

18 July 2024

The Hon Mark Dreyfus KC MP
Federal Attorney-General
Parliament of the Commonwealth of Australia
PO Box 6022
Parliament House
CANBERRA ACT 2600

Dear Federal Attorney-General Dreyfus,

Re: Risk of excessive personal data held by early childhood education and care services, including the new ACECQA requirement to store for at least 45 years

ACA NSW is the peak body for over 1,600 privately-owned predominantly small-to-medium-sized family-owned and operated businesses who provide early childhood education and care services across New South Wales. ACA NSW members employ over 25,000 employees and are committed to providing excellence in early childhood education and care for more than 125,000 children and their families.

ACA NSW is also an active and vocal member of the NSW Department of Education's Early Childhood Advisory Group (ECAG), of which child safety is one of the key issues we work with the state and national regulators on.

It is timely to recognise that over 17,700 early childhood education and care services collect and store at least the following information of over 1,000,000 children:

1. Child's name
2. Child's date of birth
3. Child's birth certificates (scanned)
4. Child's home address
5. Child's Centrelink Customer Reference Number (CRN)
6. Child's photograph(s)
7. Child's health and medical records
8. Parents' names
9. Parents' identification documents (scanned)
10. Parents' contact details

Given such large amount of information held, much if not all of such appear required to be held for now at least 45 years (see the [Australian Children's Education & Care Quality Authority \(ACECQA\)](#)) their information sheet, "[Updating Record Keeping Requirements to Support Child Protection](#)").

Notwithstanding the Federal Government's efforts in significantly improve Australia's defences against cybersecurity threats, over 17,700 early childhood education and care services tend to heavily rely on third-party software providers to store their children's and parents' information and records. It is of significant concern that these providers do not have consensus on data protection protocols and defences. Many do not even mandate multi-factor authentication.

This is best exemplified by the significant cyberattack in May 2024 on Victoria's largest early childhood education and care organisation with thousands of families' scanned images of their identification documents believed to be compromised.

Hence, ACA NSW is concerned that the records of an extrapolated 1.67 million children and their parents over the next 45 years may be at risk of unauthorised access.

Far more concerning will be the risk of such unauthorised access as well as data scraping producing false identities, deep fake images and compromising videos of children of the worst kinds. Such being the potential despite arrests of paedophiles, for example the Australian Federal Police's Operation Tenterfield in August 2023 when a single educator was identified and ultimately prosecuted for 1,623 offences against 91 children.

Despite the current legislative and regulatory requirements for collecting, recording and holding the abovementioned children's and parents' information and records, perhaps such information and records should instead be retained by their issuers while early childhood education and care services use verification processes and proxies to achieve compliance.

And notwithstanding ACECQA's Report on the [Review of Child Safety Arrangements under the National Quality Framework](#) (December 2023), ACA NSW has supported reasons to be concerned about the quantum of images collected and stored of every child and their activities. Given the already dark uses of data scraping, the now ubiquitous availability of artificial intelligence tools enable images and videos of children to be converted to fake versions and far worse.

ACA NSW is requesting to with your Department and others to seek appropriate solutions to firstly prevent unauthorised access, and ultimately to defend against the production of identity thefts, fake images and videos, and worse.

I will be contacting your Ministerial office to pursue this.

Thanking you in anticipation.

Yours sincerely,



Chiang Lim
CEO

cc The Hon Dr Anne Aly MP, Federal Minister for Early Childhood Education

The Hon Prue Car MP, NSW Deputy Premier & Minister for Education and Early Childhood Education

Gabrielle Sinclair, CEO, Australian Children's Education & Care Authority

Julie Inman Grant, eSafety Commissioner

Steve Kinmond OAM, NSW Children's Guardian



The Australian, state and territory education ministers have agreed to changes to the National Quality Framework (NQF).

NEW RECORD KEEPING REQUIREMENTS TO SUPPORT CHILD PROTECTION

WHEN DO THE CHANGES START?

From 1 October 2023, there will be new record keeping requirements under the Education and Care Services National Law and National Regulations. Please check the legislation for commencement dates in Western Australia.

This fact sheet explains the changes to record keeping practices to support child protection, which are being made in response to recommendations by the [Royal Commission into Institutional Responses to Child Sexual Abuse](#).

There are additional changes to record keeping requirements that take effect from 1 October 2023 that do not relate to child protection (for example, changes to confidentiality of records kept, recording and storing sleep and rest risk assessments, and recording and storing of safe arrival of children risk assessments). To find out more about all of the changes from the 2019 NQF Review, please visit: <https://www.acecqa.gov.au/national-quality-framework/nqf-changes-overview>

WHERE CAN I GET FURTHER INFORMATION?

For more information on changes to the new record keeping requirements to support child protection please visit nqfreview.com.au

For further/additional details on the changes to the new record keeping requirements to support child protection please visit [the Royal Commission into Institutional Responses to Child Sexual Abuse Final Report – Volume 8, Record keeping and information sharing](#).

WHY ARE THE RECORD KEEPING REQUIREMENTS CHANGING?

The changes are being made in response to recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse. It has been recommended that organisations engaged in child-related work retain records relating to child sexual abuse that has, or is alleged to have occurred, for at least 45 years (Royal Commission into Institutional Responses to Child Sexual Abuse, 2017).

The changes also reflect and incorporate guidance on existing best practice from governments and state and territory authorities.

The changes aim to:

- strengthen whole service awareness of child protections laws and individual reporting obligations, including resources related to child protection reporting
- enhance and appropriately maintain the record keeping practices of all employers and employees including volunteers in relation to actual or alleged incidents of child abuse, to ensure relevant records and information will be easily accessible to survivors of child sexual abuse.

WHAT ARE THE CHANGES?

The key changes that are reflected in the Guide to the National Quality Framework include:

- **Good record keeping** – good record keeping is important in ensuring children’s safety, health and wellbeing. In identifying and responding to the risks and incidents of child sexual abuse, good record keeping can help to avoid additional distress and trauma for survivors who may be seeking and documenting information about their abuse while in the care of child-centred organisations.

It is recommended that records related to child sexual abuse that has or is alleged to have occurred, be:

- kept for at least 45 years from the date the record is created
- clear, objective, and thorough
- maintained in an indexed, logical, and secure manner
- retained and disposed of in a consistent manner.

Further details on what records may be relevant to child sexual abuse can be found:

- in the [recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse](#) page 22 – 24 or on their [website](#)
- in [Section 175 of the National Law](#): Offence relating to requirement to keep enrolment and other documents
- in [Regulation 177 of the National Regulations](#): Prescribed enrolment and other documents to be kept by approved provider.
- **Incident, injury, trauma, and illness records** – It is already the responsibility of the approved provider and each family day care educator to keep incident, injury, trauma and illness records. The approved provider must ensure that records are stored until the child is 25 years old. In accordance with the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse, approved providers should retain records relating to child sexual abuse that has or is alleged to have occurred, **for at least 45 years** from the date the record was created.
- **Record of evidence of fitness and propriety of staff members, volunteers, and students** – Approved providers are required to keep a record of each educator’s Working with Children Check (WWCC) or Working with Vulnerable People Check (WWVP), under their relevant jurisdiction law. **This is being expanded to include checks for volunteers and students.** The record must include the identifying number of the current check under their relevant law, and the check’s expiry date if applicable. For all services this information must be included in the staff record (regulations 147, 149 and 154).

Note: Exemption for New South Wales, Queensland, South Australia, and Tasmania

If the staff member, volunteer, or student has provided:

- proof of their current teacher registration
- a record of the identifying number of the teacher registration
- the expiry date of that registration.

These must be recorded by the approved provider.

HOW CAN APPROVED PROVIDERS BEGIN PREPARING FOR THIS CHANGE?

Approved providers may find it helpful to:

- review existing documents and templates related to staff records to identify opportunities to include these requirements and recommendations
- review current policies, processes and procedures related to staffing to ensure there are systems in place to obtain employee’s current checks or teacher registration information
- review current policies, processes and procedures related to records maintenance and storage to ensure they are indexed, logical and kept securely
- communicate the changes at staff meetings and/or internal emails, newsletters and online communication platforms.

RESOURCES AND REFERENCES

For additional information download the [Guide to the National Quality Framework](#).

Visit the [ACECQA website](#) at www.acecqa.gov.au to download:

- Webpage – [Reporting requirements about children](#).
- Information sheet – [Record keeping requirements for FDC services](#).

Find other resources at:

- [Australian Institute of Family Studies](#).
- [Mandatory Reporting of Child Abuse and Neglect](#).
- [Contact your regulatory authority](#).

Acknowledgment: The information in this publication is accurate pending the Australian, state and territory education ministers’ agreement of the amended law and regulations.