



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

Annual Report

1 July 2012 to 30 June 2013

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1 Commissioner's Foreword and Overview

I am pleased to present the Standing Council on School Education and Early Childhood with the 2012/13 Annual Report on the exercise of my functions as the Education and Care Services Ombudsman, National Education and Care Services Freedom of Information and Privacy Commissioners.

My office has continued to prepare for work that will flow from the publishing of the national registers for children's education and care services on the Australian Children's Education and Care Quality Authority (ACECQA) website. This work has included the National Education and Care Services Freedom of Information Manual and the Education and Care Services Ombudsman Manual. My office is currently in the process of developing the NECS Privacy Manual which, when done, will complete development of all manuals to guide the work of all three functions.

Summary information sheets on all three functions have been published for the Education and Care Services Ombudsman, National Education and Care Services FOI and Privacy Commissioners on the website at www.necsombudsmanprivacy.edu.au

Given that the national registers were placed on the ACECQA website in the last quarter of 2012/13 complaints to my office have only just commenced to be received, with three complaints received about the assessment of childcare qualifications and one Freedom of Information request for a review of a decision.

In August 2012 I provided advice to the Standing Council on School Education and Early Childhood (SCSEEC) on legal advice I had received as to what was required to establish and give effect to the Offices of the National Education and Care Services Freedom of Information and Privacy Commissioners. I understand the SCSEEC Secretariat is working with the Early Childhood Development Working Group to progress the matters raised in my advice, however now that complaints are beginning to be received a response to my advice has become urgent.

Yours sincerely



Dr Diane Sisely

2 Powers and Responsibilities

2.1 Education and Care Services Ombudsman (ECSO)

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

The ECSO has power to deal with matters falling within the description of action taken by a prescribed authority that relates to a matter of administration¹ where the reference to prescribed authority is limited to the ACECQA.²

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

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

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

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

¹Section 5(1)(a) and (b), Ombudsman Act.

²See combination of s 282, National Law and Reg 222, National Law Regulation.

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

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

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

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

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

- (a) process requests for access to documents in accordance with the FOI Act;
- (b) grant full or partial access to any documents sought under the FOI Act unless they are exempt or contain information that would reasonably be regarded as irrelevant to a request;
- (c) in making any decisions under the FOI Act, properly advising applicants of their review rights in any statement of reasons for decision;
- (d) conduct any internal review of access refusal decisions in accordance with the FOI Act;
- (e) comply with the information publication scheme obligations contained in Part II of the FOI Act;
- (f) process requests for amendment to personal information in accordance with the FOI Act;
- (g) apply and interpret the provisions of the FOI Act consistent with the objects of the FOI Act;
- (h) use their best endeavours to assist the NECSFOIC to make a decision in relation to any review of 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;
- (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)

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

- (a) ACECQA; or
- (b) Regulatory Authority from a participating jurisdiction.³

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

From 1 January 2012, the *Privacy Act 1988* (Commonwealth) ("Privacy Act") applies as the law of each State and Territory for the purposes of the National Quality Framework. Each State and Territory has for that purpose adopted in its jurisdiction the Privacy Act as modified by the *Education and Care Services National Regulations*.

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

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

They must comply with 11 Information Privacy Principles (IPP's) set out in the Privacy Act dealing with:

- the manner and purpose of collection of personal information;
- the accuracy of personal information before use;

³See combination of s 263, National Law and Reg 199, National Law Regulation.

- secure storage of personal information;
- appropriate use or disclosure of personal information;
- access to and amendment of personal information.

They must not do an act or engage in a practice that breaches any of the IPPs in relation to personal information about an individual, otherwise that is an interference with privacy.

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

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

3 Development of Manuals and Guidelines

3.1 Manuals

Throughout the year further work has been undertaken to develop information about the role and functions of my office and guidelines for its work.

In May 2013 my office produced the National Education and Services Freedom of Information Manual. This Manual joins the Education and Care Services Ombudsman Manual produced in 2012.

My office is currently in the process of finalising the National Education and Care Services Privacy Manual which will complete development of all manuals to guide the work of all three functions.

Summary information sheets on all three functions have been published on the Education and Care Services Ombudsman, National Education and Care Services Freedom of Information and Privacy Commissioners Website at www.necsombudsmanprivacy.edu.au

3.2 Guidelines

During the year my office produced a draft Guideline outlining proposed best practice for agencies to adopt when complying with their obligations under Part 11 of the Freedom of Information Act. This draft Guideline was distributed to ACECQA and each Regulatory Authority for comment and feedback.

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

Draft Guideline 1: Part II Obligations under the FOI Act

Section 9A of the FOI Act requires the Agencies specified in the National Law Regulations to have regard to the objects of the FOI Act and any guidelines issued by the NECSPOIC under s 93A of the FOI Act when complying with their obligations under the FOI Act.

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).

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.

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)).

4 Complaints

Given that the national registers were only recently placed on the ACECQA website complaints have similarly only just commenced to be received, with three complaints and one Freedom of Information Request for Review being received. The complaints received were about how ACECQA assessed qualifications and have now been resolved. Attachment 1 provides an overview of the complaint resolution process. The Request for Review is ongoing.

5 Freedom of Information Required

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

The FOI Act requires ACECQA, each Regulatory Authority and relevant administrative tribunal to provide information on the number of requests for access to information.

During the 2012/13 year there were eight Requests for Access to information of which three were granted access in full, four granted in part and one was withdrawn.

Requests For Access		
	6 Months ending 30 June 2012	July 2012 – June 2013
(a) Regulatory Authority		
ACT-Community Services Directorate	Nil	Nil
NT-Department of Education and Children's Services	Nil	Nil
NSW-Department of Education and Communities <ul style="list-style-type: none"> • Number received during the period • Number finalised during the period 	Nil	3 3 (2 granted access in full, 1 request withdrawn)
SA- Education and early Childhood Services Registration and Standards Board <ul style="list-style-type: none"> • Number received during the period • Number finalised during the period 	Nil	1 1 (1 granted access in part)
TAS-Department of Education	Nil	Nil
VIC – Department of Education and Early Childhood Development <ul style="list-style-type: none"> • Number received during the period • Number finalised during the period 	Nil	4 4 (1 granted access in full, 3 granted in part)
WA- Department of Local Government and Communities	Nil	Nil
(b) ACECQA		
<ul style="list-style-type: none"> • Number received during the period • Number finalised during the period 	2 2 (2 withdrawn)	NIL
(c) Administrative Tribunals		
ACT Civil and Administrative Tribunal	Nil	Nil
Administrative Tribunal of NSW	Nil	Nil

Administrative and Disciplinary Division of the District of SA		
Local court established under the Local Court Act of the NT	Nil	Nil
Magistrates Court (Administrative appeals Division) established under the Magistrates Court (Administrative Appeals Division) Act (Tas)	Nil	Nil
State administrative Tribunal WA	Nil	Nil
Victorian Civil and Administrative Tribunal	Nil	Nil
Queensland Civil and Administrative Tribunal	Nil	Nil
(d) NECSFOIC	Nil	
<ul style="list-style-type: none"> • Number received during the period • Number finalised during the period 		0 0

6 Financial Statements

The financial report for my office for the period ending 30 June 2013 has been prepared by Education Services Australia and is found at Attachment 3. This financial report has been audited by Grant Thornton and the audit statement is also found at Attachment 3.

7. Budget Implications

Over the first six months of 2013/14 the office will assess the cost of an appropriate document and complaint case management system for consideration in the forthcoming budget process.

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

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Attachment 1

Complaint Resolution Process

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

Complaint

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

About who and what

Education and Care Services Ombudsman (ECSO)

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

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

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

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

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

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

National Education and Care Services Privacy Commissioner (NECSPC)

From 1 January 2012, the *Privacy Act 1988* (Commonwealth) (Privacy Act) applies as the law of each State and Territory for the purposes of the National Quality Framework. Each State and Territory has for that purpose adopted in its jurisdiction the Privacy Act as modified by the *Education and Care Services National Regulations*.

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

In writing

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

Preliminary inquiries and assessment

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

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

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

- contacting you to clarify allegations made or information provided, or obtain documentary evidence (including a copy of any complaint to the agency and any response from the agency);
- researching relevant laws and other information available;
- considering similar cases;
- obtaining legal advice;
- deciding whether the complaint or parts will or will not be investigated;
- contacting the agency to obtain its version of events, additional information or relevant documents;
- identifying disagreements in the facts or about the lawfulness or reasonableness of the agency's actions;
- seek information from others if necessary;
- consider and discuss with the agency possible action;
- try to resolve the matter using conciliation or other methods of dispute resolution.

Formal investigation

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

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

Possible outcomes

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

Privacy

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

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

Freedom of Information

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

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

Other administration

In other administrative action matters the ECSO can:

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

Whether to entertain/investigate complaint

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

When can decline to investigate/entertain complaint

Privacy function	Ombudsman function	Information Commissioner function
The act or practice complained about is not an interference with privacy of an individual ⁴	The complainant has not complained to the respondent ⁵	The complainant has or had a right to cause the action to be reviewed by the respondent agency, the Information Commissioner, a court or a tribunal, has not done so and it would have been reasonable to do so. ⁶
The complaint was made more than 12 months after the complainant became aware of the act or practice ⁷	The ECSO is satisfied the complainant became aware of the [administrative] action more than 12 months before the complaint was made ⁸	
The complaint is frivolous, vexatious, misconceived or lacking in substance (see further below) ⁹	The ECSO is of the opinion that the complaint is frivolous or vexatious or was not made in good faith (see further below) ¹⁰	The complaint is frivolous, vexatious, misconceived, lacking in substance or not made in good faith. ¹¹
The act or practice is the subject of an application under another Commonwealth, State or Territory law, and the subject-matter of the complaint has been, or is being, dealt with adequately under that law ¹²	The ECSO is of the opinion that the complainant does not have a sufficient interest in the subject matter of the complaint ¹³	The complainant does not have a sufficient interest in the subject matter of the complaint. ¹⁴

⁴Section 41(1), Privacy Act.

⁵Section 6(1A), Ombudsman Act.

⁶ Section 73(b), FOI Act.

⁷Section 41(1), Privacy Act.

⁸Section 6(1), Ombudsman Act.

⁹Section 41(1), Privacy Act. It is important to note that these concepts are not necessarily mutually exclusive.

¹⁰Section 6(1), Ombudsman Act. It is important to note that these concepts are not necessarily mutually exclusive.

¹¹Section 73(e), FOI Act.

¹²Section 41(1), Privacy Act.

¹³Section 6(1), Ombudsman Act.

Another Commonwealth, State or Territory law provides a more appropriate remedy for the act or practice that is the subject of the complaint ¹⁵	The ECSO is of the opinion that an investigation, or further investigation, of the action is not warranted having regard to all the circumstances ¹⁶	
The complainant has complained to the respondent about the act or practice and the respondent has dealt, or is dealing, adequately with the complaint ¹⁷	The complainant has complained to the respondent, the ECSO may decide not to investigate the action unless and until the complainant advises that no redress has been granted or that redress has been granted but the redress is not, in the opinion of the complainant, adequate ¹⁸	The complainant has complained to the respondent agency, and the respondent agency has dealt, or is dealing, adequately with the complaint; or has not yet had an adequate opportunity to deal with the complaint. ¹⁹
The complainant has complained to the respondent about the act or practice and the respondent has not yet had an adequate opportunity to deal with the complaint ²⁰	Where a complainant exercises a right to cause the action complained of to be reviewed by a court or a tribunal constituted under an Act, ²¹ the ECSO shall not investigate or continue to investigate the action unless of the opinion that there are special reasons justifying investigation. ²²	

¹⁴Section 73(f), FOI Act

¹⁵Section 41(1), Privacy Act.

¹⁶Section 6(1), Ombudsman Act.

¹⁷Section 41(2), Privacy Act.

¹⁸Section 6(1B), Ombudsman Act.

¹⁹Section 73(d), FOI Act.

²⁰Section 41(2), Privacy Act.

²¹Some examples of where a court or may review the matter include:

- where a decision to refuse access to some or all or parts of documents under the FOI Act may be reviewed by a relevant court or tribunal;
- where a decision to impose access charges or as to the amount of access charges under the FOI Act may be reviewed by a relevant court or tribunal;
- decisions made about registration of health practitioners including relating to renewal, endorsement, imposition of conditions, ect: s 199, National Law.
- where conduct of one of the respondent bodies may be the subject of judicial review proceedings in a participating jurisdiction.

²²Section 6(2), Ombudsman Act.

<p>An application has been made by the respondent to have a determination that any interference with privacy was in the public interest (s 72, Privacy Act) and the complainant would not be prejudiced by deferring the investigation pending determination of that application.²³</p>	<p>Where the complainant could have had the matter reviewed by a court or tribunal but has not exercised that right, the ECSO may decide not to investigate the action if of the opinion that, in all the circumstances, it would be reasonable for the complainant to exercise, or would have been reasonable for the complainant to have exercised, that right²⁴</p>	<p>The complainant has or had a right to cause the action to be reviewed by a court or a tribunal, or to another body, has not done so and it would have been reasonable to do so.²⁵</p>
	<p>Where the ECSO becomes of the opinion that adequate provision is made under an administrative practice for the review of action complained of, the ECS Ombudsman can decide not to investigate if the action has been, is being or is to be reviewed under that practice at the request of the complainant, or it would be reasonable for the complainant to cause it to be²⁶</p>	
		<p>The action complained about is not taken by an agency in the performance of the agency's functions or the exercise of the agency's powers under the FOI Act.²⁷</p>

²³Section 41(3), Privacy Act.

²⁴Section 6(3), Ombudsman Act.

²⁵Section 73(b) and (c), FOI Act.

²⁶Section 6(4), Ombudsman Act.

²⁷Section 73(a), FOI Act.

Attachment 2

Guideline 1: Part II Obligations under the FOI Act

Agencies must provide information about various freedom of information matters including

- (a) the number of requests for access received;
- (b) the number of applications for amendment to personal information received and their results;
- (c) total charges collected during the year;
- (d) the number of applications for internal review and their results;

The statistical return spreadsheet details the information required.

Name of Agency

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

Nil Returns

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

Requests for Access

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

- (a) is in writing; and
- (b) states that the request is an application for the purposes of the FOI Act; and
- (c) provides such information as is reasonably necessary to enable identification of the documents requested; and
- (d) gives details on how notices under the FOI Act may be sent to the applicant.

The following are **not** included here:

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

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

Processing of requests

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

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

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

3C includes where the refusal occurred because:

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

3C does not include:

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

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

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

Exemptions Claimed

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

Response Times

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

Disclosure log

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

Review of Access Decisions

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

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

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

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

Amendment of Personal Records

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

Attachment 3

Audited Report



Education
Services
Australia

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

**Profit and Loss
for the period ending 30 June 2013**

	Actual	Budget	Variance
	\$	\$	\$
Revenue			
Income	290,000	274,411	15,589
Total Income	<u>290,000</u>	<u>274,411</u>	<u>15,589</u>
Expenditure			
Retainer	36,397	20,000	(16,397)
Sitting Fees	1,604	15,000	13,396
Office Manager	33,395	37,500	4,105
Rent and Accommodation	27,702	30,000	2,298
IT Services	12,165	7,500	(4,665)
Other Expenses	146,928	164,411	17,483
Total Expenditure	<u>258,191</u>	<u>274,411</u>	<u>16,220</u>
Balance Of Funds at 30 June 2013	31,809		

- Report has been prepared exclusive of GST



Education
Services
Australia

**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**

**Statement of financial position
as at 30 June 2013**

	\$
CURRENT ASSETS	
Cash at bank	31,809
Total Current Assets	<u>31,809</u>
Total Non-Current Assets	<u>0</u>
TOTAL ASSETS	<u><u>31,809</u></u>
CURRENT LIABILITIES	
Income received in advance	31,809
Total Current Liabilities	<u>31,809</u>
NON-CURRENT LIABILITIES	
Total Non-current Liabilities	<u>0</u>
TOTAL LIABILITIES	<u><u>31,809</u></u>
NET ASSETS	<u><u>0</u></u>

The accompanying notes form part of this financial report.

Notes to the financial report for the period 1 January 2012 to 30 June 2013

Note 1: Basis of Preparation

The financial report for the period ended 30 June 2013 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 when the invoice is raised for services.

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 2013 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 2013, the statement of income and expenditure, for the period 1 January 2012 to 30 June 2013 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.

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.

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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 and the Department of Education, Employment and Workplace Relations, 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

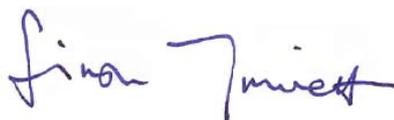
In conducting our review, we have complied with the independence requirements of the Accounting Professional and Ethical Standards Board.

Auditor's opinion

In our opinion the attached financial report of Education Services Australia Limited for the period 1 January 2012 to 30 June 2013 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 requirements of the Funding Agreement and Australian Accounting Standards; and the funding was expended in accordance with the Funding Agreement.



GRANT THORNTON AUDIT PTY LTD



Simon Trivett
Partner – Audit & Assurance

Melbourne, 23 September 2013