National Education & Care Services
FOI & Privacy Commissioners & Ombudsman

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

ANNUAL REPORT

1 July 2016 to 30 June 2017

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National Education & Care Services
FOI & Privacy Commissioners & Ombudsman

Letter of Transmittal

Chair
COAG Education Council
PO Box 202
CARLTON SOUTH VIC 3053

Dear Minister

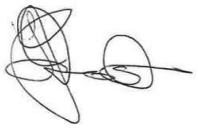
In accordance with Regulations 198, 207 and 221 of the *Education and Care Services National Law Regulations* (the ECS Regulations) I am pleased to present to the COAG Education Council the Education and Care Services Ombudsman, National Education and Care Services Freedom of Information Commissioner, and National Education and Care Services Privacy Commissioner (the ECS Commissioners), Annual Report for the period 1 July 2016 to 30 June 2017.

The Annual Report is the sixth 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 & Privacy Commissioners.

1 Commissioners' Foreword and Overview

The Education and Care Services Ombudsman, National Education and Care Services Freedom of Information Commissioner, and the National Education and Care Services Privacy Commissioner are independent statutory officers 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* (ECS Regulations).

The two Commissioners and the Ombudsman positions are established and operate independently of each other for the purposes of the National Law. The Council of Australian Governments (COAG) Education Council is responsible for appointments to the positions and has determined to appoint one person to undertake the three positions.

The positions were established in 2012 as part of reforms by COAG to create a national, uniform regulatory and quality assurance system for early childhood education and care services across Australia. The system is referred to as the National Quality Framework for Early Childhood Education and Care (the NQF). The NQF applies to most long day care, family day care, outside school hours care, and preschool/kindergarten services in Australia.

In order to implement the system the National Law established the Australian Children's Education and Care Quality Authority (ACECQA) and early childhood education and care Regulatory Authorities in each of the 8 Australian states/territories.

ACECQA oversees the implementation of the National Quality Framework. State and Territory Regulatory Authorities are responsible for granting education and care service and provider approvals, carrying out the quality assessment and rating of services, and ensuring services meet the requirements of the National Law and National Regulations.

The National Law confers specified jurisdiction on 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 that is derived from the following Commonwealth Acts as in force from time to time: *Ombudsman Act 1976*, *Freedom of Information Act 1982* and *Privacy Act 1988*

These Commonwealth Acts are modified by Part 6.2 Divisions 1, 2, and 4 of the ECS Regulations to apply in participating States and Territories and to the Australian Children's Education and Care Quality Authority for the purposes of the National Quality Framework for Early Childhood Education and Care.

The Ombudsman provides services with respect to administrative actions taken by ACECQA and the Commissioners provide 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 Ombudsman and Commissioners also play 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.

This is my second Annual Report as the Ombudsman and Commissioners since my appointment to the positions and I continue to find the roles to be interesting, challenging and rewarding.

1.1 Achievements

During the past 12 months as ECS Commissioners while undertaking my legislative responsibilities I have continued to review the policies, systems and public face of the office. This has included:

- a full re-development of the ECS Commissioners website to ensure it is accurate, informative and user friendly and to incorporate data analytics to better monitor the needs of users – www.necsopic.edu.au ;
- the development of a Strategic Plan for the office covering the period I January 2017- January 2019 **(Attachment 2);**
- continued refinements to the document and case management system using Office 365;
- up-dated the Service Charter for the Office (**Attachment 1**); and
- identification of, and development of introductory material for, key education and care stakeholder organisations.

The establishment of the new website has been a particularly important development for the office. The aim has been to create a website that is easy to navigate and that provides comprehensive information to enable users to quickly determine whether the office can assist them. The website also directs users to relevant information about the early childhood education and care regulatory and quality assurance system. The incorporation of website usage analytics and feedback mechanisms will enable ongoing improvements to be made.

The office document and case management system using Office 365 has continued to meet the needs of the office throughout the year and a new system has not been considered necessary at this stage.

1.2 The year ahead

Key priorities for the coming year include:

- a focus on increased stakeholder engagement
- identification and resolution of gaps in policy documents and support material provided by the office
- enhancements to the website as data analytics become available on usage
- options for enhancing the document and complaints management and reporting system to ensure effective and efficient complaints and enquiries management, and to facilitate the legislative requirements for the office to create store and dispose of documents appropriately.

1.3 Workload

The ECS Commissioners are appointed on a 0.2EFT basis. Access to the Commissioners is provided for customers via the new online complaint and review request facilities, email, and telephone, and in face to face meetings (by appointment only). Online requests, emails and telephone messages are monitored daily and an acknowledgement response is usually provided within 24 hours of receipt. These arrangements continue to prove satisfactory to date in dealing with the workload, although a complex complaint or review could result in additional resource requirements. The new website and the commencement of increased engagement with stakeholders by the Office may result in some increase to the workload.

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. This has often proved a source of confusion both for complainants approaching the office for Ombudsman services and the respective State/Territory Ombudsman offices. Advice included on the new website and targeted communication to State/Territory Ombudsman offices will aim to mitigate this confusion.

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.

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.*

ACECQA and each of the Regulatory Authorities must comply with 11 of the 13 Australian Privacy Principles 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

As in past years during the 2016/17 year the majority of complaints received by the office of the Ombudsman and 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; and
- 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.

During the reporting period ACECQA also revised its correspondence to applicants making it clearer that they should first apply to ACECQA if they are seeking clarification of the outcome of their qualifications assessment before applying to the Ombudsman for a review. This has resulted in a significant decline in the number of complaints received by the NECS Ombudsman.

Some complaints received by the office continue to be related to matters that do not fall within the jurisdiction of the Ombudsman or Commissioners. These included complaints about fees and charges in education and care services, the treatment of children in services, staffing levels of services, pay and conditions of educators, and the closure of services by State/Territory Regulatory Authorities. Such complaints were redirected.

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).

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 for the reporting period is provided in Table 1 at **Attachment 3.**

In summary ACECQA and Regulatory Authorities received a total of 48 requests for access to information and had a total of 9 in hand from the previous reporting year. Of this total of 57, 46 were finalised within the period. Of the 46 finalised 7 were granted access in full, 29 were granted partial access, 3 were refused

access and 7 applications were withdrawn. No requests for amendment to personal information were received during the period. Three jurisdictions charged fees and collected a total of $2,540. No applications were received for internal review of FOI decisions.

The NECSFOIC has the power to review 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.

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

NECSFOIC Review

During the period the NECSFOIC received one application for a NECSFOIC review of an FOI decision made by the NSW Regulatory Authority (NSW RA).

The NSW Regulatory Authority (NSW RA) received a FOI request for documents since the 1 January 2013, specifically incident reports, defined as notifications of serious incidents made via the National Quality Agenda Information Technology System (NQAITS) hosted and managed by ACECQA, photos and CCTV/video footage, relating to sharp/syringe finds and injuries at NSW child care centres and including the names of child care centres.

Following consideration of submissions from affected third parties (identified child care centres) together with public interest considerations the NSW RA determined to release relevant documents in part, redacting personal and/or health information of children, individuals and staff employed at the child care services and some business information related to the services. The redacted documents proposed for release retained some identifying business information – specifically, the names of the Approved Provider and Approved Service.

One affected third party sought an NECSFOIC review of the NSW RA decision on the basis that:

- the release of documents as proposed would unreasonably affect the business of the service in the way described in section 47G(1) of the FOI Act;
- the identity and location of the service was not required to satisfy the application by the FOI Applicant and [lack of identification] does not hinder the public interest matters referred to in the reasons for decision by the NSW RA;
- the release of business information may encourage similar businesses to under-report or avoid reporting to protect their reputation which is contrary to the public interest as described in *s11A(5)* of the FOI Act;
- their service was a responsible and reputable child care centre that had not engaged in any negligent or reckless behaviour. Disclosure of the documents would raise unnecessary alarm and cause parents to needlessly worry about the safety of their children.

Following investigation, the NECS FOIC upheld the FOI decision made by the NSW RA. The full Review Decision is published on the ECS Commissioners website at www.necsopic.edu.au as required under Section 55K(8) of the Commonwealth *Freedom of Information Act 1982*

No appeal was made to the relevant Administrative Appeals Tribunal to review the decision of 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 Ombudsman and Commissioners continue to maintain a small budget surplus built up over the past three years. This has enabled the re-development work on the website to be undertaken. A reduction in the outsourcing of work by the office (which was the practice in its formative years) has resulted in some additional savings.

The budget formation for 2017/18 will reflect the forward priorities for the office. Some contingency funds will be identified within the budget outlook in case complex investigations arise requiring the engagement of additional investigations staff. Costs associated with enhanced stakeholder engagement, document and support material development, and enhancements to the website as data analytics become available on usage will be met from within existing resources. Enhancements to the document and complaints management and reporting system may require some additional resourcing if a significant re-development is deemed necessary. If this is unable to be met from within existing resources, a business case will be developed and submitted to the COAG Education Council for consideration.

ATTACHMENTS

Attachment 1: Service Charter - updated June 2017

Attachment 2: ECS Commissioners' Strategic Plan

Attachment 3: Freedom of Information Statistical Data

Attachment 4: Audited Financial Report

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.* To implement 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 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; and
- 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; and
- finalise your complaint within three months where it does not involve consideration of legislative change 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; and
- 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; and/or
- advise the Education Council about possible legislative deficiencies or ambiguities.

What we cannot do

In general, we cannot:

- act outside 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*; or
- 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; and
- 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”.

Attachment 1. National Education and Care Services Freedom of Information & Privacy Commissioners & Ombudsman Annual Report 1 July 2016-30 June 2017.

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 on our website at www.necsopic.edu.au/useful-links 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 can be found on our website at www.necsopic.edu.au/useful-links.

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 Commissioner 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	June-July 2017
Next schedule review date	June 2018

National Education & Care Services
FOI & Privacy Commissioners & Ombudsman

Strategic Plan 2017-2019

The Strategic Plan is the first such plan for the office and covers the period January 2017 – January 2019. It presents a 2year outlook and identifies key challenges, proposed responses and measures of success for the period.

Setting

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 are independent, statutory officers appointed by the Council of Australian Governments (COAG) Education Council under national applied laws legislation – the *Education and Care Services National Law*. The Ombudsman and Commissioner positions are established and operate independently of each other for the purposes of the National Law. One person has been appointed to the three roles.

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

ACECQA oversees the implementation of the NQF. State and Territory Regulatory Authorities are responsible for granting education and care service and provider approvals, carrying out the quality assessment and rating of services, and ensuring services meet the requirements of the National Law and National Regulations.

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

Legislative Framework

The Office operates within a complex legislative framework. Victoria passed the *Education and Care Services National Law Act 2010* and, except for Western Australia, each State and Territory passed legislation applying the National Law, with some variations to accommodate local requirements. Western Australia enacted corresponding legislation. *The Education and Care Services National Regulations 2011* amplify the National Law.

The National Law confers specified jurisdiction on 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 that is derived from the following Commonwealth Acts as in force from time to time: *Ombudsman Act 1976, Freedom of Information Act 1982*, and *Privacy Act 1988*. These Commonwealth Acts are modified by the *Education and Care Services National Regulations 2011* to apply in participating States and Territories and to ACECQA.

Vision

Public confidence in the accountability and fairness of the administration of the national regulatory and quality assurance system for early childhood education and care.

Purpose

To provide independent, fair and accessible complaint-handling, review, investigation and advisory services and to work with ACECQA and the State and Territory Regulatory Authorities to improve their decision making and practices where necessary.

Values

Fairness and Impartiality

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

Key challenges for the period

Key challenges facing the office during the period are:

- Ensuring that efficient and effective policies, procedures and systems are in place to support the work of the office.
- Ensuring the role of the office is known, understood and valued by stakeholders and the public.
- Establishing stronger relationships with the agencies and with other complaint-handling bodies, in particular the Commonwealth Ombudsman and Australian Information Commissioner, to ensure sharing of

information and consistency of practice where appropriate.

Objectives*

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

1. Independent, fair and timely complaint handling and review services are provided

Outcome

Independent and accessible complaint, review and investigation that is recognised as fair and reasonable by those involved.

Strategies

Provide timely and effective assessment and investigation of complaints and requests for FOI Decision Review.

Establish comprehensive case and knowledge management systems to support timely, accurate decision-making.

Resolve complaints using flexible approaches.

Engage with agencies to support their understanding of their responsibilities under the legislation and the role and investigation and review processes of the office.

Key performance indicators

Percentage of receipt of complaints acknowledged within 3 working days (100%).
Percentage of preliminary assessments of complaints completed within 10 days (100%).
Percentage of verbal/email progress reports provided to clients weekly (100%.)
Percentage of complaints finalised within 3 months (98%).
Percentage of complaints open after 12 months from lodgement (0%).
Percentage of client and agency satisfaction with the services provided *(benchmark to be established).*
Percentage of Commissioners' and Ombudsman decisions upheld following any Tribunal or Court review (100%).

2. Individuals are empowered to resolve complaints with the agencies and through the Commissioners' and Ombudsman's office.

Outcome

Individuals have the support, advice and information necessary to manage their complaints with the agencies and through the office.

Strategies

Identify, and provide information to, key early childhood education and care stakeholders about the role and jurisdiction of the office and the obligations of agencies under the legislation.

Provide information and assistance to the community and agencies through authoritative online resources and enquiry service advice.

Support agencies to provide clear information about the rights of clients to seek review of their decisions.

Redirect premature complaints made to the office back to the agencies in the first instance when appropriate.

Key performance indicators

Information materials developed and made publicly available.
Increased level of stakeholder awareness of the role and jurisdiction of the office (*benchmark to be established*)
Reduction in premature complaints or out of jurisdiction matters received – (*benchmark to be established*).
Level of client satisfaction with the services provided (*benchmark to be established*).

3. Agencies are supported in exercising their responsibilities under the legislation.	4. Appropriate policies, processes and systems are in place to support the work of the office of the Commissioners and Ombudsman.
Outcome The office's investigations and advisory services and materials help the agencies to meet their obligations under the legislation. **Strategies** Develop or identify resources and guidance material to assist agencies to fulfil their obligations under the Acts. Conduct as necessary Commissioner initiated assessments of ACECQA and Regulatory Authority compliance with requirements under the FOI and Privacy Acts. Work with the agencies to rectify any identified systemic weaknesses in decision-making, processes or practices. **Key performance indicators** Percentage increase in resource and guidance material provided to agencies over the period (70%). Number of assessments of ACECQA and Regulatory compliance under the FOI and Privacy legislation (2) Percentage of agency satisfaction with resources and assistance provided by the office (98%).	**Outcome** Robust case management and reporting system, up to date policies and comprehensive quality information and guidance materials available to the public and the agencies. **Strategies** Review and re-develop the Office website. Develop a cost-effective complaints management and reporting system. Identify and fill gaps in office policies and resource material. Develop client satisfaction measurement tools. **Key performance indicators** Website redeveloped and live by September 2017. Initial complaints management and reporting system established. Evaluated for effectiveness by June 2018. All Office policies updated, and new policies developed where gaps identified. Comprehensive suite of resource materials available to support client and agency needs. Client satisfaction measurement tools developed.

Success

We are successful when we:

- Undertake our responsibilities in an efficient and timely manner
- Provide individuals with information and support to enable them to confidently pursue a complaint through the office or with the agencies, or to seek a FOI Decision Review
- Provide authoritative resources and support to assist agencies to fulfil their obligations under the legislation and encourage sound practice
- Settle complaints informally through advice, consultation and mediation wherever possible
- Support public trust and confidence in the integrity of the administration of the education and care services regulatory and quality assurance system through our actions
- Establish and maintain positive relationships with key stakeholders
- Establish and maintain effective relationship with other complaint-handling bodies, in particular the Commonwealth Ombudsman's Office and Australian Information Commissioner to ensure sharing of information and consistency of practice where appropriate.

- Provide an effective referral system for general enquiries.

Accountability

The Ombudsman and Commissioners are formally accountable to the COAG Education Council and submit reports as necessary to the senior officials group of the Council. Information about the performance of the office is also publicly available in our annual reports which are available on our website and tabled in each of the Commonwealth, State and Territory Parliaments.

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

We keep individuals and entities within our jurisdiction informed about actions and outcomes through regular communication.

Strategic Plan Review

Progress against the Strategic Plan will be reviewed during the period and the Plan will be revised in January 2019.

Attachment 3

Freedom of Information Statistical Data 1 July 2016 to 30 June 2017

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 Training
WA Department of Communities
ACECQA Australian Children's Education and Care Quality Authority

Table 1 FOI REQUESTS FOR ACCESS: 1 July 2016 - 30 June 2017

Jurisdiction	No. in hand from 2015/16	No. received	No. finalised	Access granted (full)	Access granted (partial)	Internal Review	Fees Collected $ (rounded)	Amendments sought/made to personal records
ACT	0	5	0	NA	NA	NA	NA	0
NSW	1	16	14*	3	9	1	289	0
NT	0	1	1	1	0	0	0	0
QLD	5	12	15*	1	10	0	2,095	0
SA	0	2	2*	0	1	0	0	0

Jurisdiction	No. in hand from 2015/16	No. received	No. finalised	Access granted (full)	Access granted (partial)	Internal Review	Fees Collected $ (rounded)	Amendments sought/made to personal records
TAS	0	0	NA	NA	NA	NA	NA	0
VIC	3	7	9*	2	6	0	156	0
WA	0	2	2	0	2	0	0	0
ACECQA*	0	3	3*	0	1	0	0	0

***Notes**

ACECQA 2 requests were withdrawn

NSW 2 requests withdrawn

QLD 3 requests withdrawn; 1 full refusal

SA 1 full refusal

VIC 1 full refusal

Education Services Australia

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

Statement of Funding and Expenditure for the period 1 July 2016 to 30 June 2017

	Actual $	Budget $	Variance $
Funding			
FY17 Funding	145,000	145,000	-
	145,000	**145,000**	-
Expenditure			
Professional Services	2,000	2,000	-
Domestic Travel Account for Projects	-	8,000	8,000
Investigation Contigency	-	30,000	30,000
Website Development & Hosting	3,000	50,000	47,000
Retainer	20,000	20,000	-
Rent - Ombudsman	20,000	20,000	-
Sundry	10,868	57,860	46,992
Project Legal Fees	18,930	20,000	1,070
Salary & On Costs	72,844	44,223	(28,621)
	147,642	**252,083**	**104,441**
FY17 Loss	**(2,642)**		
Prior years unspent funding	107,083		
Total Balance of funds remaining	**104,441**		

- Report has been prepared exclusive of GST

For identification purposes only

Grant Thornton Audit Pty Ltd

Education Services Australia

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

Statement of Financial Position as at 30 June 2017

	30 June 2017 $
CURRENT ASSETS	
Cash at Bank	104,441
Total Current Assets	104,441
Total Non-Current Assets	-
TOTAL ASSETS	104,441
CURRENT LIABILITIES	
Income Received in Advance	104,441
Total Current Liabilities	104,441
NON-CURRENT LIABILITIES	
Total Non-Current Liabilities	-
TOTAL LIABILITIES	104,441
NET ASSETS	-

- Report has been prepared exclusive of GST

For identification purposes only

Grant Thornton Audit Pty Ltd

Notes to the financial report for the year 1 July 2016 to 30 June 2017

Note 1: Basis of Preparation

The financial report for the year ended 30 June 2017 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 2017 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

Auditor's opinion

We have audited the accompanying financial report, being a special purpose financial report, which comprises the statement of financial position as at 30 June 2017, the statement of funding and expenditure, for the period 1 July 2016 to 30 June 2017 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").

In our opinion the attached financial report of Education Services Australia Limited for the year ended 30 June 2017 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.

Basis for Auditor's Opinion

We conducted our audit in accordance with Australian Auditing Standards. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Report section of our report. We are independent of the Company in accordance with the ethical requirements of the Accounting Professional and Ethical Standards Board's APES 110 Code of Ethics for Professional Accountants (the

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Code) that are relevant to our audit of the financial report in Australia. We have also fulfilled our other ethical responsibilities in accordance with the Code.

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

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

A further description of our responsibilities for the audit of the financial report is located at the Auditing and Assurance Standards Board website at:
http://www.auasb.gov.au/auditors_responsibilities/ar3.pdf .
This description forms part of our auditor's report.

GRANT THORNTON AUDIT PTY LTD

S C Trivett
Partner – Audit & Assurance

Melbourne, 1 September 2017