Education & Care Services Ombudsman,
National Education & Care Services
FOI & Privacy Commissioners

EDUCATION AND CARE SERVICES OMBUDSMAN, NATIONAL EDUCATION AND CARE SERVICES PRIVACY AND FREEDOM OF INFORMATION COMMISSIONERS

ANNUAL REPORT

1 July 2015 to 30 June 2016

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Education & Care Services Ombudsman,
National Education & Care Services
FOI & Privacy Commissioners

Letter of Transmittal

Chair
COAG Education Council
PO Box 202
CARLTON SOUTH VIC 3053

Dear Minister

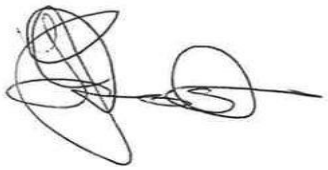
In accordance with Regulations 198, 207 and 221 of the *Education and Care Services National Law Regulations* (the ECS Regulations) I am pleased to present to the COAG Education Council the Education and Care Services Ombudsman, National Education and Care Services Freedom of Information Commissioner, and National Education and Care Services Privacy Commissioner (the ECS Commissioners), Annual Report for the period 1 July 2015 to 30 June 2016.

The Annual Report is the fifth such report from the office of the ECS Commissioners since its establishment in January 2012.

The Annual Report has been prepared in accordance with the requirements of the ECS Regulations. I am satisfied that the ECS Commissioners' Office has financial and governance procedures and processes in place that meet the specific needs of the Office and that comply with the ECS Regulations applying to the Office.

Regulations 198, 207 and 221 of the ECS Regulations require each member of the Ministerial Council to cause a copy of the Annual Report to be laid before the House of Parliament of the jurisdiction the member represents.

Yours sincerely



Lesley Foster

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

1 Commissioners' Foreword and Overview

The office of the Education and Care Services Ombudsman, National Education and Care Services Freedom of Information Commissioner, and the National Education and Care Services Privacy Commissioner (the ECS Commissioners), is an independent statutory agency established under national applied laws legislation – *the Education and Care Services National Law Act 2010* (the National Law) and the associated *Education and Care Service National Regulations*.

The office was established in 2012 as part of reforms by the Council of Australian Governments (COAG) to create a national, uniform regulatory and quality assurance scheme for early childhood education and care services across Australia under the National Quality Framework for Early Childhood Education and Care (the NQF).

The three ECS Commissioner positions are established and operate independently of each other for the purposes of the National Law. The COAG Education Council is responsible for the appointment of the ECS Commissioners and in 2011 determined to appoint one person to cover the three roles.

The Commonwealth *Ombudsman Act 1976, Freedom of Information Act 1982* and *Privacy Act 1988* - as in force from time to time - apply for the purposes of the operation of the office. Part 6.2 Divisions 1, 2, and 4 of the "ECS Regulations" modify the respective Commonwealth Acts to apply in participating States and Territories for the purposes of the National Quality Framework for Early Childhood Education and Care.

The office provides ombudsman services with respect to administrative actions taken by the Australian Children's Education and Care Quality Authority (ACECQA), and freedom of information and privacy complaint and review services in relation to actions taken in these areas by each of the State and Territory early childhood education and care Regulatory Authorities and ACECQA.

The office also plays an important role in promoting public and service provider confidence in the integrity of the administration of the regulation of early childhood education and care.

In June 2015 the Education Council commissioned an independent review of the workload and operational arrangements for the ECS Commissioners. The review was identified in the original appointment instrument for the three roles in 2012. The review considered: the structure of the office; workloads; role capability requirements; policies, procedures and systems; management; and governance. It reported to the Education Council in August 2015 and made a series of recommendations within the identified areas.

Following the review the Education Council developed a new position description and capability requirements for the ECS Commissioners' roles and undertook a national recruitment process for the positions, from which I was subsequently appointed in late December 2015.

This is my first Annual Report as the ECS Commissioners since my appointment and I have found these first six months in the roles to be interesting, challenging and rewarding. The Report incorporates the activities undertaken by the previous ECS Commissioners, Mr Ian Pollerd, during the period 1 July 2015 to 23 December 2015.

1.1 Achievements

During my first six months as ECS Commissioners while undertaking my legislative responsibilities I have focused on reviewing the policies, systems and public face of the office within the context of the Education Council Review recommendations. This has resulted in a number of actions including:

- establishment of an interim basic document and case management system using Office 365;
- development of a Service Charter (**Attachment 1**);
- improved procurement procedures;
- revision of *Guideline 1: Part II Obligations under the FOI Act (the Information Publication Scheme) for Regulatory Authorities and ACECQA* (**Attachment 2**);
- revision of Guidelines for Freedom of Information Statistical Returns for Administrative Tribunals, Regulatory Authorities and ACECQA; and
- initial engagement with Regulatory Authorities and ACECQA on improvements to the Office website and services.

These actions are the first steps towards ensuring both an enhanced operational base for the office that meets public expectations, and improved stakeholder engagement.

1.2 The year ahead

Key priorities for the coming year include:

- Sourcing a cost effective complaints management and reporting system
- Re-development of the office website
- Development and implementation of a stakeholder engagement strategy

A better complaints management and reporting system will enable accurate monitoring and reporting and data analysis, assist in effective and efficient complaints and enquiries management, and facilitate the legislative requirements for the office to create store and dispose of documents appropriately.

Improvements to the office website will provide better and more accessible information for stakeholders and the public and will raise the profile of the office and its services and enable feedback from customers and stakeholders.

The ECS Commissioners have a key educative role to play in promoting public awareness of, and confidence in, the administration of the regulation of early childhood education and care and in assisting Regulatory Authorities and ACECQA to fulfil their obligations under ombudsman, freedom of information and privacy legislation. A comprehensive stakeholder engagement strategy will address this role.

1.3 Workload

The ECS Commissioners are appointed on a 0.2EFT basis. Access to the Commissioners is provided for customers directly through the office and via email and telephone. Emails and telephone messages are monitored daily and an acknowledgement response is usually provided within 24 hours of receipt. These arrangements have proved satisfactory to date in dealing with the workload, although a complex complaint could result in additional resource requirements. In addition it appears that there is limited awareness of the Commissioners' FOI and Privacy roles. The proposed enhanced stakeholder engagement by the Office may see an increase in the workload in these areas.

2 About the ECS Ombudsman, Freedom of Information and Privacy Commissioners

2.1 Education and Care Services Ombudsman (ECSO)

The Education and Care Services Ombudsman receives complaints and assists people who believe they may have been treated unfairly or inappropriately by the Australian Children's Education and Care Quality Authority (ACECQA). The ECSO operates under the Commonwealth *Ombudsman Act 1976* (as modified).

The ECSO has the power to investigate, either on the basis of a complaint received or the Ombudsman's own motion, an action taken by an employee, agent, staff member or contractor of ACECQA that relates to a matter of administration. Such matters can include:

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

The ECSO powers extend to anything that 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.

The ECSO 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 ECSO cannot compel ACECQA to comply with its recommendations nor change the law. However, the Ombudsman may, at the conclusion of an investigation and after reporting on findings and recommendations, forward the report to the nominated member of the Ministerial Council responsible for overseeing the National Law. In addition, if the appropriate action is not taken and it would be appropriate in all the circumstances, the Ombudsman may also formally report to the Parliaments of the Commonwealth and the participating jurisdictions.

The ECSO does not have any powers in relation to how State and Territory Regulatory Authorities exercise their powers or functions under the National Law or Regulations. Complaints about Regulatory Authorities are directed to the Ombudsman in the State or Territory in which the Regulatory Authority is located.

2.2 National Education and Care Services Freedom of Information Commissioner (NECSFOIC)

The NECSFOIC has powers to enquire into and investigate written complaints, and undertake own motion investigations, about the performance of functions, or the exercise of powers, under the Commonwealth *Freedom of Information Act 1982* (FOI Act) by ACECQA or a State or Territory Regulatory Authority.

ACECQA and each Regulatory Authority 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 ACECQA or each Regulatory Authority access to documents of those agencies under the FOI Act.

Under the FOI Act ACECQA and each of the Regulatory Authorities must:

(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 advise applicants of their review rights in any statement of reasons for the 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 NECSFOIC to make a decision in relation to any review of a reviewable decision;
(i) assist the NECSFOIC 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 NECSFOIC 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 FOIC under the FOI Act; and
(m) implement any recommendations made by the NECSFOIC as a result of an investigation of a complaint.

2.3 National Education and Care Services Privacy Commissioner (NECSPC)

ACECQA and each of the State and Territory Regulatory Authorities are bound by and must comply with the requirements of Commonwealth *Privacy Act 1982*, (the Privacy Act), as modified by the *Education and Care Services National Regulations,* in relation to how they collect, use, store and otherwise handle personal information about individuals (including sensitive information).

"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 (amongst other things).*

On 12 March 2014 following changes made to the Privacy Act by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* the Australian Privacy Principles (APP) came into effect. ACECQA and each of the Regulatory Authorities must comply with 11 of the 13 APP's set out in the Privacy Act dealing with:

- open and transparent management of personal information

- an individual's right to anonymity and pseudonymity in some cases in dealing with an agency
- the manner and purpose of collection of personal information
- the collection and handling of unsolicited personal information
- notification of the collection of personal information
- appropriate use or disclosure of personal information
- cross-border disclosure of personal information
- the accuracy of personal information before use
- secure storage of personal information
- a person's right to access their personal information
- amendment to personal information

The NECSPC has the power to deal with written complaints alleging an interference with privacy arising from an alleged breach of the APP's by ACECQA or a State or Territory Regulatory Authority. The NECSPC may also conduct own motion investigations into whether these agencies are complying with their obligations under the Privacy Act. The NECSPC may make various enforceable determinations as a result of investigations.

3 Complaints

During the 2015/16 year the majority of complaints received by the ECS Commissioners related to the process or outcomes of the assessment of overseas qualifications by ACECQA. Generally the complaints were resolved through:

- further clarification of the reasons for the assessment outcome by ACECQA to the complainant;
- seeking additional information and further consideration of the application by ACECQA;
- the provision of advice by ACECQA and/or the ECS Ombudsman to the complainant about opportunities for further study and applying for Recognition of Prior Learning.

Drawing from the complaints received there are a few observations that can be made, some of which may be at least partially addressed through the proposed ECS Commissioners' stakeholder engagement strategy, website redevelopment, and/or by ACECQA. These observations include:

- there is a lack of understanding by some applicants for qualifications assessments of both the Australian Qualifications Framework and the qualifications requirements to work in early childhood education and care and, in particular, Outside School Hours Care, despite the comprehensive information made available by ACECQA;
- the lack of understanding is exacerbated as would be expected by language barriers for people from a language background other than English;
- there may be some benefit in providing refresher information to Regulatory Authorities about the qualifications assessment process to ensure that staff are equipped to provide accurate information to educators or potential educators about the factors taken into account in a qualifications assessment.

4 Freedom of Information

The NECS Freedom of Information Commissioner (NECSFOIC) is required each financial year to report on the operation of the Commonwealth *Freedom of Information Act 1982* as modified by

the *Education and Care Services National Law Act 2010* and its associated regulations (referred to here as the FOI Act).

The Australian Children's Education and Care Quality Authority (ACECQA) and each State and Territory Regulatory Authority is required to report to the NECS FOI Commissioner on a number of matters including: the number of FOI requests for access to documents received; the number of applications received for amendment to personal information and their result; the total charges collected during the year; and the number of applications for internal review of FOI decisions and their results. Data by jurisdiction is provided in Table 1 at **Attachment 3.**

In summary ACECQA and Regulatory Authorities received a total of 41 Requests for Access to information of which 33 were finalised within the period. 3 were granted access in full, 21 were granted in part, 3 were refused and 3 were withdrawn by the applicants and 3 were transferred to other agencies within the National Quality Framework. No requests for amendment to personal information were received during the period. Two jurisdictions charged fees and collected a total of $490. No applications were received for internal review of FOI decisions.

The NECSFOIC has the power to consider requests for the review of Freedom of Information decisions that have been made by ACECQA or a State or Territory education and care services Regulatory Authority with respect to either access to documents or decisions regarding amendment of, or annotation to, personal records. If the applicant is dissatisfied with the NECSFOIC's decision they have the right to appeal to the relevant Administrative Tribunal. The NECSFOIC did not receive any requests for review for the period 1 July 2015-30 June 2016.

Each State and Territory relevant Administrative Tribunal (as listed in Regulation 210 of the *Education and Care Services National Regulations*) is required to provide information to the NECSFOIC on

- the number of applications received for review of "access to documents" decisions made by the NECSFOIC and their results;
- the number of applications received for review of "requests to amend/annotate personal records" decisions made by the NECSFOIC and their results; and
- the number of applications withdrawn by applicants.

The relevant administrative tribunals are:

ACT ACT Civil and Administrative Tribunal

NSW NSW Civil and Administrative Tribunal

NT Local Court of the Northern Territory;

QLD Queensland Civil and Administrative Tribunal,

SA Administrative and Disciplinary Division of the District Court of South Australia

TAS Magistrates Court (Administrative Appeals Division) of Tasmania

WA State Administrative Tribunal of Western Australia

VIC Victorian Civil and Administrative Tribunal

As expected, given the NECSFOIC did not receive any requests for review for the period 1 July 2015-30 June 2016, Administrative Tribunals report there were no requests received by them

for review of either access to records decisions or amendment/annotation to personal records decisions made by the NECSFOIC.

5 Financial Statements

The financial report has been audited by Grant Thornton Audit Pty Ltd and the audit statement is found at **Attachment 4.**

6 Budget Outlook

The ECS Commissioners' office has built up a small surplus over the past two years. A reduction in the outsourcing of work by the office (which was the practice in its formative years) is expected to result in some additional savings. The budget formation for 2016/17 will reflect the forward priorities for the office – the sourcing of a more robust case management and reporting system, website redevelopment and stakeholder engagement. Some contingency funds need to be identified within the budget outlook in case complex investigations arise requiring the engagement of additional investigations staff. Costs associated with the stakeholder engagement strategy will be met from within the existing budget. The case management and reporting system is expected to require some additional resourcing and the redevelopment of the website may require a modest injection of additional funds. If these activities are unable to be met from within existing resources business cases will be developed and submitted to the COAG Education Council for consideration.

ATTACHMENTS

Attachment 1: Service Charter

Attachment 2: Guideline 1: Obligations under Part II of the *Freedom of Information Act 1982* for ACECQA and State and Territory Regulatory Authorities

Attachment 3: Freedom of Information Statistical Data

Attachment 4: Audited Financial Report

SERVICE CHARTER

Office of the National Education and Care Services Ombudsman, Privacy Commissioner and Freedom of Information Commissioner

June 2016

Service Charter

This Service Charter sets out the standards of service that you can expect in dealing with the Offices of the National Education and Care Services Ombudsman, Privacy Commissioner and Freedom of Information Commissioner.

Our Role

Commonwealth, State and Territory governments established a national quality assurance framework for early childhood education and care services across Australia through the *Education and Care Services National Law Act 2010* and the *Education and Care Services National Regulations.* For the purpose of implementing this scheme, the National Law established the Australian Children's Education and Care Quality Authority (ACECQA) and education and care services Regulatory Authorities in each of the States and Territories. The State and Territory Regulatory Authorities are:

ACT	Children's Education and Care Assurance, Education and Training Directorate.
NSW	Early Childhood Education and Care Directorate, Department of Education
NT	Quality Education and Care NT, Department of Education
QLD	Regulation, Assessment and Service Quality, Department of Education and Training
SA	Education and Early Childhood Services Registration and Standards Board
TAS	Education and Care Unit, Department of Education
VIC	Department of Education and Training, Quality Assessment and Regulation Division
WA	Education & Care Regulatory Unit, Department of Local Government & Communities

The National Law establishes the offices of the National Education and Care Services Ombudsman, Privacy Commissioner and Freedom of Information Commissioner as impartial integrity bodies. The offices operate under the Commonwealth *Ombudsman Act 1976, Privacy Act* 1988 and *Freedom of Information Act 1982* as modified by the National Regulations.

What we do

The Offices of the Education and Care Services Ombudsman, Privacy Commissioner and Freedom of Information Commissioner seek to resolve complaints about certain actions of ACECQA and the Regulatory Authorities and assist them to improve the integrity and effectiveness of their services where necessary through investigation, advice and review.

The Education and Care Services Ombudsman investigates administrative actions taken by ACECQA.

The National Education and Care Services Privacy Commissioner and Freedom of Information Commissioner investigates complaints about interferences with privacy by ACECQA or a State or Territory Regulatory Authority and complaints about a decision made by ACECQA or a State or Territory Regulatory Authority in relation to a freedom of information request.

An investigation may occur as a result of receiving a complaint by a member of the public, including education and care services and providers, or as a result of the Ombudsman, Privacy Commissioner or Freedom of Information Commissioner deciding to investigate an action on their own motion. Our investigations seek to determine whether the relevant action was lawful and reasonable, whether due process has been followed and whether all relevant considerations were taken into account.

Our vision

We aim to provide independent and accessible complaint-handling and advisory services to ensure that the

national regulatory framework for early childhood education and care is accountable, responsive and fair.

We seek to work collaboratively with ACECQA and the Regulatory Authorities to ensure their conduct and decision-making is lawful, reasonable and transparent.

We aim for excellence in providing a professional service to the public, and to produce timely and high quality work.

Our values

We are committed to the following core values:

Fairness

We are independent and impartial. We respond to complaints without bias and we give everyone the chance to have their say. We do not act as an advocate for either the complainants or ACECQA or the Regulatory Authorities

Integrity

We are open, honest and transparent in our actions and decisions. We take actions and make decisions based on our independent assessment of the facts, the law and the public interest.

Accessibility

We are responsive, and adapt our approaches to meet people's individual needs. Our service is free, and we strive to ensure everyone can access and use our information and services. We are committed to making our written material easy to read and understand, and to developing simple processes that are easy to navigate. We will help people to clarify the details of their complaints to enable a speedy resolution.

Respect

We maintain high professional standards when delivering our services and we treat complainants and stakeholders with dignity and respect.

Value-adding

We aim to bring clarity to problems and identify practical solutions and bring about improvements wherever possible. Establishing good relationships and communication is fundamental to our work. We aim to share what we learn and use our resources and information to influence positive change.

Proportionality

We establish processes and seek resolutions that are appropriate to the complaint and ensure complainants are given realistic expectations about what can be achieved

Accountability

We keep individuals and entities within our jurisdiction informed about actions and outcomes through regular communication. The Ombudsman and Commissioners are formally accountable to the COAG Education Council and regularly submit progress reports to the senior officials group of Council. Information about the performance of our office is also publically available in our annual report which is tabled in each of the Commonwealth, State and Territory Parliaments. The Ombudsman and Commissioners are responsible for ensuring that all employees of and third parties (such as consultants and contractors) who are engaged to carry out work on behalf of the office seek to act in accordance with this service charter.

Outcome Focused

We are focused on providing practical and meaningful outcomes to complainants. We aim to help ACECQA and Regulatory Authorities to meet their obligations to education and care providers, services and the public

by improving, where appropriate, the ways in which they deliver services and handle complaints.

Our Service Guarantee

When you contact the office of the National Education and Care Services Ombudsman, Privacy Commissioner and Freedom of Information Commissioner you can expect to be treated in a courteous and respectful way.

You can expect that we will:

- give careful attention to your concerns in order to ensure that we understand your complaint
- help people who need assistance to formulate their complaints and questions
- communicate in a clear way about how we can assist you and what we require from you in order to proceed with a matter
- refer you to the most appropriate alternative complaint-handling body if we are unable to assist you with your complaint or propose some other strategy
- keep you regularly updated about the progress of your complaint
- promptly assess all the information provided by you, the entity you complained about, and any other relevant third parties, in a fair and impartial way
- effectively explain to you what we can and cannot do about your complaint and provide reasons for our decisions
- maintain confidentiality where appropriate and possible

Timeliness Benchmarks

We aim to:

- Acknowledge receipt of your complaint within three working days
- Decide whether your complaint is in the jurisdiction of the office within 5 working days
- Finalise your complaint within three months where it does not involve consideration of legislative change in order to be addressed

While your matter is open with this office, we aim to:

- Provide you with a progress update every week, unless there are circumstances when it is not practical or appropriate to do so
- Return any telephone calls from you within three working days
- Respond to written communication from you within 10 working days

Complaints

Making a complaint

The office of the National Education and Care Services Ombudsman, Privacy Commissioner and Freedom of Information Commissioner receives complaints and enquiries by mail, email or telephone. We generally ask that complaints be put in writing either via our complaint forms (available on our website) or otherwise so that we have sufficient information to assess the complaint.

Mailing address: National Education and Care Services Ombudsman, Privacy and Freedom of Information Commissioners, PO Box 202, Carlton South, Victoria, 3001

Email address: enquiry@necsombudsmanprivacy.edu.au

Telephone enquiries: 03 9654 1077 or 0419 380 607. A voicemail service is available if we are unavailable to accept your call.

What we can do

At the conclusion of an investigation, the Education and Care Services Ombudsman, Privacy Commissioner or Freedom of Information Commissioner may undertake a number of actions including but not limited to:

- determine that the actions taken by ACECQA or a Regulatory Authority were reasonable in all of the circumstances and take no further action
- provide (or recommend that the relevant entity provide) a better explanation of the relevant decision or process to the complainant
- expedite delayed action
- recommend that a decision be reconsidered
- recommend that an apology be offered to an affected person
- recommend that processes or policies be reviewed or changed
- advise the Education Council about possible legislative deficiencies or ambiguities

What we cannot do

The Education and Care Services Ombudsman, Privacy Commissioner and Freedom of Information Commissioners' jurisdiction relates to the administrative actions of ACECQA and the State and Territory Regulatory Authorities in respect to the administration of relevant aspects of the National Quality Framework.

In general, we cannot:

- act outside of the parameters of the relevant legislation
- provide legal advice or act as an advocate for anyone
- recommend or order that compensation be paid (except if the complaint is about an interference with privacy, in which case a declaration may be made that the affected person is entitled to compensation for any loss or damage suffered)
- force the release of a document determined to be exempt under the *Freedom of Information Act 1982* (Cwlth)
- recommend that action be taken that is not legally available to the relevant body under the *Education and Care Services National Law* as in force in participating States and Territories

What we need from you

There are a number of ways to make it easier and quicker for the office to assist you, including that you:

- raise your concerns directly with the entity that you are dissatisfied with *before* lodging a complaint with our office
- provide us with accurate information and respond to our requests for information in a timely manner
- tell us if you have special requirements, such as requiring assistance from an interpreter
- inform us as soon as possible if you need to correct or update any information you have provided to the office, including if you wish to withdraw your complaint
- be polite and willing to listen.

Review of our decisions

Criticisms and compliments are important ways of gaining feedback about our service and your views are always welcome. If you are dissatisfied with a decision we have made or with the way our services were delivered to you, you should raise your concerns with us. You will need to explain in writing why you are dissatisfied and provide us with an opportunity to resolve your concerns or provide you with a better explanation of our decision or actions. If, after completing this process, you remain dissatisfied with a decision

we have made, you can ask for the matter to be formally reviewed. In order to conduct a review, you will need to:

- make a written request for a review within three months of being advised of our decision), and
- clearly identify why you are dissatisfied and provide us with any new and substantive information that is relevant to the decision we have made.

Your request will be assessed to determine whether there are sufficient grounds for a review. If we agree to review our decision, your request will be assigned to an external person who was not involved in the handling your complaint in the first instance. The review will typically consider:

- the process adopted by our office in handling your complaint and whether it fairly and appropriately addressed all of the issues you raised
- the merit of the conclusion reached by our office, particularly whether it was reasonable based on the information available
- whether the decision was adequately explained to you.

You will be informed of the outcome of the review in writing. Possible outcomes include:

- upholding the original decision
- changing the decision
- referring the matter back our office so that further consideration can be given to it.

We only review a matter once.

Applicants can also seek the review of the Freedom of Information Commissioner's decisions, and certain decisions of the Privacy Commissioner, from the relevant Administrative Appeals body. Applicants will be advised of their rights to appeal when being notified of the Commissioners' decisions.

Charter review

The Education and Care Services Ombudsman, Privacy and Freedom of Information Commissioners regularly monitor the performance of the office against the standards in this Service Charter to assess ways to make further improvements. The Service Charter will be formally reviewed annually by 30 June.

Date introduced	June 2016
Date(s) modified	
Next schedule review date	June 2017

Attachment 2

GUIDELINE 1
Obligations under Part II of the *Freedom of Information Act 1982* for ACECQA and State and Territory Regulatory Authorities

Version 1.2

June 2016

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LIST OF TERMS AND ABBREVIATIONS

Term/Abbreviation	Whole term/explanation
Agencies	The agencies specified in the National Regulations which must have regard to this Guideline in complying with their obligations under the *FOI Act* as modified by the National Regulations: the 8 Regulatory Authorities and the ACECQA (r 208 National Regulations).
Regulatory Authority	In each of the 8 participating jurisdictions: ACT: Director General of the Education and Training Directorate NSW: Director General of the Department of Education and Communities NT: Quality Education and Care NT, Department of Education QLD: Chief Executive of the Department of Education and Training SA: Education and Early Childhood Services Registration and Standards Board TAS: Secretary of the Department of Education VIC: Secretary of the Department of Education and Training WA: Chief Executive of the Department of Local Government and Communities
ACECQA	Australian Children's Education and Care Quality Authority
FOI Act	*Freedom of Information Act 1982 (Cth)* as modified by the National Law and Regulations
ECS FOI Commissioner	Education and Care Services Freedom of Information Commissioner
National Law	*Education and Care Services National Law Act 2010 (Vic)* as applied by the law of all States and Territories
National Regulations	*Education and Care Services National Regulations 2011*
OAIC	Office of the Australian Information Commissioner

ACKNOWLEDGEMENT

The ECS FOI Commissioner gratefully acknowledges the Office of the Australian Information Commissioner for its excellent Guidelines, available athttps://www.oaic.gov.au/freedom-of-information/foi-guidelines/. This ECS FOI Commissioner Guideline is based on the OAIC's Guideline Part 13 (*Information Publication Scheme*), version 1.4 of October 2014.

1. INTRODUCTION & OVERVIEW

1.1. This Guide is issued by the National Education and Care Services Freedom of Information Commissioner (ECS FOI Commissioner) under s 93A of the Commonwealth *Freedom of Information Act 1982* for use by the Australian Children's Education and Care Quality Authority (ACECQA) and the State and Territory Education and Care Services Regulatory Authorities as defined by the *Education and Care Services National Regulations* - collectively referred to throughout as the Agencies

1.2. Section 9A of the Commonwealth *Freedom of Information Act 1982* (FOI Act) as modified by the *Education and Care Services National Law Act 2010* and the *Education and Care Services National Regulations* requires the Agencies to have regard to the objects of the FOI Act and any guidelines issued by the ECS FOI Commissioner under s 93A of the FOI Act when complying with their obligations under the FOI Act.[1]

1.3. The purpose of this Guideline is to set out recommended best practice that the ECS FOI Commissioner encourages Agencies to adopt in complying with their obligations under Part II of the FOI Act.

1.4. Part II of the FOI Act requires Agencies to publish information about their functions, structures, powers and operations. It also permits Agencies to publish other information in accordance with the FOI Act. Agencies' compliance with Part II of the FOI Act is referred to as their Information Publication Scheme ("**IPS**").

POLICY AND OBJECTIVES

1.5. The IPS encourages Agencies to proactively publish information about its activities rather than releasing such information on request. In addition, it assists potential FOI applicants in identifying what documents could be sought under the FOI Act. Although it requires significant effort for Agencies to set up and monitor, it should ultimately reduce the need for Agencies to deal with repeated requests for information about the Agencies' own activities.

1.6. The IPS supports the following objects of the FOI Act by:

- requiring Agencies to publish information (s 3(1)(a));
- acknowledging that information held by government Agencies is a national resource to be managed for public purposes (s 3(3)); and
- affirming that public access to information should be facilitated, provided promptly and at the lowest reasonable cost (s 3(4)).

INFORMATION TO BE PUBLISHED UNDER THE IPS

1.7. An Agency's IPS consists of publishing 3 categories of information:

i) An "agency plan", which explains how the Agency intends to implement and administer its IPS (ss 8(1), 8(2)(a));
ii) Information relating to the Agency as specified in s 8(2) of the FOI Act (s 8(2));
iii) Any other information which can be proactively published (rather than in response to requests made to access those documents) (s 8(4)).

[1] By way of contrast, Commonwealth government agencies subject to the *Freedom of Information Act 1982 (Cth)* will be referred to in this Guideline as "Commonwealth agencies".

2. HOW INFORMATION IS TO BE PUBLISHED

PUBLISHING TO THE PUBLIC, AND TO A WEBSITE

2.1. Information published by an Agency as part of its IPS must be:
   a) published to members of the public generally (s 8D(2)); and
   b) published on a website by one of three ways (s 8D(3)):
      i) allowing the information to be downloaded directly from the website;
      ii) providing a link to another website where the information can be downloaded; or
      iii) providing details on the website about how the information may be obtained.

2.2. The OAIC has designed this IPS icon for use by Commonwealth agencies:

2.3. For consistency and ease of use by the public, the ECS FOI Commissioner recommends Agencies use the OAIC icon.[2] In addition, Agencies should:

- place the IPS icon prominently on the homepage of the Agency website or on a dedicated 'Access to Information' webpage. Clicking on that icon should take the user of the website to the Agency's dedicated IPS webpage;
- ensure any search function on the Agency website includes search results linked to or including information published by the Agency under Part II of the FOI Act;
- ensure that any online content published by the Agency under its IPS is in a format that can be searched, downloaded or accessed in a way that allows text to be copied;
- consider providing an alert or subscriber service, such as an email notification service or RSS feeds, by which a subscriber can be notified of new publications published by the Agency under its IPS.

2.4. Guidance on online publishing for Agencies is also available at:
- https://www.oaic.gov.au/freedom-of-information/foi-resources/foi-agency-resources/guidance-for-agency-websites-access-to-information-web-page; and
- www.humanrights.gov.au/disability_rights/standards/www_3/www_3.html - *World Wide Web Access: Disability Discrimination Act Advisory Notes* (Version 4.1) published by the Australian Human Rights Commission.

IMPOSING CHARGES

2.5. Information published under an Agency's IPS must be available free of charge to the community, except if the information cannot be, or is chosen not to be, downloaded from a website, and the Agency has incurred specific reproduction or incidental costs in providing access to that information in a particular instance (s 8D(4)). The Agency must not impose any such charges without having first published details of the charge under its IPS (s 8D(5)). There are no set formulae for how Agencies may charge for access in those instances but the *Freedom of Information (Charges) Regulations 1982 (Cth)* may provide some guidance about what charges would be reasonable for particular types of access.

[2] Available in various formats for agencies' use at: https://www.oaic.gov.au/freedom-of-information/foi-resources/foi-agency-resources/access-to-information-ips-and-foi-disclosure-log-icons-for-agency-websites.

3. INFORMATION REQUIRED TO BE PUBLISHED

3.1. Section 8(2) of the FOI Act requires Agencies to publish the following information:

a) an agency plan for how it intends to comply with its obligations under Part II of the FOI Act;
b) the Agency's organisational structure;
c) how statutory officers are appointed to the Agency;
d) contact details of the officer tasked with responding to requests about the Agency's compliance with the Act;
e) the Agency's functions and powers;
f) operational information of the Agency;
g) annual reports of the Agency;
h) how members of the public may comment on policy proposals on areas which the Agency is responsible for;
i) information in documents which the agency routinely gives access to in response to requests for access made under Part III of the FOI Act; and
j) information routinely provided by the Agency to Parliament.[3]

3.2. Each of these categories are discussed in further detail below.

Where information already published elsewhere

3.3. Agencies should keep in mind that they need not duplicate information required to be published under s 8(2) of the FOI Act if that information is already published elsewhere, for example, in its annual report. This is particularly likely to be the case in relation to the Agency's organisational structure, or its powers and functions; information usually contained in its annual reports and sometimes published in a separate section on the Agency website.

3.4. In those circumstances, the Agency will have satisfied the requirement in s 8(2) of the FOI Act if the topic is set out on the IPS with a link provided to the document or page where information under that topic and corresponding with s 8(2) of the FOI Act can be viewed or downloaded.

AGENCY PLANS

3.5. Section 8(1) of the Act requires Agencies to prepare and publish a plan showing:
i) The information the Agency proposes to publish under the IPS;
ii) How, and to whom, the Agency proposes to publish that information; and
iii) Other steps the Agency will take to comply with IPS requirements.

3.6. Public feedback can be valuable in improving Agencies' IPS. Agencies are encouraged to include as part of their agency plan how feedback on the Agency's IPS can be made and received, and how they will be evaluated and acted on by the Agency.

AGENCY STRUCTURE – s 8(2)(B)

Use of an organisational chart

3.7. One of the easiest ways in which this information could be presented is by way of an organisational chart. If any abbreviations, acronyms or specialist terms are used in the chart,

[3] For example, in the case of the ACECQA, the annual report pursuant to s 279 of the National Law, which s 280 requires to be tabled in the Parliament nominated under s 280(1) of the National Law, and which must then be published on the ACECQA's website.

however, the Agency should include a glossary or an explanation of the terms used. Any such additional information should be visibly indicated and linked to the organisational chart itself.

Level of detail required

3.8. The level of detail required to be provided will differ between different Agencies based primarily on their size and functions. The ECS FOI Commissioner will generally expect Agencies to:

- identify each business unit that is managed by an officer of the Senior Executive of the agency;
- identify what function or power of the Agency that business unit/officer is responsible for;
- specify the lines of accountability from the manager of each business unit through to the Agency's chief executive officer or principal.

In addition, if technical terms are used, a brief description of the role of each business unit could be provided.

Organisational restructures

3.9. Section 8B of the FOI Act requires Agencies to ensure information it publishes under Part II is accurate, up-to-date and complete. This means that an Agency should update the information published about its Agency structure as early as possible following any reorganisation of the Agency's internal structures and lines of accountability.

Statutory committees

3.10. If an Agency is responsible for any statutory committees, the Agency should also publish information about the committee and its functions, as well as the names of the committee members.

OFFICERS OF THE AGENCY – s 8(2)(d)

3.11. If the Agency uses a standard employment contract, the template employment contract should be published as part of its IPS.

3.12. In relation to statutory appointees, the Agency should publish:

- the name of the person appointed;
- the length or term of appointment;
- the position to which the person is appointed;
- the functions or powers the person is appointed to carry out or exercise;
- the Act and provision of the Act by which the person is appointed.

AGENCY'S FOI OFFICER(S)

3.13. Agencies must publish contact details of an officer, or officers, who can be contacted about access to the Agency's information or documents under the FOI Act. Contact details for the officer(s) should include a position title, a telephone number and an email address. The ECS FOI Commissioner recommends that the telephone number and email address be a generic address that will not change with staffing changes of the Agency.

AGENCY'S FUNCTIONS – s 8(c), s 8(5)

3.14. Agencies must, as far as practicable, publish details about their functions, including their decision-making powers and other powers affecting any person.

Powers and Functions

3.15. Agencies should provide the following information:

- a list of their functions and powers, explained briefly in plain English;
- for each function and each power, the source of that function or power, e.g., is it derived from a provision in an enactment, a ministerial announcement, or some other government instrument. Where possible, a link should be provided to the legislation, instrument or government announcement giving the Agency its functions and powers as set out in this part of the Agency's IPS;
- details about any other functions or powers able to be exercised by the Agency which may be temporary in nature, for example, a project which the Agency was funded to complete.

3.16. In relation to the powers exercised by the Agency, a description of how that power, when exercised, may affect persons or groups of persons should also be published. The aim is to allow the public to read such descriptions and be able to gain an understanding of what it is the Agency does that can affect them.

3.17. Agencies should avoid legal or technical jargon when publishing information relating to its functions or powers. The Agency should detail broadly where its powers and functions are derived and how those powers and functions may be exercised in ways that will affect other persons and members of the public.

Incidental powers and functions

3.18. In addition to expressly conferred powers and functions, Agencies also have and exercise powers and functions which enable them to conduct their business efficiently. Examples include activities of the Agency relating to its employees and managing its properties and records. These activities are incidental to the Agency performing its designated functions and exercising powers expressly conferred on it and such details need not be published as part of the Agency's IPS.

OPERATIONAL INFORMATION OF THE AGENCY – s 8(2)(j)

"Operational information"

3.19. Section 8A of the FOI Act defines "operational information" as *information held by the agency to assist the agency to perform or exercise the agency's functions or powers in making decisions or recommendations affecting members of the public (or any particular person or entity, or class of persons or entities). Example: The agency's rules, guidelines, practices and precedents relating to those decisions and recommendations*.

3.20. Such information need not have been generated by the Agency itself. As long as it is used by the Agency to assist it in performing or exercising its functions or powers, it should be published as part of the Agency's IPS.

"Assisting the agency to perform or exercise its functions or powers"

3.21. Documents of the following types will be captured by this requirement of the Agency's IPS:

- in the nature of a manual;
- containing an interpretation, rule, guideline, practice or precedent;
- letters of advice used as a precedent or template;
- checklists to be used in performing functions or exercising powers of the Agency;

- providing details about a scheme which is administered by the Agency;
- flowcharts assisting officers in making decisions or performing functions of the Agency;
- forming part of a training package provided to officers of the Agency;
- stating how legislation or a scheme will be administered, applied or enforced by the Agency;
- procedures followed by the Agency in investigating breaches or evasions of legislation and schemes administered by the Agency.

"Making decisions or recommendations"

3.22. The terms "making decisions or recommendations" should be construed broadly for the purposes of complying with the IPS. It extends to doing or refusing to do any act or thing, and includes:

- the refusal to make decisions;
- suspending or revoking orders, approvals, consents, directions, etc;
- imposing a condition or restriction;
- issuing or refusing to issue a licence or authority;
- making a declaration, demand or requirement;
- retaining or refusing to provide an item.

"Affecting members of the public or any particular class of persons or entities..."

3.23. Common examples of decisions or recommendations that affect persons or members of the public include decisions or recommendations that concern, in relation to the public or a particular person or class of persons, their:
- rights, privileges or benefits; or
- obligations, penalties or detriments they may be subject to.

What is not captured by s 8(2)(j)?

3.24. There are 2 main categories of information which do not need to be published under s 8(2)(j) of the FOI Act. They are:
- information otherwise available to members of the public (s 8A(2)), for example, published case reports, books available for general purchase from shops or from libraries, etc.; and
- earlier drafts or every version of a particular document. Only a single representative document need be provided where there may be minor variations, or earlier drafts, of a document that is captured by s 8(2)(j).

ANNUAL REPORTS – s 8(2)(e)

3.25. The full texts of Agencies' annual reports must, if made, be published or "linked" to the responsible Agency's IPS. Some examples relevant to ACECQA include the reports of the Board of the ACECQA pursuant to s 279 of the National Law and of the Board pursuant to s 281 of the National Law.

PUBLIC COMMENTS – s 8(2)(f)

3.26. This applies to agencies responsible for developing specific policy proposals. Agencies should provide details about how the public may comment on policy proposals being developed by the Agency and include any details about the officer who can be contacted or to whom any such comments may be sent.

INFORMATION ROUTINELY PROVIDED IN RESPONSE TO REQUESTS FOR ACCESS – s 8(2)(g)

3.27. Agencies are required to publish information which the Agency routinely gives access to in response to requests for access to documents made under Part III of the FOI Act. Importantly, however, there are 3 categories of information which, *if it would be unreasonable to publish*, this requirement does not apply to:

a) personal information about any individual (s 8(2)(g)(i));
b) information about any person's business, commercial, financial or professional affairs (s 8(2)(g)(ii)); and
c) other information of a kind determined by the ECS FOI Commissioner under s 8(3) of the FOI Act (s 8(2)(g)(iii)).

3.28. Section 8(3) of the FOI Act allows the ECS FOI Commissioner to make a determination that information of a particular kind need not be published. That determination must be made by legislative instrument.

3.29. Where information is not published because an exception applies, Agencies should, if practicable, record the fact that that document or part of a document was not published and which exception in s 8(2)(g) applies.

Third party information

3.30. The first 2 types of information reflect Parliament's intention that information routinely provided to persons or business applicants in response to an FOI request made by those persons or applicants need not be published and made accessible to others.

3.31. It is open to the Agency to seek any relevant person's views about the potential publication of the information as part of the agency's IPS.

"Routinely provided"

3.32. In determining what information is 'routinely' provided in response to requests made under Part III of the FOI Act, Agencies should take into consideration the following:

- Has the information been otherwise published in the Agency's disclosure log?[4]
- Would publication of the information promote one or more of the FOI Act's objects?
- Is the information likely to be of benefit or interest to the general public?
- Would publication reduce the likelihood of having to deal with further requests for the information?

How is this information different from the information in the disclosure log?

3.33. Agencies should keep in mind that information published in their disclosure logs will not necessarily be the same as information published under the Agency's IPS. This is because the information published under s 11C of the FOI Act appears as the information was released in response to a specific request for access made under Part III of the FOI Act. However, the information published under the IPS and pursuant to s 8(2)(g) of the FOI Act may be different from time to time due to revision or developments on the same topic. An example may be the minutes of board meetings that are regularly sought under Part III of the FOI Act. The publication by the Agency under the disclosure log would be a copy of the particular minutes provided to an FOI applicant in response to a specific request which may have sought only the meeting minutes between, for example, 2015 and 2016. However, if board meetings are published under s 8(2)(g)

[4] Under s 11C of the FOI Act.

of the Act, then minutes of each board meeting would continue to be published under the Agency's IPS, including beyond the date specified in the request for access.

INFORMATION ROUTINELY PROVIDED IN RESPONSE TO PARLIAMENT – s 8(2)(g)

3.34. For the purposes of determining what information should be published under s 8(2)(h) of the FOI Act, the Agency should follow a similar process as in relation to publishing information under s 8(2)(g) of the FOI Act as described above from [3.27].

ADDITIONAL INFORMATION FOR PUBLICATION

3.35. Section 8(4) of the FOI Act permits Agencies to publish any *other* information held by the Agency. The ECS FOI Commissioner suggests Agencies consider the following factors when determining what additional information they could publish under s 8(4) of the FOI Act as part of their IPS:

- Is the information of interest to the public, and in particular to members of the public which may have contact with, or use services provided by, the Agency?
- Is there a public demand for this type of information?
- Will publication of the information promote greater Agency accountability?
- Will publication of the information assist the public in understanding how the Agency makes decisions, or in dealing with the Agency?
- Will publication assist public participation in any policy development or implementation that the Agency is or could be responsible for?
- Is the information in an accessible and reusable format?
- Is the information a historical record or will it require revision or updating?
- Are there privacy or other security concerns that may require consultation with third parties, or editing of the information before publication?

INFORMATION EXEMPT FROM PUBLICATION UNDER THE IPS

Exempt material need not be published – s 8C(1)

3.36. Agencies are not required to publish exempt matter as part of their IPS. Part IV of the FOI Act sets out the grounds on which Agencies may legitimately claim that documents are exempt from disclosure under the FOI Act.[5]

Information restricted or prohibited from publication – s 8C(2)

3.37. In addition, if there is another enactment which restricts or prohibits the publication of particular information, the Agency is not required to publish that information under its IPS except as permitted or required by that other enactment.

[5] But also see ss 11A(4) and (5) and the definition of 'exempt document' in s 4(1), FOI Act.

4. RECOMMENDED STRUCTURE OF PUBLICATIONS

4.1. The FOI Act specifies what information must be published under the IPS and requires that information to be published on a website, but it does not specify any structure or format for publication. For consistency, the ECS FOI Commissioner supports the use of the following structure for information required to be published under s 8(2) of the FOI Act, and as suggested by the OAIC:[6]

- **Agency plan**
- **Who we are**
  - The organisation and structure of the Agency;
  - Location of the Agency's office(s);
  - Governance arrangements;
  - Senior management of the Agency; and
  - Statutory appointments (if any).
- **What we do**
  - Functions and powers of the Agency;
  - Operational information – rules, guidelines, practices and precedents relating to those functions and powers.
- **Our reports and responses to Parliament**
  - Annual reports laid before the Parliament;
  - Other information routinely provided to Parliament.
- **Routinely requested information and disclosure log**
  - Information the agency routinely gives access to in response to FOI requests;
  - The Disclosure Log of information released under the FOI Act by the Agency.
- **Consultation arrangements**
  - Details of arrangements by which members of the public may comment on specific policy proposals for which the Agency is responsible.
- **Contact us**
  - Details of an officer (or officers) who can be contacted about access to the Agency's information under the FOI Act.

4.2. For information the Agency chooses to publish under s 8(4) of the FOI Act, the ECS FOI Commissioner also supports the structure suggested by the OAIC. The Agency will need to include only those headings and parts relevant to that Agency:

- **Our priorities**
  Examples include the Agency's corporate and strategic plans, and assessments and reviews undertaken of those plans.
- **Our finances**
  Examples include financial information relating to pay and grading structures in the Agency, Agency procurement procedures, tendering and contracting procedures.
- **Our lists**
  Examples include Agency contracts, grants and appointments, links to other information published by the Agency, information held in registers required by law, and any other lists and registers relating to the Agency's functions.

[6] See https://www.oaic.gov.au/resources/freedom-of-information/foi-guidelines/part-13-information-publication-scheme-v1-4.pdf.

5. ONGOING COMPLIANCE – MANAGING, REVIEWING & MONITORING

5.1. The Act requires Agencies to be proactive in managing their IPS. This will comprise Agencies ensuring the currency and accuracy of their IPS (s 8B) and reviewing their IPS regularly from time to time (s 9). The ECS FOI Commissioner has powers and functions to review, investigate, monitor and report on an Agency's IPS and will be actively engaged in assisting Agencies in implementing and reviewing their IPS.[7]

ENSURING INFORMATION IS ACCURATE, UP-TO-DATE AND COMPLETE

5.2. Section 8B of the FOI Act requires Agencies to ensure their entries are 'accurate, up to date and complete'. This will necessarily vary from Agency to Agency and within each Agency's IPS itself, depending on what the information is and how it is published. All information should be regularly reviewed and updated, perhaps 2 – 3 times a year, with a review of the agency plan carried out annually.

5.3. The ECS FOI Commissioner expects some categories of information to be updated as soon as reasonably practicable, for example, in cases where there has been:

- a restructuring of the Agency;
- changes in senior management or personnel;
- changes in contact arrangements;
- changes to an Agency's powers or functions, especially as a result of legislative amendment or alteration of an executive scheme;
- changes of operational information (as defined in s 8A) when it is notified to the Agency's own staff and officers;
- consultation arrangements; and
- reports or information provided to Parliament.

5.4. Depending on the number of FOI requests received by the Agency, it may be more appropriate to provide information routinely provided as a result of FOI requests periodically rather than immediately. The ECS FOI Commissioner recommends that Agencies consider, when publishing documents under the IPS, when that document should be reviewed for accuracy and currency and to diarise the review date appropriately. Agencies may also consider notating on documents published under their IPS when a document was last updated.

ROLE OF THE ECS FOI COMMISSIONER

5.5. The ECS FOI Commissioner has specific functions under Part II of the FOI Act. They are:

a) providing assistance to Agencies in identifying and preparing information to be published under an Agency's IPS (s 8E(a));
b) determining how and to whom information is required or permitted to be published under s 8D of the FOI Act (s 8E(b));
c) reviewing the operations of each Agency in fulfilling their obligations under Part II of the FOI Act, in conjunction with the respective Agency (s 8F(a), s 9(1));
d) monitoring and investigating Agencies' compliance with Part II of the FOI Act (s 8F(b), s 8F(c)); and
e) reporting on the operation of an Agency's IPS (s 8F(c)).

[7] See, for example, ss 8E and 8F of the FOI Act on the ECS FOI Commissioner's functions in relation to Part II of the FOI Act.

REVIEW OF THE IPS UNDER S 9 OF THE FOI ACT

5.6. Section 9 of the FOI Act requires Agencies to regularly review the operation of the IPS in their Agency in conjunction with the ECS FOI Commissioner, "as appropriate from time to time" (s 9(1)(a)), and at the very least every 5 years (s 9(1)(b)).

Review "as appropriate from time to time"

5.7. If Agencies comply with their obligation under s 8B of the FOI Act to ensure that their IPS is kept accurate, up-to-date and complete, they will need to review their IPS as appropriately from time to time as required by s 9(1)(a) of the FOI Act. As discussed earlier, this will vary from Agency to Agency.

5.8. The OAIC has developed an Agency self-assessment checklist which the ECS FOI Commissioner encourages Agencies to use at least every year. The self-assessment checklist is available for download in a range of formats from the OAIC website at https://www.oaic.gov.au/images/documents/freedom-of-information/foi-resources/foi-agency-resources/IPS_agency_self_assessment_checklist.pdf .

Five year reviews

5.9. In addition, Agencies are required to complete a review of their IPS compliance every five years (s 9(1)(b)). The ECS FOI Commissioner requires Agencies to complete their first review June 2017. More information about this review will be provided by the ECS Commissioner closer to the date of the first review.

COPYRIGHT

5.10. Consistent with the principle that government information is a national resource (s 3(3)), Agencies are encouraged to make information published under their IPS available for re-use where appropriate. The ECS FOI Commissioner recommends Agencies provide a clear statement on their IPS entry page or website about the extent to which the public may reuse the Agency's IPS publications.

5.11. To deal with the possibility that third parties may own the copyright to material proposed to be published by an Agency as part of its IPS,[8] the ECS FOI Commissioner recommends that Agencies also include a further statement on its IPS entry page or website informing the public that they may need to obtain permission from the copyright owner of some material before that material may be re-used in any way. If an Agency is aware of any contact details of a copyright owner, those details should also be provided to assist members of the public in obtaining any permissions required.

[8] Section 90(1)(a) of the FOI Act provides that no action lies against an agency or an officer of any agency for, among other things, breach of copyright, if an agency officer publishes a document in good faith in the belief that publication is required or permitted under Part II of the FOI Act.

Attachment 3

Freedom of Information Statistical Data 1 July 2015 to 30 June 2016

Table 1 provides details of Freedom of Information requests for access to information and amendment to personal information made to each of the State and Territory Regulatory Authorities and ACECQA for the period 1 July 2015-30 June 2016

ACT Children's Policy and Regulatory Unit Education and Training Directorate

NSW Early Childhood Education and Care Services

NT Early Childhood Policy and Regulations

QLD Department of Education and Training

SA Education and Early Childhood Services Registration and Standards Board

TAS Department of Education

VIC Department of Education and Early Childhood Development

WA Department of Local Government and Communities

ACECQA Australian Children's Education and Care Quality Authority

Table 1 FOI REQUESTS FOR ACCESS: 1 July 2015 - 30 June 2016

Jurisdiction	No. received	No. finalised	Access granted (full)	Access granted (partial)	Internal Review	Fees Collected	Amendments sought/made to personal records
ACT	NIL						NIL
NSW	9	7*	1	5	NIL	NIL	NIL
NT	1	1		1	NIL	NIL	NIL
QLD	18	14*		10	NIL	$250	NIL
SA	2	2*		1	NIL	NIL	NIL
TAS	NIL						NIL
VIC	6	4	1	3	NIL	$240	NIL
WA	2	2		2	NIL	NIL	NIL
ACECQA	3	3	*	*	NIL	NIL	NIL

***Notes**

NSW	I request withdrawn by applicant
QLD	I request withdrawn by applicant; 3 requests refused in full
SA	I applicant notified in writing of intention to refuse request because of a practical refusal reason (s 24AB(2) of FOI Act
ACECQA	2 requests transferred to other agencies; 1 request withdrawn by applicant

Education Services Australia

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

Statement of Funding and Expenditure for the period 01 Jul 2015 - 30 Jun 2016

		Actual $	Budget $	Variance $
Funding				
	FY16 Funding	145,000	145,000	-
		145,000	**145,000**	-
Expenditure				
	Retainer/Salary	62,872	46,976	(15,896)
	Legal Fees	12,262	50,000	37,738
	Rent	20,000	20,004	4
	Travel & Accomodation	2,258	2,000	(258)
	Other Expenses	14,491	15,000	509
	Sundry	0	84,987	84,987
		111,883	**218,967**	**107,084**
FY16 Surplus		33,117		
Prior year unspent funding		73,966		
Total Balance of funds remaining		**107,083**		

- 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 Ombudsman, 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 Jun 2016

CURRENT ASSETS	**$**
Cash at bank	107,083
Total Current Assets	107,083
Total Non-Current Assets	0
TOTAL ASSETS	107,083
CURRENT LIABILITIES	
Income received in advance	107,083
Total Current Liabilities	107,083
NON-CURRENT LIABILITIES	
Total Non-Current Liabilities	0
TOTAL LIABILITIES	107,083
NET ASSETS	0

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Notes to the financial report for the year 1 July 2015 to 30 June 2016

Note 1: Basis of Preparation

The financial report for the year ended 30 June 2016 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 2016 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 2016, the statement of funding and expenditure, for the period 1 July 2015 to 30 June 2016 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 2016 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.

GRANT THORNTON AUDIT PTY LTD

S. C. Trivett
Partner – Audit & Assurance

Melbourne, 24 August 2016