



National Education & Care Services
FOI & Privacy Commissioners & Ombudsman

SERVICE CHARTER

Updated June/July 2017

Service Charter

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

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* 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:

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| ACT | Children’s Education and Care Assurance, Education 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 | Quality Assessment and Regulation Division, Department of Education and Training |
| WA | Education & Care Regulatory Unit, Department of Communities |

The National Law establishes the NECSOPIC as impartial integrity bodies. The Ombudsman and Commissioners respectively 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 Education and Care Services Ombudsman, and National Freedom of Information and Privacy Commissioners seek to resolve complaints about, or review certain actions of, ACECQA and the Regulatory Authorities and assist them to improve the integrity and effectiveness of their services where necessary through investigation, review and advice.

The Education and Care Services Ombudsman investigates complaints made about administrative actions taken by the Australian Children’s Education and Care Quality Authority (ACECQA). Administrative actions are any action taken or not taken by ACECQA (including its contractors) in relation to ACECQA’s duties, functions or powers.

The National Education and Care Services Freedom of Information Commissioner conducts reviews of Freedom of Information decisions made by ACECQA or a State or Territory Regulatory Authority and investigates complaints about how those agencies are carrying out their responsibilities under the Commonwealth *Freedom of Information Act 1982*

The National Education and Care Services Privacy Commissioner investigates complaints about interferences with privacy by ACECQA or a State or Territory Regulatory Authority.

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 administration of the national regulatory and quality assurance framework for early childhood education and care is accountable, responsive and fair.

We seek to work collaboratively with ACECQA and the State and Territory 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 strive to produce timely and high quality work.

Our values

We are committed to the following core values:

Fairness and Impartiality

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 and Respect

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

Accessibility and Responsiveness

We are responsive, and adapt our approaches to meet people's individual needs. Our services are free, and we strive to ensure everyone can access and use our information and services. We respond to complaints quickly. If we can't help we explain why and try to suggest alternative action. 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.

Proportionality and Value-adding

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

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 submit progress reports to the senior officials group of the Council. Information about the performance of our office is also publicly 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 any 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.

Our Service Guarantee

When you contact our Office you can expect to be treated in a courteous and respectful way.

You can expect that we will:

- give careful attention to your concerns 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 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 agency 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

We receive complaints, requests for review and enquiries by mail, email, telephone or in person (by appointment only). We generally ask that complaints be put in writing either via our complaint forms (available on our website in either online or document form) or otherwise so that we have sufficient information to assess the complaint.

Mailing address: NECSOPIC, PO Box 202, Carlton South, Victoria, 3053

Street Address: Level 3, 15-31 Pelham Street, Carlton, Victoria (by appointment only)

Email address: enquiry@necsopic.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 range of actions including (but not limited to) where relevant:

- determine that the actions taken by ACECQA or a Regulatory Authority were reasonable in all circumstances and take no further action
- provide (or recommend that the relevant agency provides) 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

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*
- 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

You can make it easier and quicker for the Office to assist you if you:

- raise your concerns directly with the agency that you are dissatisfied with *before* lodging a complaint with our office (ie ACECQA or a State or Territory Regulatory Authority)
- 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 the way our services were delivered to you, you should raise your concerns with us.

You may seek a review of our decisions in certain circumstances. You will always be advised of your review rights when we inform you of the outcomes of our investigations of your complaint or Freedom of Information Review request. In circumstances where you have the right to appeal to a “relevant Tribunal or Court” the Office will provide you with the details of the Tribunal or Court. Details of the relevant Tribunals and Courts are also listed on our website under “Useful Links”.

Review of National Education & Care Services Freedom of Information Commissioner Review Decisions

If a party to a NECS FOI Commissioner Review is dissatisfied with the outcome of the review they may apply under section 57A of the *Freedom of Information Act 1982* to have the merits of the decision reviewed by the relevant Tribunal. The relevant Tribunals are listed here [insert hyperlink to Tribunals]. The Tribunal provides independent merits review of administrative decisions and has the power to set aside, vary or affirm a NECS FOI Review Decision.

You have 28 days from the date on which you were given the NECS FOI Review Decision to apply for a Tribunal Review. The NECS FOI Commissioner will not be a party to the proceedings. An application fee may be applicable when lodging an application for review with a Tribunal although it can be waived in some circumstances. For more information about Tribunal review processes and applicable fees visit the relevant Tribunal website.

A party to a NECS FOI review may also appeal against the NECS FOI Commissioner Review Decision on a question of law to a relevant Court. A list of the relevant Courts is here.[insert hyperlink]

Direct review of ACECQA or State/Territory Regulatory Authorities Freedom of Information Decisions by a Tribunal

In normal circumstances, you cannot appeal directly to a Tribunal for a review of a FOI decision made by ACECQA or a State or Territory Regulatory Authority without first applying for a NECS FOI Commissioner review. The exception is if the Commissioner decides that it would be in the interests of the administration of the *FOI Act* for the Tribunal to consider the matter. You will be advised by the NECS FOI Commissioner if this is the case.

You also cannot apply for a Tribunal review if the Commissioner has decided not to undertake or continue a FOI review.

Review of National Education and Care Services Privacy Commissioner Determinations

A party to a Privacy Commissioner Privacy Determination may apply under s 96 of the *Privacy Act 1988* to have a decision made under s52(1) or (1A) of the Act to make a Determination reviewed by the relevant Tribunal. The Tribunal provides independent merits review of administrative decisions and has the power to set aside, vary, or affirm a privacy determination. An application to the Tribunal must be made within 28 calendar days after the day on which the person is given the privacy determination. An application fee may be payable to the Tribunal when lodging an application.

You can also apply to the relevant Court for a review of a decision or determination by the NECS Privacy Commissioner if you think that:

- a decision by the Commissioner not to investigate, or not to further investigate, your complaint under the *Privacy Act 1988* is not legally correct
- a determination by the Commissioner under section 52 of the *Privacy Act 1988* following the investigation of your complaint, is not legally correct.

You can make this application under section 5 of the *Administrative Decisions (Judicial Review) Act 1977*.

The Court will not review the merits of your case but it may refer the matter back to the Privacy Commissioner for further consideration if it finds the decision or determination was wrong in law or the Commissioner's powers were not exercised properly.

An application for review must be made to the Court **within 28 calendar days** of the Privacy Commissioner sending the decision or determination to you. You may wish to seek legal advice as the process can involve fees and costs.

Review of Education and Care Services Ombudsman Decisions

If you disagree with the final decision of the Ombudsman and you believe that we have not taken into consideration all your evidence or you have additional information you can ask us to consider the matter further. Such a request must be made in writing within 28 days of being told of our decision and must set out the reasons why you believe we failed to consider your evidence adequately or, if you have additional information, details of that information and why this was not provided to us initially. We will endeavor to complete our further consideration of your matter within thirty days and we will advise you of the outcome. We will only further consider a matter once.

Complainants and ACECQA may seek judicial review to a Supreme Court of the Ombudsman's decision alleging such things as an error of law, failure to take into account relevant matters, bias or some other grounds upon which a judicial review could be sought, such as the Ombudsman exceeded their jurisdiction.

Service Charter review

The Education and Care Services Ombudsman and National Education and Care Services Freedom of Information Commissioner and Privacy 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.

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| Date introduced | June 2016 |
| Date(s) modified | June-July 2017 |
| Next schedule review date | June 2018 |