinion that the complainant does not have a sufficient interest in the subject matter of the complaint.[12]	The complainant does not have a sufficient interest in the subject matter of the complaint.[13]
An investigation, or further investigation, of	The ECS Ombudsman is of the opinion that an investigation,	

[3] Section 41(1), Privacy Act.
[4] Section 6(1A), Ombudsman Act.
[5] Section 73(b), FOI Act.
[6] Section 41(1), Privacy Act.
[7] Section 6(1), Ombudsman Act.
[8] Section 41(1), Privacy Act. It is important to note that these concepts are not necessarily mutually exclusive.
[9] Section 6(1), Ombudsman Act. It is important to note that these concepts are not necessarily mutually exclusive.
[10] Section 73(e), FOI Act.
[11] Section 41(1), Privacy Act.
[12] Section 6(1), Ombudsman Act.
[13] Section 73(f), FOI Act

the act or practice is not warranted having regard to all the circumstances.[14]	or further investigation, of the action is not warranted having regard to all the circumstances.[15]	
The complainant has complained to the respondent about the act or practice and the respondent has dealt, or is dealing, adequately with the complaint.[16]	Where the complainant has complained to the respondent, the ECS Ombudsman may decide not to investigate the action unless and until the complainant advises that no redress has been granted or that redress has been granted but the redress is not, in the opinion of the complainant, adequate.[17]	The complainant has complained to the respondent agency, and the respondent agency has dealt, or is dealing, adequately with the complaint or has not yet had an adequate opportunity to deal with the complaint.[18]
The complainant has complained to the respondent about the act or practice and the respondent has not yet had an adequate opportunity to deal with the complaint.[19]	Where a complainant exercises a right to cause the action complained of to be reviewed by a court or a tribunal constituted under an Act,[20] the ECS Ombudsman shall not investigate or continue to investigate the action unless of the opinion that there are special reasons justifying investigation.[21]	
An application has been made by the respondent to have a determination that any interference with privacy was in the public interest (s 72, Privacy Act) and the ECS	Where the complainant has or had a right to have the matter reviewed by a court or tribunal but has not exercised that right, the ECS Ombudsman may decide not to investigate the action if of	The complainant has or had a right to complain about the action to another body,, has not done so and it would have been reasonable to do so.[24]

[14] Section 41(1), Privacy Act.
[15] Section 6(1), Ombudsman Act.
[16] Section 41(2), Privacy Act.
[17] Section 6(1B), Ombudsman Act.
[18] Section 73(d), FOI Act.
[19] Section 41(2), Privacy Act.
[20] Some examples of where a court or may review the matter include:
- where a decision to refuse access to some or all or parts of documents under the FOI Act may be reviewed by a relevant court or tribunal;
- where a decision to impose access charges or as to the amount of access charges under the FOI Act may be reviewed by a relevant court or tribunal;
- decisions made about registration of health practitioners including relating to renewal, endorsement, imposition of conditions, etc: s 199, National Law.
- where conduct of one of the respondent bodies may be the subject of judicial review proceedings in a participating jurisdiction.

[21] Section 6(2), Ombudsman Act.

Ombudsman is satisfied that the interests of persons would not be unreasonably prejudiced by deferring the investigation pending determination of that application.[22]	the opinion that, in all the circumstances, it would be reasonable for the complainant to exercise, or would have been reasonable for the complainant to have exercised, that right.[23]	
	Where, before or after an investigation into administrative action is commenced, the ECS Ombudsman becomes of the opinion that adequate provision is made under an administrative practice for the review of the action complained of, the ECS Ombudsman can decide not to investigate if the action has been, is being or is to be reviewed under that practice at the request of the complainant, or the ECS Ombudsman is satisfied the complainant is entitled to seek review of the action under that practice and it would be reasonable for the complainant to cause it to be.[25]	
		The action complained about is not taken by an agency in the performance of the agency's functions or the exercise of the agency's powers under the FOI Act.[26]
Another Commonwealth, State or Territory law provides a more appropriate remedy for the act or practice that is		

[24] Section 73(c), FOI Act.
[22] Section 41(3), Privacy Act.
[23] Section 6(3), Ombudsman Act.
[25] Section 6(4), Ombudsman Act.
[26] Section 73(a), FOI Act.

the subject of the complaint.[27]		
The complainant has not responded, within the period specified by the NECS Privacy Commissioner, to a request for information in relation to the complaint.[28]		
The act or practice is being dealt with by a recognised external dispute resolution scheme[29] or would be more effectively dealt with by that scheme.[30]		

[27] Section 41(1), Privacy Act.
[28] Section 41(1), Privacy Act.
[29] Section 41(1), Privacy Act.
[30] Section 41(1), Privacy Act.

FREEDOM OF INFORMATION STATISTICAL RETURN
2014/2015

1 Name of Administrative Tribunal:	Nil Return

2 Tribunal Review decisions-access related	Number
A. No. of applications for review received by the Tribunal	
B. No. of applications where NECS FOI Commissioner decision was affirmed on review	
C. No. of applications where NECS FOI Commissioner decision was varied on review by the following:	
(i) greater access given (full access given)	
(ii) greater access given (more but not full access given)	
(iii) access granted after deferment	
(iv) access granted in another form	
(v) charges reduced or not imposed	
(vi) lesser access given (after review of an access grant decision)	
(vii) allowing a further period for making an application for internal review of an access refusal decision	
(viii) not allowing a further period for making an application for internal review of an access refusal decision	
(ix) requiring the agency to conduct further searches for documents	
(x) requiring the agency to process the request following a practical refusal reason under s 24AA	
D. No. of applications withdrawn by applicant	

3 Tribunal review decisions-amendment related	Number
A. No. of applications for review received by the Tribunal	
B. No. of applications where NECS FOI Commissioner decision was affirmed on review	
C. No. of applications where NECS FOI Commissioner decision was varied on review by the following:	
(i) decision to amend or annotate a document	
(ii) decision to refuse to amend or annotate a document	
D. No. of applications withdrawn by applicant	

FREEDOM OF INFORMATION STATISTICAL RETURN
2014/2015

1 Name of Agency:	Nil Return

2 Requests for access (only valid requests under s 15):	Number
A. No. on hand at the beginning of the period	
B. No. received during the period	
C. No. finalised during the period	
D. No. outstanding at the end of the period	

3 Processing of requests:	Number
The number of requests where:	
A. Access was granted in full	
B. Access was granted in part	
C. Access was refused in full (including where no relevant documents found)	
D. Request was transferred to another agency within the National Quality Framework	
E. The request was withdrawn by the applicant	

4 Use of practical refusal decisions	Number
For requests finalised during the period, the number of requests where:	
A. The applicant was initially notified in writing of an intention to refuse the request because a practical refusal reason existed (s 24AB(2))	
B. The request was **subsequently** processed, other than by confirming the practical refusal or the request being withdrawn	

5 Exemptions Claimed	Number
For all requests finalised in the period indicate the types of exemptions claimed (if any). Only indicate each type of exemption once for each request finalised, even if it was used multiple times in relation to that request.	
A. No of times exemptions were not claimed	
Div 2 of Part IV - Exemptions	
B. Documents affecting national security, defence or international relations (s 33)	
C. Cabinet documents (s 34)	

FREEDOM OF INFORMATION STATISTICAL RETURN
2014/2015

8 Disclosure Log	Number
The number of listings added to the disclosure log during the period where the:	
A. listing provides a direct link to the information on the same website (s11C(3)(a)), or	
B. listing provides a link to another website where the information is published (s11C(3)(b)), or	
C. listing provide information about how the information can be otherwise accessed (s11C(3)(c))	

9 Internal Review of Decisions	Number
A. No. of applications for internal review received	
B. No. of applications where agency decision/action was affirmed on review	
C. No. of applications where agency action was varied on review by the following:	
(i) greater access given (full access given)	
(ii) greater access given (more but not full access given)	
(iii) access granted after deferment	
(iv) access granted in another form	
(v) charges reduced or not imposed	
(vi) lesser access given (after review of an access grant decision)	
D. No. of applications withdrawn by applicant without concession of agency	

10 Amendment of Personal Records	Number		
A. No. of requests for amendment of personal records received under s 48			
B. No. of requests for which the initial decision was notified to the applicant within:			
(i) applicable statutory time period			
(ii) up to 30 days late			
(iii) More than 30 days late			
C. No. of applications for internal review			
D. No. of requests which resulted (at initial and internal review stages) in:		Initial Decision	Internal Review
(i) alteration of the records			
(ii) addition of an appropriate notation			
(iii)both (i) and (ii)			
(iv) refusal/confirmation of decision to refuse			

D. Documents affecting enforcement of law and protection of public safety (s 37)
E. Documents to which secrecy provisions of enactments apply (s 38)
F. Documents subject to legal professional privilege (s 42)
G. Documents containing material obtained in confidence (s 45)
H. Documents the disclosure of which would be contempt of Parliament or Court (s 46)
I. Documents disclosing trade secrets or commercially valuable information (s 47)
J. Electoral rolls and related documents (s 47A)

Div 3 of Part IV - Conditional Exemptions

K. Commonwealth -State relations (s 47B)
L. Delberative processes (s 47C)
M. Financial or property interests of the Commonwealth (s 47D)
N. Certain operations of agencies (s 47E)
O. Personal privacy (s 47F)
P. Business (other than documents to which s 47 applies) (s 47G)
Q. Research (s 47H)
R. The economy (s 47J)

6 Response Times

Number

Note: statutory time period includes where time extended in accordance with the FOI Act and periods suspended by operation of the FOI Act

A. Statutory time period met
B. Up to 30 days overdue
C. 31 to 60 days overdue
D. 61 to 90 days overdue
E. More than 90 days overdue

7 Processing charges

Number

A. No. of requests for which charges were notified during the period

Amount

B. Total charges notified (round to nearest dollar)
C. Total charges collected (round to nearest dollar)

Attachment 4

GUIDELINE FOR PREPARATION OF FREEDOM OF INFORMATION STATISTICAL RETURN SPREADSHEET: ACECQA & REGULATORY AUTHORITIES

Key points

- The FOI Act requires agencies under the National Quality Framework to provide information for inclusion in the Annual Report to be produced by the NECS FOI Commissioner.
- The statistical returns provided to those agencies by the NECS FOI Commissioner must be completed and returned by the due date.
- Even if no FOI requests have been received during the relevant periods, a "Nil Return" must be submitted.
- This guideline assists in the completion of the statistical return

Why is FOI information required?

The National Education and Care Services FOI Commissioner ("**NECS FOI Commissioner**") is required each financial year to prepare and submit an annual report to the COAG Education Council. That annual report must include certain information about the operation of the *Freedom of Information Act 1982* (Cth) as amended by the National Law and Regulations ("**FOI Act**").

The FOI Act requires agencies to provide to the NECS FOI Commissioner information that the NECS FOI Commissioner requires to prepare reports.

Who must complete a return?

The agencies that must provide information are the:

(a) National Authority (ie ACECQA); and
(b) each Regulatory Authority,

under the National Law.

Reporting deadlines

Agencies must complete a return must provide the statistical information sought to the NECS FOI Commissioner by no later than **27 July 2015**. Compliance with this deadline is essential as it will enable the NECS FOI Commissioner to comply with a statutory deadline to submit the annual report.

What information is required?

Agencies must provide information about various freedom of information matters including

(a) the number of requests for access received;

(b) the number of applications for amendment to personal information received and their results;

(c) total charges collected during the year;

(d) the number of applications for internal review and their results;

The statistical return spreadsheet details the information required.

Name of Agency

To complete the name of your agency, click on the box under the heading "Name of Agency". Click on the drop list at the end of the box. Select your agency's name.

Nil Returns

A "Nil Return" must be submitted where there is no activity at all to report for the period covered by the statistical return spreadsheet. It is not enough to just put zeros everywhere. To submit a Nil Return where no FOI requests for access or amendment have been received, click on the box under the heading "Nil Return", click on the drop list on the right and highlight "Yes".

Requests for Access

This should only be completed if your agency received during the relevant period requests for access to documents which complied with the requirements of s 15 of the FOI Act. A request is only compliant if it:

(a) is in writing; and

(b) states that the request is an application for the purposes of the FOI Act; and

(c) provides such information as is reasonably necessary to enable identification of the documents requested; and

(d) gives details on how notices under the FOI Act may be sent to the applicant.

The following are **not** included here:

- A request for internal review of a decision;
- A request for review by the NECS FOI Commissioner;
- A request for review by the appropriate administrative tribunal for your participating jurisdiction.

A request should be treated as having been finalised if a decision to grant full or partial access has been notified to the applicant but the documents have not been released yet as at the end of the relevant period.

Processing of requests

All requests where decisions were made to allow access wholly or partly should be recorded whether or not:

- access was deferred under s 21, FOI Act;
- the applicant sought review of a decision to grant partial access (ie parts of documents or some of documents) or which included a charge for providing access;
- the applicant indicated that given the charges imposed, they no longer sought access.

3B includes decisions to either grant access to only some of the documents sought, or to grant access to an edited copy of documents (s 22).

3C includes where the refusal occurred because:

- the documents were exempt;
- they were not subject to the FOI Act;
- no relevant documents could be found in the agency's possession;
- a practical refusal reason existed (eg processing would substantially and unreasonably divert resources.

3C does not include:

- a deemed refusal which arises due to expiration of a time limit for notifying a decision;
- requests where access was refused in the form sought, but was provided in a different form (that should be an access decision, not refusal).

3D applies where the whole request was transferred to another agency within the National Quality Framework.

3E applies where either the applicant has expressly withdrawn the request, or they have failed to respond to an estimate of charges being sought and the request lapses and is therefore taken to have been withdrawn.

Exemptions Claimed

This should include all categories of exemption claimed for each request that was finalised. However, only record each category of exemption claimed once for each FOI request which was finalised, even if the category was used multiple times in relation to various documents dealt with by the request.

Response Times

This aims to determine how many requests are not decided within the statutory timeframes and how long any delay is. Note that even if a deemed refusal has arisen, the agency must still process the request.

Disclosure log

The NECS FOI Commissioner has an obligation to monitor and report on disclosure log requirements and use by agencies under the FOI Act.

Review of Access Decisions

The FOI Act provides for 3 procedures for review of a decision refusing access in accordance with a request:

- internal review
- review by NECS FOI Commissioner
- review by the relevant administrative tribunal for your participating jurisdiction.

The NECS FOI Commissioner seeks information about internal reviews only as it will at this stage obtain information about any administrative tribunal review directly from the relevant tribunal and will keep its own records of reviews sought from the NECS FOI Commissioner.

In relation to 9B, C and D, in each case the questions should be answered on the basis of review decisions **made and notified** to the applicant during the reporting period. It will not necessarily be the same as the number of applications for review received during the period (9A).

Amendment of Personal Records

This collates information about request made under s 48 of the FOI Act to amend personal records. It is self explanatory.

Attachment 5

GUIDELINE FOR PREPARATION OF FREEDOM OF INFORMATION STATISTICAL RETURN SPREADSHEET: ADMINISTRATIVE TRIBUNALS

Key points

- The FOI Act requires an Annual Report to be produced by the National Education and Care Services FOI Commissioner ("**NECS FOI Commissioner**") including information about FOI in administrative tribunals.
- The statistical returns provided to those administrative tribunals by the NECS FOI Commissioner must be completed and returned by the due date.
- Even if no FOI requests have been received during the relevant periods, a "Nil Return" must be submitted.
- This guideline assists in the completion of the statistical return.

Why is FOI information required?

The NECS FOI Commissioner is required each financial year to prepare and submit an annual report to the COAG Education Council. That annual report must include certain information about the operation of the *Freedom of Information Act 1982* (Cth) as amended by the National Law and Regulations ("**FOI Act**").

That includes information about FOI matters in administrative tribunals.

Who must complete a return?

The administrative tribunals from which information is sought are the:

(a) ACT Civil and Administrative Tribunal;

(b) NSW Civil and Administrative Tribunal;

(c) Administrative and Disciplinary Division of the District Court of South Australia;

(d) Local Court of the Northern Territory;

(e) Magistrates Court (Administrative Appeals Division) of Tasmania;

(f) State Administrative Tribunal of Western Australia;

(g) Victorian Civil and Administrative Tribunal; and

(h) Queensland Civil and Administrative Tribunal,

under the National Law.

Reporting deadlines

Administrative Tribunals are requested to complete a return and provide the statistical information sought to the NECS FOI Commissioner by no later than 27 July 2015.

Compliance with this deadline is essential as it will enable the NECS FOI Commissioner to comply with a statutory deadline to submit the annual report.

What information is required?

Administrative Tribunals should provide information about various freedom of information matters including

(a) the number of applications received for review of decisions of the NECS FOI Commissioner, and their results;

(b) the number of applications withdrawn by applicants.

The statistical return spreadsheet details the information required by the NECS FOI Commissioner.

Name of Agency

To complete the name of your administrative tribunal, click on the box under the heading "Administrative Tribunal". Click on the drop list at the end of the box. Select your administrative tribunal's name.

Nil Returns

A "Nil Return" must be submitted where there is no activity at all to report for the period covered by the statistical return spreadsheet. It is not enough to just put zeros everywhere. To submit a Nil Return where no FOI requests for access or amendment have been received, click on the box under the heading "Nil Return", click on the drop list on the right and highlight "Yes".

Tribunal Review decisions- access related

All Tribunal decisions relating to access should be recorded, including where:

- access was deferred under s 21, FOI Act;
- the applicant sought review of a decision to grant partial access (i.e. parts of documents or some documents) or which included a charge for providing access;
- the applicant sought to extend the time for making an internal review application;
- an agency was required to conduct further searches for documents;
- an agency was required to process a request following a practical refusal reason under s 24AA, FOI Act;
- the applicant sought review of a deemed decision.

A decision to grant full or partial access should be treated as having been finalised even if the documents have not been released yet as at the end of the relevant period.

Tribunal Review decisions- amendment related

All Tribunal decisions should be recorded where the applicant sought review of a decision to refuse to amend or annotate a record of personal information.

Completed Returns

Any queries about completion of any part of the return should be directed to the NECS FOI Commissioner:

- by email at: ian.pollerd@necsombudmanprivacy.edu.au
- by telephone to Ian Pollerd on (03) 9654 1077.

Completed returns should be sent as an attachment by email to the NECS FOI Commissioner at: ian.pollerd@necsombudmanprivacy.edu.au

Attachment 6

AUDITED REPORT

Education Services Australia

The provision of office support for the Education and Care Services Obudsman, the National Education and Care Services Privacy Commissoner and the National Education and Care Services Freedom of Information Commissioner

Statement of Income and Expenditure for the period 1 July 2014 - 30 June 2015

	Actual $	Budget $	Variance $
Revenue			
Revenue	145,000	145,000	0
Total revenue	**145,000**	**145,000**	0
Expenditure			
Retainer	20,000	20,000	0
Legal fees	25,091	50,000	24,909
Consultants	30,046	31,976	1,930
Rent	20,000	20,004	4
Other expenses	8,987	56,110	47,123
Total expenditure	**104,124**	**178,090**	**73,966**
Balance of funds from FY 2015	**40,876**		
Balance remaining from prior years	**33,090**		
Total balance of funds remaining	**73,966**		

- Report has been prepared exclusive of GST

For identification purposes only

Grant Thornton Audit Pty Ltd

Education Services Australia

The provision of office support for the Education and Care Services Obudsman, the National Education and Care Services Privacy Commissoner and the National Education and Care Services Freedom of Information Commissioner

Statement of Financial Position as at 30 June 2015

CURRENT ASSETS	**$**
Cash at bank	73,966
Total Current Assets	**73,966**
Total Non-Current Assets	**0**
TOTAL ASSETS	**73,966**
CURRENT LIABILITIES	
Income received in advance	73,966
Total Current Liabilities	**73,966**
NON-CURRENT LIABILITIES	
Total Non-Current Liabilities	**0**
TOTAL LIABILITIES	**73,966**
NET ASSETS	**0**

For identification purposes only

Grant Thornton Audit Pty Ltd

Notes to the financial report for the year 1 July 2014 to 30 June 2015

Note 1: Basis of Preparation

The financial report for the year ended 30 June 2015 are drawn up as special purpose reports to fulfil the requirements consistent with those of the Funding Agreement between the Department of Education, Employment and Workplace Relations and Education Services Australia Limited for the provision of office support for 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, dated 21 February 2012 which expired on 1 March 2013 ("Funding Agreement").

Basis of preparation

The financial statements are presented in accordance with AASB 101 Presentation of Financial Statements (Revised 2007).

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 Company'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) Revenue
Revenue is measured at the fair value of the consideration received or receivable and is recognised by reference to stage of completion.

All revenue is stated net of the amount of goods and services tax (GST).

(ii) Operating expenses
Operating expenses are recognised in profit or loss upon utilisation of the service or at the date of their origin.

(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 2015 amounts shown as Other Liabilities represent the unrecognised revenue for projects invoiced or received in advance. It is possible that on completion of project work, balances that have not been fully expended could be returned to the Department of Education, Employment and Workplace Relations.

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Independent Auditor's report
To the members of Education Services Australia Limited

Report on the financial report

We have audited the accompanying financial report, being a special purpose financial report, which comprises the statement of financial position as at 30 June 2015, the statement of income and expenditure, for the period 1 July 2014 to 30 June 2015 and notes comprising a summary of significant accounting policies. The financial report relates to activities consistent to the Funding Agreement between the Department of Education, Employment and Workplace Relations and Education Services Australia Limited, dated 21 February 2012 which expired on 1 March 2013, regarding funding for the provision of office support for 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 ("Funding Agreement").

Management's responsibility for the financial report

The management of Education Services Australia Limited are responsible for the preparation of the financial report. This responsibility includes establishing and maintaining internal control relevant to the preparation and fair presentation of the financial report in accordance with the Funding Agreement and the Australian Accounting Standards.

Auditor's responsibility

Our responsibility is to express an opinion on the financial report based on our audit. We conducted our audit in accordance with Australian Auditing Standards. These Auditing Standards require that we comply with relevant ethical requirements relating to audit engagement and plan and perform the audit in order to express an opinion on the preparation and presentation of the financial report to management.

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An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error.

In making those risk assessments, the auditor considers internal control relevant to the Education Services Australia Limited's preparation and fair presentation of the financial report 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 the Education Services Australia Limited's internal control.

These procedures have been undertaken to form an opinion whether, in all material respects, the financial report is presented fairly in accordance with Australian Accounting Standards. We disclaim any assumption of responsibility for any reliance on this report or on the financial report to which it relates, to any person other than Education Services Australia Limited, or for any purpose other than that for which it was prepared.

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

Independence

In conducting our review, we have complied with the independence requirements of the Accounting Professional and Ethical Standards Board.

Auditor's opinion

In our opinion the attached financial report of Education Services Australia Limited for the year ended 30 June 2015 for the provision of office support for 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 is presented fairly, in all material respects, in accordance with the Funding Agreement and Australian Accounting Standards; and the funding was expended in accordance with the Funding Agreement.

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Simon Trivett

Simon Trivett
Partner – Audit & Assurance

Melbourne, 27 August 2015