

**Protocol for sharing, using and  
disclosing National Quality Agenda IT  
System data by  
Participating Jurisdictions,  
the Australian Government  
and ACECQA**

**Effective from 1 October 2017**

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## Version history

Version No.	Author	Date	Approval
1.0	ACECQA	June 2017	Draft endorsed by regulatory authorities and the Australian Government through the Regulatory Practice Committee (RPC)
2.0	ACECQA	July 2017	Draft reviewed by ECPG NQA Review Implementation Working Group
3.0	ACECQA	September 2017	Final version endorsed by the Early Childhood Policy Group

# Protocol for NQA ITS data sharing and disclosure

## Purpose and scope

1. This protocol is made in accordance with sections 271(7) and 272(2) of the Education and Care Services National Law (National Law) and has been developed and agreed by participating jurisdictions, the Australian Government and the Australian Children's Education and Care Quality Authority (ACECQA).
2. The protocol outlines how participating jurisdictions, the Australian Government and ACECQA agree to share, use and disclose National Quality Framework (NQF) information and data within the National Quality Agenda IT System (NQA ITS) to administer and further the objectives of the NQF.
3. A separate protocol is maintained for Out of Scope Services data within the NQA ITS, which was agreed by participating jurisdictions, the Australian Government and ACECQA through the then Quality and Consistency Committee in June 2015.
4. In addition to this protocol and the protocol for Out of Scope Services data, the governance framework for the sharing, usage and disclosure of NQA ITS data is supported by technical policies containing procedural information and guidance that have been, and continue to be, developed collaboratively under the NSG. These procedures relate to system access, security, change management and web services information exchange.

## Definitions

5. In this protocol the following definitions apply unless the context requires otherwise:

<b>ACECQA</b>	The Australian Children's Education and Care Quality Authority
<b>Australian Government</b>	The Australian Government Department with portfolio responsibility for early childhood, also referred to in the National Law as the Commonwealth
<b>Disclosure</b>	The release of information to an individual or entity
<b>NQA ITS/the System</b>	National Quality Agenda Information Technology System
<b>National Law</b>	Education and Care Services National Law Act
<b>National Partnership Agreement</b>	National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care
<b>National Regulations</b>	Education and Care Services National Regulations
<b>National Quality Agenda IT Steering Group</b>	Comprises representatives from participating jurisdictions, the Australian Government and ACECQA and provides oversight of NQA ITS strategic and operational priority setting
<b>NQF</b>	National Quality Framework

<b>Out of Scope services</b>	Children’s education and care services which are outside the scope of the National Law and National Regulations (as per Section 5(1) of the National Law and National Regulation 5).
<b>Participating Jurisdiction (‘jurisdiction’)</b>	Under the National Law, participating jurisdiction means a State or Territory in which: <ul style="list-style-type: none"> <li>• the National Law applies as a law of the state or territory; or</li> <li>• a law that substantially corresponds to the National Law has been enacted.</li> </ul>
<b>Parties</b>	Parties to this protocol; participating jurisdictions, the Australian Government and ACECQA
<b>Protocol</b>	Protocol for sharing, using and disclosing NQA ITS data by jurisdictions, the Australian Government and ACECQA
<b>Regulatory Authorities</b>	The administrative unit or body in each state and territory responsible for the administration of the National Law and National Regulations. The term regulatory authority is used in this protocol where the National Law specifies an act is to be done by a regulatory authority.
<b>Sharing</b>	The disclosure of information by a party to another party or parties.
<b>Use</b>	The handling of information by a party, or an activity undertaken with information by a party.
<b>Web service</b>	A web service allows one IT system to communicate with another IT system, including inter-agency communication. It sends requests/responses over the web to allow data and information to be remotely accessed and modified between two distinct systems.

## Background

### *The National Quality Framework*

6. Section 3(2)(f) of the National Law states that an objective of the framework is to reduce the regulatory and administrative burden for education and care services by enabling information to be shared between jurisdictions and the Commonwealth.
7. Information sharing also enables other objectives and guiding principles of the NQF. For example, the NQF aims to:
  - a. ensure the safety, health and wellbeing of children attending education and care services (section 3(2)(a))
  - b. establish a system of national integration and shared responsibility between participating jurisdictions and the Commonwealth in the administration of the national education and care services quality framework (section 3(2)(d)), and
  - c. improve public knowledge, and access to information, about the quality of education and care services (section 3(2)(e)).

### *Legislative basis*

8. Section 271 of the National Law sets out that ACECQA, regulatory authorities, government departments and public and local authorities may disclose information to each other about education and care services under specified circumstances.
9. Sections 261(2)(a) and 227(2)(a) set out that regulatory authorities and ACECQA have the power to collect, hold and use information obtained under the National Law by the regulatory authority or ACECQA about the provision of education and care to children including information about outcomes for children and information about providers of education and care services in each participating jurisdiction.
10. Section 271(7)(b) of the National Law states a protocol may be developed covering the disclosure of information and agreed by ACECQA, participating jurisdictions and the Australian Government.
11. Section 272 of the National Law sets out that ACECQA and regulatory authorities may disclose certain information to approved providers under specified circumstances.
12. Section 272(2) of the National Law states a protocol may be developed covering these disclosures and agreed by ACECQA, participating jurisdictions and the Australian Government.
13. The sharing of information under sections 271 and 272 of the National Law is subject to the Commonwealth *Privacy Act 1988* (the Privacy Act) and this Protocol (sections 271(7) and 272(2)). Noting the Privacy Act allows organisations to use and disclose personal

information in ways that are authorised by law (Australian Privacy Principle 2.1(g)), parties will comply with the Privacy Act if they share information with each other in accordance with the National Law.

#### *Policy basis*

14. Following the 2014 review of the National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care, the Education Council, through the January 2017 Decision Regulation Impact Statement (DRIS) for changes to the NQF, announced changes to the grounds for information sharing under the National Law.
15. The DRIS noted that the previous Law *'limits the ability of participating jurisdictions of the NP NQA to share information in furtherance of the objectives of the National Quality Framework and in instances, for the purposes of the National Law, which includes ensuring the safety, health and wellbeing of children.'*
16. To support the new information sharing provisions that took effect on 1 October 2017<sup>1</sup>, the DRIS also cites agreement to:
  - *develop guidance materials around the use of NQA Information Technology System (NQA ITS) data and the sharing of certain contact details.*
17. The Education Council Letter of Expectation 2016-2018 to ACECQA supports the policy position of streamlined information sharing and systems, including the following strategic directions:
  - Achieving NQF system and reporting improvements
    - *Develop streamlined and reliable systems, including the identification and collection of relevant data in the NQA ITS, to monitor and identify any emerging issues or risks and develop practical operational solutions in collaboration with jurisdictions.*
    - *Explore changes to the NQA ITS to increase support for jurisdictions in undertaking regulatory activities, including record keeping and archiving, investigations, compliance capabilities and sharing appropriate information with and between regulatory authorities.*

#### **The role of the NQA ITS in supporting information sharing**

18. The NQA ITS provides:
  - a. a business tool for communication and transaction of regulatory activity between providers, persons with management or control of services, nominated supervisors or authorised representatives of an approved provider, and regulatory authorities

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<sup>1</sup> Except for Western Australia.

- b. a means by which education and care regulators can effectively collaborate and share information to support their regulatory efforts.
- 19. The NQA ITS supports the goal of creating a more efficient, cohesive and streamlined environment for business activity.
- 20. ACECQA is responsible for the secure and efficient management of the NQA ITS on behalf of the Australian Government and participating jurisdictions. Oversight of NQA ITS strategic priority setting is achieved through NQA ITS Steering Group (NSG), which comprises representatives from participating jurisdictions, the Australian Government and ACECQA.
- 21. The NQA ITS also supports the Australian Government to undertake its role under Commonwealth legislation as it relates to the children's education and care sector. Integration of the NQA ITS with relevant Australian Government managed databases will further support regulatory efforts by participating jurisdictions and the Australian Government.

*Sharing information between parties*

- 22. The National Law states that ACECQA, regulatory authorities and any government department, public authority or local authority may disclose information to each other in respect of education and care services for specified purposes (section 271(3)).
- 23. The purposes for disclosure of information between parties are:
  - a. the disclosure is reasonably necessary to promote the objectives of the National Quality Framework; or
  - b. the disclosure is for the purposes of enabling or assisting the other entity to perform or exercise any of its functions or powers under the National Law; or
  - c. the disclosure is for the purposes of research or the development of national, state or territory policy with respect to education and care services; or
  - d. the disclosures is for a purpose relating to the funding of education and care services; or
  - e. the disclosure is for a purpose relating to the payment of benefits or allowances to persons using education and care services, providing the disclosure is not otherwise prohibited by law (section 271(4)).
- 24. Regulatory authorities must disclose to other regulatory authorities the suspension or cancellation of a working with children check, working with children card or teacher registration of a nominated supervisor of which it is notified under the National Law (section 271(5)).

25. Information disclosed for the purpose of research or the development of policy must not include information that could identify or lead to the identification of an individual other than:
  - a. an approved provider or nominator supervisor
  - b. a family day care educator who has been suspended from providing education and care to children
  - c. a person subject to a prohibition notice
  - d. a person being prosecuted for an offence under the National Law (section 271(8)).

*Disclosure of information to non-parties*

26. Section 270 requires and/or allows the publication of certain information by ACECQA, regulatory authorities and the Australian Government.
27. ACECQA or regulatory authorities may disclose the following information to an approved provider if the provider asks and ACECQA or the regulatory authority considers on reasonable grounds that the provider needs the information to comply with the National Law:
  - a. whether a person named in the request is subject to a prohibition notice under section 182 of the National Law
  - b. whether a family day care educator named in the request has been suspended from providing education and care to children under section 178 (section 272(1)).
28. Regulatory authorities may disclose to the head (or their delegate) of the government department responsible for the administration of a working with children law, any prohibition notice given under the National Law as applying in any jurisdiction in respect of the person (section 271(6)).
29. Disclosures made under sections 271 and 272 of the National Law are subject to the Commonwealth *Privacy Act 1988* (the Privacy Act) and this protocol (section 271(7) and 272(2)).

**Key principles/Objectives for NQA ITS data sharing, use and disclosure**

30. Lawful, efficient, collaborative and streamlined communication between participating jurisdictions, ACECQA and the Australian Government is prioritised to ensure information is managed to realise the objectives of the National Law.
31. Consultation between parties when sharing information under the NQF is paramount.

32. High level inter-jurisdictional cooperation and action will enable participating jurisdictions, the Australian Government and ACECQA to fulfil the objectives of the NQF.
33. Information sharing enables participating jurisdictions and the Australian Government to leverage respective enforcement powers to respond to non-compliance and identify risks of non-compliance among providers.
34. The exchange of information, strategies and experiences that inform and strengthen provider compliance with the National Law and Regulations is encouraged.

### **Supporting information sharing to enhance regulatory strategy through the NQA ITS - Roles and responsibilities**

35. Parties agree the regulatory benefits from information exchange will be achieved if relevant information is entered into the NQA ITS.
36. Parties acknowledge the responsibilities each party has for supporting information sharing.

#### *Joint responsibilities*

37. All parties are responsible for ensuring compliance with relevant laws, regulations and policies that govern the use, security and retention of NQA ITS data that they share, use and disclose. This includes maintaining appropriate data access controls within each agency to ensure NQA ITS data is accessed and used for genuine business purposes only.
38. Each party is responsible for its own adherence to this protocol.
39. Additional NQA ITS procedures and business process rules may be required to support the objectives of promoting information sharing to enhance regulatory strategy. This work will be progressed collaboratively by all parties through the NSG.
40. Web services facilities are in place for the Australian Government and some participating jurisdictions to allow inter-agency communication between the NQA ITS and their respective agency IT systems. A web services protocol will be finalised through the NSG to define the roles and responsibilities of ACECQA, the Australian Government and regulatory authorities that operate web services between their respective agency IT systems and the NQA ITS.

#### *Participating jurisdictions*

41. Any data stored in the NQA ITS by a regulatory authority is visible to other regulatory authorities, ACECQA and the Australian Government unless it is entered into specific confidential data fields, is an activity record, or is a document in SharePoint.
42. Activity records, documents in SharePoint and data in confidential fields can only be accessed by the regulatory authority that entered it. A restricted number of ACECQA

staff in the Education and Care Systems team can view the data for system administration purposes.

43. Regulatory authorities are responsible for deciding what information they enter into the NQA ITS. However, to help achieve the objectives of the NQF, at a minimum, regulatory authorities agree to enter and make the following information available to all parties to this protocol within the NQA ITS:
  - a. 'Applications' – grounds for refusal decision
  - b. 'Investigations' – summary of outcomes and actions taken (approval notes and compliance actions)
  - c. 'Non-compliance and enforcement' – description of breach / non-compliance, summary of outcomes and actions taken (investigation and investigation area details)
  - d. 'Prohibition notices' – First name, last name, date of birth, date issued/lifted and details of prohibition notice including types and conditions.

#### *ACECQA*

44. ACECQA facilitates information sharing arrangements through its day to day management of the NQA ITS.
45. ACECQA enters data into the NQA ITS in relation to Excellent rating (when awarding the rating) and second tier review applications.
46. ACECQA will make NQA ITS technical enhancements as required to continue to support the principles within this protocol.
47. ACECQA, in collaboration with all parties, maintains permissions and edit controls on the NQA ITS such as to enable appropriate information sharing between parties in accordance with this protocol and all relevant legislative requirements.
48. ACECQA will retain all records within the NQA ITS for as long as the System is in operation and/or ACECQA retains its role in managing the System on behalf of participating jurisdictions and the Australian Government. Should these arrangements cease, all records created by a jurisdiction will be exported and provided to that jurisdiction for management under their respective retention and disposal requirements.

#### *Australian Government*

49. It is noted that the 2017 DRIS, in considering potential overlaps between the National Law and the Family Assistance Law, recommended the development of:

- *'nationally consistent business rules for entering data and storing documents in the NQA ITS': and*
  - *options to streamline NQF and FAL approval processes, including through development of a single paper-based application form, as a first step towards a combined online application process'.*
50. On 4 April 2017, the Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Act 2017 came into effect. This Act amends Family Assistance Law (FAL) to enable the implementation of the Australian Government's child care reforms from 2 July 2018. The main element of the reforms is the replacement of the Child Care Benefit (CCB) and Child Care Rebate (CCR) payments by one streamlined means-tested payment called the Child Care Subsidy (CCS).
  51. The Australian Government requires a new IT system to support the reforms that will coincide with the commencement of the Child Care Subsidy (CCS) from 2 July 2018. Given this work is underway, governments are considering joined up entry level approvals and regulatory provisions.
  52. As part of this work, a new online CCS provider approval application that forms part of the new Australian Government child care IT system will support the identification of the entity applying for approval, as well as improving the 'line of sight' to those individuals who must meet Fit and Proper provisions.
  53. The online CCS application will populate provider information from the NQA ITS and will validate that the entity applying for CCS provider approval is the same entity to which provider approval has been granted under National Law. The online CCS application will interface with the information in the NQA ITS to allow only those providers and services who have valid Provider and Service Approval Numbers to apply. In addition, the online CCS application will contain auto fill capabilities for specific fields from the NQA ITS to support better alignment of data.

#### **Use of shared information**

54. Shared information will allow participating jurisdictions and the Australian Government to leverage their enforcement powers to meet the objectives of the National Law of ensuring the health, safety and wellbeing of children, and improving the quality of services.
55. The National Law allows parties to share information with each other for defined purposes. Under this protocol, parties agree to use shared information only for those defined purposes. That is, parties agree to use shared information only:
  - a. to promote the objectives of the National Quality Framework
  - b. to perform or exercise any of its functions or powers under the National Law

- c. for the purposes of research or the development of national, state or territory policy with respect to education and care services
- d. for a purpose relating to the funding of education and care services
- e. for a purpose relating to the payment of benefits or allowances to persons using education and care services, providing the disclosure is not otherwise prohibited by law.

### **Disclosure of information to non-parties**

#### *Requests for access to information under FOI*

- 56. All parties will consider all requests for information in accordance with the National Law, Commonwealth *Freedom of Information Act 1982* (the FOI Act) and Commonwealth *Privacy Act 1988* (the Privacy Act) and this protocol.
- 57. Sharing data and information through the NQA ITS has implications for all parties under the FOI Act. Under the FOI Act, a document is deemed to be 'in the possession of the agency, whether created in the agency or received in the agency'. Therefore, parties may receive FOI requests for information contained in the NQA ITS that was originated by other parties.
- 58. Requests for information under FOI must be managed in accordance with the FOI Act and FOI guidelines.
- 59. In line with the FOI Act and guidelines, when responding to requests for information under the FOI Act, and the request relates to information solely or partly originated by another party, all parties will give due consideration to the agency that may be best placed to manage the request, including whether the 'subject matter of the document is more closely connected with the functions of another agency or minister (section 16(1) of the FOI Act)'.
- 60. Noting the guiding principle of this protocol that consultation is paramount, parties will seek to use the consultation provisions in the FOI Act when handling access requests.

#### *Privacy*

- 61. Where the information contains information or an opinion about an individual whose identity is apparent or can be reasonably ascertained, the data will be "personal information" for the purposes of the *Privacy Act 1988* (the Privacy Act).
- 62. When disclosing personal information to non-parties, parties will:
  - a. remove information that may identify an individual prior to release, unless required or authorised to disclose this information under law, or

- b. de-identify the information to a necessary level to prevent identification of the individual to ensure their privacy is maintained, unless required or authorised to disclose this information under law.
63. Specifically, parties agree no data will be provided to non-parties that identify, or could lead to the identification of individual children unless this disclosure is required or authorised under law.

*Public release of NQF information by ACECQA*

64. A number of ACECQA's functions under the National Law relate to information sharing and publication. For example, under section 225 of the National Law ACECQA's functions include:
- a. to report to and advise the Ministerial Council on the National Quality Framework
  - b. to publish information about the implementation and administration of the National Quality Framework and its effect on developmental and educational outcomes for children
  - c. to report to the regulatory authorities and the relevant Commonwealth Department in relation to:
    - i. the collection of information under this Law
    - ii. the evaluation of the National Quality Framework
  - d. to keep national information on the assessment, rating and regulation of education and care services
  - e. to publish, monitor and review ratings of approved education and care services
  - f. to publish guides and resources
    - i. to support parents and the community in understanding quality in relation to education and care services, and
    - ii. to support the education and care services sector in understanding the National Quality Framework.
65. ACECQA facilitates the public release of national information and releases information:
- a. through established channels
  - b. through one off channels
  - c. in response to ad hoc requests
66. Before releasing information through established channels, ACECQA notifies and consults with relevant participating jurisdictions as appropriate.
67. Where ACECQA seeks to release data through new, ongoing channels, ACECQA will notify and consult with relevant participating jurisdictions as appropriate.
68. Where ACECQA seeks to release data in response to ad hoc requests and through one off avenues, ACECQA will notify and consult with relevant participating jurisdictions as appropriate, taking into account factors such as whether the information is publicly available and the sensitivity of the information to be released.

*Disclosure of information by participating jurisdictions and the Australian Government*

69. Where participating jurisdictions and the Australian Government seek to publicly release shared data, they will notify and consult with relevant participating jurisdictions as appropriate, taking into account factors such as whether the information is publicly available and the sensitivity of the information to be released.

*Disclosure of information to approved providers under section 272(1)*

70. The National Law allows ACECQA and regulatory authorities to disclose to an approved provider if the provider asks and ACECQA or the regulatory authority considers on reasonable grounds that the provider needs the information to comply with the National Law:
- a. whether a person named in the request is subject to a prohibition notice under section 182 of the National Law
  - b. whether a family day care educator named in the request has been suspended from providing education and care to children under section 178 (section 272(1)).

*Disclosure of information to departments administering working with children laws under section 271(6)*

71. Regulatory authorities may disclose to the head of the government department responsible for the administration of a working with children law, any prohibition notice given under the National Law as applying in any jurisdiction in respect of the person (section 271(6)).

**Protocol contact officers**

72. All parties to this protocol must nominate a suitable delegate(s) to facilitate the operation and implementation of this protocol. Contact officers are responsible for initially seeking to resolve any issues or disagreements which arise under the protocol.
73. Contact details for each Protocol contact officer are provided at Appendix A.

**Approval and review**

74. This protocol was agreed by all parties through the Early Childhood Policy Group on 27 September 2017.
75. This protocol will be reviewed every two years from the date of effect (1 October 2017) or earlier if required.