

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

March 2023

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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
4.0	ACECQA	November 2019	Reviewed by RPC
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6.0	ACECQA	March 2023	Reviewed and endorsed by RPC

Protocol for NQA ITS data sharing, use and disclosure

Purpose and scope

1. The Education and Care Services National Law (National Law) authorises ACECQA, state and territory regulatory authorities and the Australian Government to share information about education and care services to:
 - a. administer and promote the objectives of the National Quality Framework (NQF)
 - b. support education and care research or the development of policy
 - c. for purposes relating to funding a of education and care services or the payment of benefits or allowances to persons using those services (section 271¹).
2. This protocol is made in accordance with sections 271(7) and 272(2) of the National Law and has been developed and agreed by participating jurisdictions, the Australian Government and ACECQA.
3. The protocol outlines how participating jurisdictions, the Australian Government and ACECQA agree to share, use and disclose information and data within the National Quality Agenda IT System (NQA ITS).
4. 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.
5. 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 National IT Systems Steering Group (NSG). These procedures relate to system access, security, change management and web services information exchange.

Definitions

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

ACECQA	The Australian Children’s Education and Care Quality Authority
Australian Government	The Australian Government Department with portfolio responsibility for early childhood, also referred to in the National Law as the Commonwealth
Disclosure	The release of information to an individual or entity
Regulators	The government agencies or bodies responsible for monitoring compliance of relevant duty holders with their respective

¹ Further details at paragraph 20 below

legislative requirements, including to become or remain an approved provider of children’s education and care, and to operate a service approved to provide children’s education and care.

In the context of this protocol, ‘regulators’ refers specifically to the regulators of the Australian children’s education and care system – state and territory regulatory authorities as National Law regulators, and the Australian Government as the (FAL) regulator.

Family Assistance Law (FAL)	A suite of Commonwealth legislation related to child care fee assistance (including the Child Care Subsidy and Additional Child Care Subsidy)
NQA ITS/the System	National Quality Agenda Information Technology System
National Law	<i>Education and Care Services National Law Act 2010</i>
National Regulations	Education and Care Services National Regulations
National IT Systems Steering Group (NSG)	Comprises representatives from participating jurisdictions, the Australian Government and ACECQA and provides oversight of NQA ITS strategic and operational priority setting
NQF	National Quality Framework
Out of Scope services	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).
Participating Jurisdiction (‘jurisdiction’)	Under the National Law, participating jurisdiction means a State or Territory in which: <ul style="list-style-type: none">• the National Law applies as a law of the state or territory; or• a law that substantially corresponds to the National Law has been enacted.
Parties	Parties to this protocol; participating jurisdictions, the Australian Government and ACECQA
Protocol	Protocol for sharing, using and disclosing NQA ITS data by jurisdictions, the Australian Government and ACECQA
Regulatory Authorities	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.
Regulatory Practice Committee (RPC)	Comprises representatives from regulatory authorities, the Australian Government and ACECQA. A forum convened by ACECQA for improving regulatory practice and authorising a range

of functions and services provided by ACECQA to, and on behalf of, all governments.

Sharing

The disclosure of information by a party to another party or parties.

Use

The handling of information by a party, or an activity undertaken with information by a party.

Web service

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 (NQF)

7. Section 3(2)(f) of the National Law states that an objective of the NQF is to reduce the regulatory and administrative burden for education and care services by enabling information to be shared between jurisdictions and the Commonwealth.
8. 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

9. 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.
10. 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.
11. 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.
12. Section 272 of the National Law sets out that ACECQA and regulatory authorities may disclose certain information to approved providers under specified circumstances.
13. 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.
14. 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)). The Privacy Act applies to ACECQA and regulatory authorities for the

purposes of the NQF, and to the Australian Government. 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, use and disclose information in accordance with the National Law and/or FAL.

Sharing information between parties

15. 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)).
16. 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)).
17. 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)).
18. 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)).

19. The Family Assistance Law allows disclosure of information for the purposes of the National Law and Regulations (section 161(1A) of the *A New Tax System (Family Assistance) (Administration) Act 1999*).

Disclosure of information to non-parties

20. Section 270 requires and/or allows the publication of certain information by ACECQA, regulatory authorities and the Australian Government.
21. 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)).
22. 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)).
23. 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)).

The role of the NQA ITS in supporting information sharing

24. 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
 - b. a means by which education and care regulators can effectively collaborate and share information to support their regulatory efforts.
25. The NQA ITS supports the goal of creating a more efficient, cohesive and streamlined environment for business activity.

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 by ACECQA and all governments is achieved through the

Regulatory Practice Committee (RPC), with operational IT System matters considered by RPC's NSG.

26. For example, parties typically agree to business rules and functionality documents for the NQA ITS through the NSG.

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

27. 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.
28. Consultation between parties when sharing information under the NQF is paramount.
29. High level inter-jurisdictional cooperation and action will enable participating jurisdictions, the Australian Government and ACECQA to fulfil the objectives of the NQF and for the Australian Government to have appropriate oversight of the funding and payments for education and care services.
30. 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 in the education and care sector.
31. The exchange of information, strategies and experiences that inform and strengthen compliance with the National Law and Regulations and the FAL is encouraged.

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

32. Parties agree the regulatory benefits from information exchange will be achieved if relevant information is entered into the NQA ITS.
33. Parties acknowledge the responsibilities each party has for supporting information sharing.
34. Parties share and disclose information as authorised under the National Law and FAL. To avoid doubt, parties do not disclose information collected by another party unless the information and the disclosure is related to performing a function or activity under the National Law or FAL.

Joint responsibilities

35. 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.

36. Each party is responsible for its own adherence to this protocol.
37. 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 or other relevant interjurisdictional bodies, as appropriate.
38. 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. The NQA ITS web services protocol, finalised through the NSG and RPC, defines 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

39. Data stored in the NQA ITS by a regulatory authority may be visible to other regulatory authorities, ACECQA and the Australian Government unless it is entered into specific confidential data fields.
40. Data in confidential fields (such as bank account details) are only visible to the relevant regulator(s). A restricted number of ACECQA staff can view the data for system administration purposes.
41. 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' – risk assessments completed in the process of assessing applications , grounds for refusal decisions, conditions of approvals and suspension or cancellations of approvals
 - 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.
 - e. 'Notifications' – including notifications of: intention to transfer service approval; any proposed change to the premises; and any appointment or removal of a person with management or control.

ACECQA

42. ACECQA facilitates information sharing arrangements through its day to day management of the NQA ITS.
43. ACECQA enters data into the NQA ITS in relation to Excellent rating (when awarding the rating) and second tier review applications.
44. ACECQA will make NQA ITS technical enhancements as required to continue to support the principles within this protocol.
45. 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.
46. 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

47. Provider and service approval applications² made under the FAL are managed through the NQA ITS.
48. Data entered into the NQA ITS by the Australian Government or its applicants may be visible to regulatory authorities and ACECQA unless it is entered into specific confidential data fields. Data in confidential fields are only visible to the relevant regulator(s). A restricted number of ACECQA staff can view the data for system administration purposes.
49. Information exchange occurs between the Australian Government's Child Care Subsidy System (CCSS) and the NQA ITS, supporting better alignment of data and to confirm entities applying for National Law and FAL approval are the same.

Use of shared information

50. 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.

² Data associated with the ongoing administration of the FAL, outside the provider and service application process, continues to be maintained externally to the NQA ITS by the Australian Government.

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.

Disclosure of information to non-parties

51. Information exchange occurs between the NQA ITS and contracted third party providers providing online knowledge assessments, to enable some data to auto populate. Information exchange may occur between the NQA ITS and contracted third parties providing document verification services and electronic signature software for fraud prevention purposes. Third party providers will be contractually required to comply with the Privacy Act as if they were an agency.

Requests for access to information under FOI

52. 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.
53. 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.
54. Requests for information under FOI must be managed in accordance with the FOI Act and FOI guidelines.
55. 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)'.
56. 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

57. 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).
58. All parties have responsibilities under, and agree to comply with, the Privacy Act.
59. Under the Privacy Act, more than one entity can be collecting and holding the same personal information. Consequently, ACECQA collects and holds all personal information in the NQA ITS for the purposes of the Privacy Act. Regulatory authorities

and the Australian Government may also collect and hold some of the personal information in the NQA ITS for the purposes of the Privacy Act.

60. Parties agree it is their responsibility to make their users aware of their relevant privacy obligations, including what personal information can and what must not be included in NQA ITS data fields, activity records and SharePoint documents, and shared with other parties via the NQA ITS.
61. When collecting personal information using the NQA ITS, parties agree to only collect and hold the personal information that is necessary to carry out their functions and activities under the National Law and FAL, and only as much personal information as is necessary to carry out those functions and activities.
62. When disclosing personal information to non-parties (other than third party contractors performing services on behalf of 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.
64. Parties acknowledge that some personal information contained in the NQA ITS, such as information about a person's health or criminal record, is sensitive information under the Privacy Act and is afforded additional protection. Parties will only collect, use and disclose sensitive information contained in the NQA ITS as permitted by the Privacy Act.

Notifiable data breaches

65. Parties have obligations under the Notifiable Data Breaches (NDB) Scheme under the Privacy Act. A data breach happens when personal information is accessed or disclosed without authorisation or is lost. ACECQA has an established procedure for responding to a data breach and will follow that procedure, in consultation with relevant parties, in the event that a data breach, or suspected data breach occurs in relation to the NQA ITS. Parties agree to notify ACECQA if they become aware of any potential data breach.

Relevant secrecy laws

66. Parties agree to ensure their personnel comply with any relevant secrecy laws when collecting, sharing, using and disclosing information. Parties agree to make personnel who may access protected information under a relevant secrecy law aware of their obligations and that it may be a criminal offence to fail to comply.

67. Division 2 – Confidentiality of Part 6 of *A New Tax System (Family Assistance) (Administration) Act 1999* (FAL) is a relevant secrecy law. Sharing and disclosure of information for the purposes of the National Law is permitted under these provisions.

Public release of NQF information by ACECQA

68. 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 NQF
 - b. to publish information about the implementation and administration of the NQF 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 NQF
 - 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 NQF.
69. ACECQA facilitates the public release of national information:
- a. through established channels
 - b. through one off channels
 - c. in response to ad hoc requests.
70. Before releasing information through new and established channels, or in response to ad hoc data requests, ACECQA notifies and consults with relevant participating jurisdictions as appropriate.
71. Factors such as whether the information is publicly available and the sensitivity of the information to be released are also taken into account.

Public release of information by participating jurisdictions and the Australian Government

72. 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.

Release of NQF information by the Australian Government under the DATA Scheme

73. Under the *Data Availability and Transparency Act 2022* (the DATA Scheme), accredited users may request Australian Government data for one of three permitted purposes: government service delivery, informing government policies and programs, and research and development. The Australian Government may only refuse such a request if reasons are provided.
74. Under the DATA Scheme, all data lawfully collected, created or held by a Commonwealth body, or on its behalf, may be shared. Data in the NQA ITS related to provider and service approval under the FAL may therefore be relevant to this scheme.
75. The Australian Government may release data contained in FAL application records under the DATA Scheme.
76. Before making a decision under the DATA Scheme to release data contained in combined FAL and National Law provider and service application records (including person with management and control records), the Australian Government will notify and consult with ACECQA and relevant participating jurisdictions as appropriate.

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

77. 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)

78. 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)).

Collection of data into other records management systems

79. Parties agree to only migrate NQA ITS data to their own records management systems if the data is relevant to their functions and activities.

Protocol contact officers

80. 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.

Approval and review

81. This protocol was agreed by all parties through the Regulatory Practice Committee in March 2023.