

Privacy Code of Practice

Effective 22 December 2000

1. Introduction

- 1.1 This document is a Privacy Code of Practice for the NSW Department of Education and Training made under Part 3, Division 1 of the Privacy and Personal Information Protection Act 1998 (the Act).
- 1.2 The Privacy and Personal Information Protection Act 1998 provides for the protection of personal information held by government agencies and imposes obligations on government agencies in the collection, storage, use and dissemination of personal information.
- 1.3 The Information Protection Principles in Part 2 of the Act set out general standards to be followed by public sector agencies when collecting, storing and using personal information so as to protect personal privacy. There are specific exemptions to the Information Protection Principles detailed in the Act.
- 1.4 Further, this Privacy Code of Practice contains modifications to the Information Protection Principles that will apply to certain functions of the Department of Education and Training.

2. The Agency

- 2.1 The NSW Department of Education and Training co-ordinates the delivery of education and training services in NSW from pre-school to the tertiary level. The government education and training system provides children, young people and the wider community with the opportunity to undertake high quality education and training courses. The Department is committed to meeting the learning needs of all students.
- 2.2 This Privacy Code of Practice applies to all of the public sector agencies under the administration of the Department of Education and Training.
- 2.3 Personal information held by the Department of Education and Training includes information on students, employees, parents, guardians, caregivers, clients, employers, business partners and associates.

3. Policy Context

3.1 Parent, guardian or caregiver

In this code the words 'parent, guardian or caregiver' are used in relation to the provision and collection of personal information relating to school

students. It is intended that departmental staff take appropriate account of individual circumstances. In deciding whether or how information is to be provided or collected from parents, guardians and caregivers, factors to be considered include court orders, living arrangements and the wishes of the student concerned depending on their age and maturity. For example, there will be circumstances in which decisions of the Family Court make it inappropriate for schools to provide personal information concerning a student to one of that student's natural parents.

3.2 The Department's philosophy in relation to information on government school students

The Act is based on the clear principle that individuals, including children and young people, have rights relating to their personal information. The Department is committed to the preservation and promotion of these rights.

The effective operation of schools involves the maintenance of a vital link between teachers and parents, guardians and caregivers who share responsibilities for the welfare and learning of students. In some circumstances, the privacy rights of students must necessarily be a secondary consideration to the relationship between schools and parents, guardians and caregivers. The Act recognises this, in part by placing an age limit on the requirement that personal information must be collected directly from the individual concerned. There is also the widely accepted principle, reinforced by case law, that certain individuals either because of their young age or mental capacity are unable to give informed consent or make considered judgement. On the other hand, schools have always taken account of the age and maturity of students when determining the extent of individual responsibility given to the student. This is most clearly reflected in the freedom generally afforded to senior students relating to such matters as attendance, use of motor vehicles and uniform. The extent to which the personal information rights of individual students are modified will therefore depend on the age, maturity and capacity for independent action of the students involved. Any limitation on the information rights of students will need to be justified in terms of the above considerations.

Any decision to use this code to limit rights that students would otherwise have under the Act is subject to a right of review. Where a particular student objects to a decision concerning their personal information eg. does not wish to have his or her personal information disclosed to a parent, guardian or caregiver that decision is to be reviewed by the principal, with a right of appeal to the district superintendent. In these cases, the principal may need to establish particular operating or management procedures. The review will be carried out before the personal information is released unless the complaint has arisen after the release of the personal information.

All students will be notified of their right to an internal review through information provided to student representative councils of schools statewide. Student complaints will be sent into the Privacy Section of the Department where their details will be entered into a secure database. The number of student internal reviews will be noted in the monthly internal review report furnished with the Privacy Commissioner. These details will also be reported

in the Department's Annual Report.

3.3 Safe and disciplined learning environment

The Education Act 1990 gives the Minister for Education and Training the power to 'control and regulate student discipline in government schools' [section 35(1)].

In this code, use of the phrase 'safe and disciplined learning environment' should be understood in a particular policy context, that is the Ministerial Statement on Good Discipline and Effective Learning issued to all schools and dated December 1995. This statement outlines the Government's expectations of good discipline in NSW public schools. It gives direction on the development of school discipline policies, school discipline codes and strategies to promote good discipline and effective learning, including reinforcing student achievement, dealing with unacceptable behaviour and suspension and expulsion.

4. A Privacy Code of Practice

4.1 Reasons for a Code of Practice

4.1.1 Some modifications to the Information Protection Principles are needed by the Department of Education and Training to cover particular situations as outlined below.

4.2 Modification of sections 9, 10, 12(a), 13, 14, 15, 17, 18 and 19 Privacy and Personal Information Protection Act 1998 - Investigative functions

4.2.1 The Department of Education and Training has a number of complaint handling and investigative functions. These include, but are not limited to, the investigation of allegations against staff members, contractors and volunteers in relation to:

- child sexual abuse and inappropriate conduct of a sexual nature involving students;
- physical and emotional abuse of students;
- efficiency and other issues which may result in disciplinary proceedings and
- corrupt conduct, maladministration and financial impropriety of various kinds.

4.2.2 The Department of Education and Training may depart from sections 9, 10, 12(a), 13, 14, 15, 17, 18 and 19 of the Privacy and Personal Information Protection Act 1998 if compliance might detrimentally affect or prevent the proper exercise of its complaint handling functions or investigative functions. Some of these exemptions are in line with those provided to 'investigative agencies' as defined in section 3 of the Privacy and Personal Information Protection Act 1998

4.3 Modification of sections 9 and 10 Privacy and Personal Information Protection Act 1998 - Collection of information from parent, guardian or caregiver

- 4.3.1 It is a common practice in government schools to deal with parents, guardians or caregivers when collecting information about students. Many students attending government schools are 16 years of age or older. There would be a community expectation that this practice continue.
- 4.3.2 The Department of Education and Training may depart from section 9 of the Privacy and Personal Information Protection Act 1998 to allow the collection of personal information about a student at a government school from the parent, guardian or caregiver of the student.
- 4.3.3 The Department of Education and Training may depart from section 10 of the Privacy and Personal Information Protection Act 1998 to allow that in cases where personal information about a student is collected from the parent, guardian or caregiver of a student, the parent, guardian or caregiver is the person made aware of the requirements contained in this section.
- 4.3.4 The Department of Education and Training may depart from section 10 of the Privacy and Personal Information Protection Act 1998 if the parent, guardian or caregiver of a student enrolled at a government school has expressly consented to the Department not complying with the principle.

4.4 Modification of sections 13 and 15 Privacy and Personal Information Protection Act 1998 - Counsellor records

- 4.4.1 It is considered appropriate and in accordance with community standards that conversations between counsellors and their clients are confidential.
- 4.4.2 The Department of Education and Training may depart from section 13 of the Privacy and Personal Information Protection Act 1998 to preserve the confidentiality of counsellor records where another individual has been mentioned in the course of a counselling session. In this case, that other individual is not required to be informed that the Department holds personal information relating to them.
- 4.4.3 The Department of Education and Training may depart from section 15 of the Privacy and Personal Information Protection Act 1998 to preserve the confidentiality of counsellor records where another individual has been mentioned in the course of a counselling session. In this case, the Department is not required to amend the personal information of that other individual at the request of the individual.

4.5 Modification of sections 14 and 15 Privacy and Personal Information Protection Act 1998 - Access to and amendment by parent, guardian or caregiver

- 4.5.1 These sections are inappropriate in their application to all students enrolled at government schools. In most situations the personal information to which this section applies will have been collected from the parent, guardian or caregiver of a student. It is considered appropriate and in accordance with community expectations that, in certain circumstances, where a student enrolled at a government school requests access to personal information held by the Department of Education and Training, approval from the student's parent, guardian or caregiver be obtained before the information is released to the student and before information held is amended.
- 4.5.2 The Department of Education and Training may depart from section 14 of the Privacy and Personal Information Protection Act 1998 to enable, in certain circumstances, the approval of the parent, guardian or caregiver of a student to be obtained before the Department releases personal information to a student enrolled at a government school.
- 4.5.3 The Department of Education and Training may depart from section 15 of the Privacy and Personal Information Protection Act 1998 to enable, in certain circumstances, the amendment of information held about a student enrolled at a government school at the request of the parent, guardian or caregiver

4.6 Modification of sections 17, 18 (1)(a), 18(1)(b) and 19(1) Privacy and Personal Information Protection Act 1998 - Disclosure involving parent, guardian or caregiver

- 4.6.1 The disclosure requirements in these sections of the Act are inappropriate in their application to all students enrolled at government schools. Some students may not understand the implications of the disclosure of personal information. In certain circumstances, when it is in the best interest of the student, the personal information of a student may be disclosed to a parent, guardian or caregiver of the student enrolled in a government school.
- 4.6.2 The Department of Education and Training may depart from section 17 of the Privacy and Personal Information Protection Act 1998 to allow the parent, guardian or caregiver of a student to whom information relates to provide consent for the use of the information for a purpose other than that for which it was collected.
- 4.6.3 The Department of Education and Training may depart from section 18(1)(a) of the Privacy and Personal Information Protection Act 1998 to allow for consideration of any objection by the parent, guardian or caregiver of a student before disclosing information about a student.
- 4.6.4 The Department of Education and Training may depart from section 18(1)(b) of the Privacy and Personal Information Protection Act 1998 to allow for consideration of the level of awareness of the parent, guardian or caregiver of a student about the disclosure of information concerning the student.

4.6.5 The Department of Education and Training may depart from sections 18(1)(a), 18(1)(b) and 19(1) of the Privacy and Personal Information Protection Act 1998 to allow the Department, in certain circumstances, when it is in the best interest of the student, to disclose the personal information of a student to a parent, guardian or caregiver of the student enrolled in a government school except in the case of counsellor records unless authorised under section 16.1.6 or section 17.1.4.

4.6.6 The Department of Education and Training may depart from sections 18(1)(a), 18(1)(b) and 19(1) of the Privacy and Personal Information Protection Act 1998 in certain circumstances, given the sensitivity of the issue and taking into account the age and maturity of the student, if the parent, guardian or caregiver of the student to whom the information relates expressly consents to the Department not complying.

4.7 Modification of sections 17, 18 and 19 Privacy and Personal Information Protection Act 1998 - Child protection

4.7.1 Where use and disclosure of information is for the purpose of child protection, the Department of Education and Training may depart from sections 17, 18 and 19 of the Privacy and Personal Information Protection Act 1998.

4.8 Modification of sections 9, 10, 13, 14, 15, 17, 18(1)(a), 18(1)(b) and 19(1) Privacy and Personal Information Protection Act 1998 - Safe and disciplined learning environment

4.8.1 A critical factor in achieving the goals of public education is the provision of a safe and disciplined learning environment. In order to fulfill its duty of care towards staff and students, it may be considered necessary in certain circumstances, for the Department to collect, use and disclose information provided by staff and students without the consent of the individual to whom the information relates.

4.8.2 The Department of Education and Training may depart from section 9 of the Privacy and Personal Information Protection Act 1998 to allow the collection of personal information about a student from staff and students in circumstances where it is considered necessary to promote and maintain a safe and disciplined learning environment.

4.8.3 The Department of Education and Training may depart from section 10 of the Privacy and Personal Information Protection Act 1998 in circumstances where it is considered necessary to promote and maintain a safe and disciplined learning environment.

4.8.4 The Department of Education and Training may depart from section 13 of the Privacy and Personal Information Protection Act 1998 to preserve the confidentiality of information provided by staff or students about another student, in circumstances where it is considered necessary to promote and maintain a safe and disciplined learning environment.

- 4.8.5 The Department of Education and Training may depart from section 14 of the Privacy and Personal Information Protection Act 1998 to allow the Department to deny a student access to their personal information provided by staff or students in circumstances where it is considered necessary to promote and maintain a safe and disciplined learning environment.
- 4.8.6 The Department of Education and Training may depart from section 15 of the Privacy and Personal Information Protection Act 1998 to preserve the confidentiality of information provided by staff or students about another student. In this case, the Department is not required to amend the personal information of that other student at the request of the student, in circumstances where it is considered necessary to promote and maintain a safe and disciplined learning environment.
- 4.8.7 The Department of Education and Training may depart from section 17 of the Privacy and Personal Information Protection Act 1998 if the use of the information concerned is for a purpose other than the purpose for which it was collected and in circumstances where it is considered necessary to promote and maintain a safe and disciplined learning environment.
- 4.8.8 The Department of Education and Training may depart from sections 18(1)(a) and 18(1)(b) of the Privacy and Personal Information Protection Act 1998 in circumstances where it is considered necessary to promote and maintain a safe and disciplined learning environment.
- 4.8.9 The Department of Education and Training may depart from section 19(1) of the Privacy and Personal Information Protection Act 1998 in circumstances where it is considered necessary to promote and maintain a safe and disciplined learning environment.
- 4.9 Modification of sections 17, 18 and 19 Privacy and Personal Information Protection Act 1998 - Legal purposes
- 4.9 Modification of sections 17, 18 and 19 Privacy and Personal Information Protection Act 1998 - Legal purposes**
- 4.9.1 Where use and disclosure of information is for the purpose of obtaining legal advice or representation or for use in legal proceedings, the Department of Education and Training may depart from sections 17, 18 and 19 of the Privacy and Personal Information Protection Act 1998.
- 4.10 Modification of sections 18(1)(a) and 18(1)(b) Privacy and Personal Information Protection Act 1998 - Board of Studies**
- 4.10.1 Where disclosure of information is in relation to the provision of application and performance information to the Board of Studies for the purpose of the School Certificate or Higher School Certificate the Department of Education and Training may depart from sections 18(1)(a) and 18(1)(b) of the Privacy and Personal Information Protection Act 1998.

5. Review of Conduct Covered by this Code of Practice

- 5.1 Individuals have a right of review if they believe that the Department of Education and Training has contravened this Privacy Code of Practice. Procedures relating to complaints and internal review procedures will be available from the Department.

6. Information Protection Principle 1 (Section 8)

Collection of personal information for lawful purposes

(1) A public sector agency must not collect personal information unless:

- (a) the information is collected for a lawful purpose that is directly related to a function or activity of the agency, and
- (b) the collection of the information is reasonably necessary for that purpose.

(2) A public sector agency must not collect personal information by any unlawful means.

6.1 Exemption

- 6.1.1 The Department of Education and Training will comply with this principle with the exception of information collected before Part 2 of the Act commences. [s20(3)]

7. Information Protection Principle 2 (Section 9)

Collection of personal information directly from individual

A public sector agency must, in collecting personal information, collect the information directly from the individual to whom the information relates unless:

(a) the individual has authorised collection of the information from someone else, or

(b) in the case of information relating to a person who is under the age of 16 years-the information has been provided by a parent or guardian of the person.

7.1 Modification

- 7.1.1 The Department of Education and Training may depart from this Information Protection Principle if compliance might detrimentally affect or prevent the proper exercise of the Department of Education and Training's complaint handling functions or any of its investigative functions.

- 7.1.2 The Department of Education and Training may depart from this Information

Protection Principle to collect personal information relating to a student enrolled at a government school from the student's parent, guardian or caregiver.

7.1.3 The Department of Education and Training may depart from this Information Protection Principle to collect personal information about a student from staff and students, in circumstances where it is considered necessary to promote and maintain a safe and disciplined learning environment.

7.2 Exemptions

7.2.1 Information collected before Part 2 of the Act commences is exempt from this Information Protection Principle. [s20(3)]

7.2.2 The Department of Education and Training is not required to comply with this Information Protection Principle if the information concerned is collected in connection with proceedings (whether or not actually commenced) before any court or tribunal. [s23(2)]

7.2.3 The Department of Education and Training may depart from this Information Protection Principle when handling a complaint or other matter that could be referred or made to an investigative agency or that has been referred from or made by an investigative agency. [s24(4)]

7.2.4 The Department of Education and Training is not required to comply with this Information Protection Principle if it is lawfully authorised or required not to comply with the principle or non compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998). [s25(a)&(b)]

7.2.5 The Department of Education and Training is not required to comply with this Information Protection Principle if compliance would, in the circumstances, prejudice the interests of the individual to whom the information relates. [s26(1)]

8. Information Protection Principle 3 (Section 10)

Requirements when collecting personal information

If a public sector agency collects personal information from an individual, the agency must take such steps as are reasonable in the circumstances to ensure that, before the information is collected or as soon as practicable after collection, the individual to whom the information relates is made aware of the following:

- (a) the fact that the information is being collected,
- (b) the purposes for which the information is being collected,
- (c) the intended recipients of the information,
- (d) whether the supply of the information by the individual is required by law or is voluntary, and any consequences for the individual if the information (or any part of it) is not provided,

(e) the existence of any right of access to, and correction of, the information,
(f) the name and address of the agency that is collecting the information and
the agency that is to hold the information.

8.1 Modifications

- 8.1.1 The Department of Education and Training may depart from this Information Protection Principle if compliance might detrimentally affect or prevent the proper exercise of the Department of Education and Training's complaint handling functions or any of its investigative functions.
- 8.1.2 The Department of Education and Training may depart from this Information Protection Principle by collecting information about a student enrolled at a government school from the parent, guardian or caregiver of the student and that the parent, guardian or caregiver is made aware of the requirements in this section
- 8.1.3 The Department of Education and Training may depart from this Information Protection Principle if the parent, guardian or caregiver of a student enrolled at a government school has expressly consented to the Department not complying with the principle.
- 8.1.4 The Department of Education and Training may depart from this Information Protection Principle in circumstances where it is considered necessary to promote and maintain a safe and disciplined learning environment.

8.2 Exemptions

- 8.2.1 Information collected before Part 2 of the Act commences is exempt from this Information Protection Principle. [s20(3)]
- 8.2.2 The Department of Education and Training is not required to comply with this Information Protection Principle if the information concerned is collected for law enforcement purposes. However, this does not remove any protection provided by any other law in relation to the rights of accused persons or persons suspected of having committed an offence. [s23(3)]
- 8.2.3 The Department of Education and Training is not required to comply with this Information Protection Principle if it is lawfully authorised or required not to comply with the principle or non compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998). [s25(a)&(b)]
- 8.2.4 The Department of Education and Training is not required to comply with this Information Protection Principle if compliance would, in the circumstances, prejudice the interests of the individual to whom the information relates. [s26(1)]
- 8.2.5 The Department of Education and Training is not required to comply with this Information Protection Principle if the individual to whom the information

relates has expressly consented to the Department not complying with the principle. [s26(2)]

9. Information Protection Principle 4 (Section 11)

Other requirements relating to collection of personal information

If a public sector agency collects personal information from an individual, the agency must take such steps as are reasonable in the circumstances (having regard to the purposes for which the information is collected) to ensure that:

(a) the information collected is relevant to that purpose, is not excessive, and is accurate, up to date and complete, and

(b) the collection of the information does not intrude to an unreasonable extent on the personal affairs of the individual to whom the information relates.

9.1 Exemption

- 9.1.1 The Department of Education and Training will comply with this principle with the exception of information collected before Part 2 of the Act commences. [s20(3)]

10. Information Protection Principle 5 (Section 12)

Retention and security of personal information

A public sector agency that holds personal information must ensure:

(a) that the information is kept for no longer than is necessary for the purposes for which the information may lawfully be used, and

(b) that the information is disposed of securely and in accordance with any requirements for the retention and disposal of personal information, and

(c) that the information is protected, by taking such security safeguards as are reasonable in the circumstances, against loss, unauthorised access, use, modification or disclosure, and against all other misuse, and

(d) that, if it is necessary for the information to be given to a person in connection with the provision of a service to the agency, everything reasonably within the power of the agency is done to prevent unauthorised use or disclosure of the information.

10.1 Modification

- 10.1.1 The Department of Education and Training may depart from section 12(a) of this Information Protection Principle if compliance might detrimentally affect or prevent the proper exercise of the Department of Education and Training's complaint handling functions or its investigative functions.

11. Information Protection Principle 6 (Section 13)

Information about personal information held by agencies

A public sector agency that holds personal information must take such steps as are, in the circumstances, reasonable to enable any person to ascertain:

(a) whether the agency holds personal information, and

(b) whether the agency holds personal information relating to that person, and

(c) if the agency holds personal information relating to that person:

(i) the nature of that information, and

(ii) the main purposes for which the information is used, and

(iii) that person's entitlement to gain access to the information.

11.1 Modification

11.1.1 The Department of Education and Training may depart from this Information Protection Principle to maintain the confidentiality of counsellor records

11.1.3 The Department of Education and Training may depart from this Information Protection Principle to preserve the confidentiality of information provided by staff or students about another student in circumstances where it is considered necessary to promote and maintain a safe and disciplined learning environment.

11.2 Exemption

11.2.1 The Department of Education and Training is not required to comply with this Information Protection Principle if it is lawfully authorised or required not to comply with the principle or non compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998). [s25(a)&(b)]

12. Information Protection Principle 7 (Section 14)

Access to personal information held by agencies

A public sector agency that holds personal information must, at the request of the individual to whom the information relates and without excessive delay or expense, provide the individual with access to the information.

12.1 Modifications

The Department of Education and Training may depart from this Information Protection Principle if compliance might detrimentally affect or prevent the proper exercise of the Department of Education and Training's complaint handling functions or its investigative functions.

12.2.1 The Department of Education and Training is not required to comply with this Information Protection Principle if it is lawfully authorised or required not to comply with the principle or non compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998). [s25(a)&(b)]

12.1.2 The Department of Education and Training may depart from this Information Protection Principle in certain circumstances, where the personal information

held by the Department is requested by a student enrolled in a government school to allow the Department to obtain approval from the parent, guardian or caregiver of the student before releasing information to the student.

- 12.1.3 The Department of Education and Training may depart from this Information Protection Principle in certain circumstances, to allow the Department to deny a student access to their personal information provided by staff or students in circumstances where it is considered necessary to promote and maintain a safe and disciplined learning environment.

12.2 Exemption

- 12.2.1 The Department of Education and Training is not required to comply with this Information Protection Principle if it is lawfully authorised or required not to comply with the principle or non compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998). [s25(a)&(b)]

13. Information Protection Principle 8 (Section 15)

Alteration of personal information

(1) A public sector agency that holds personal information must, at the request of the individual to whom the information relates, make appropriate amendments (whether by way of corrections, deletions or additions) to ensure that the personal information:

(a) is accurate, and

(b) having regard to the purpose for which the information was collected (or is to be used) and to any purpose that is directly related to that purpose, is relevant, up to date, complete and not misleading.

(2) If a public sector agency is not prepared to amend personal information in accordance with a request by the individual to whom the information relates, the agency must, if so requested by the individual concerned, take such steps as are reasonable to attach to the information, in such a manner as is capable of being read with the information, any statement provided by that individual of the amendment sought.

(3) If personal information is amended in accordance with this section, the individual to whom the information relates is entitled, if it is reasonably practicable, to have recipients of that information notified of the amendments made by the public sector agency.

13.1 Modification

- 13.1.1 The Department of Education and Training may depart from section 15(1) of this Information Protection Principle to maintain the confidentiality of counsellor records

- 13.1.2 The Department of Education and Training may depart from this Information Protection Principle if compliance might detrimentally affect or prevent the

proper exercise of the Department of Education and Training's complaint handling functions or its investigative functions.

- 13.1.3 The Department of Education and Training may depart from this Information Protection Principle, in certain circumstances, to amend personal information held on a student enrolled at a government school at the request of a parent, guardian or caregiver of the student to whom the information relates.
- 13.1.4 The Department of Education and Training may depart from this Information Protection Principle to preserve the confidentiality of information provided by staff or students about another student. In this case, the Department is not required to amend the personal information of that other student at the request of the student, in circumstances where it is considered necessary to promote and maintain a safe and disciplined learning environment.

13.2 Exemption

- 13.2.1 The Department of Education and Training is not required to comply with this Information Protection Principle if it is lawfully authorised or required not to comply with the principle or non compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998). [s25(a)&(b)]

14. Information Protection Principle 9 (Section 16)

Agency must check accuracy of personal information before use
A public sector agency that holds personal information must not use the information without taking such steps as are reasonable in the circumstances to ensure that, having regard to the purpose for which the information is proposed to be used, the information is relevant, accurate, up to date, complete and not misleading.

14.1 Compliance

- 14.1.1 The Department of Education and Training will comply with this Information Protection Principle

15. Information Protection Principle 10 (Section 17)

Limits on use of personal information
A public sector agency that holds personal information must not use the information for a purpose other than that for which it was collected unless:
(a) the individual to whom the information relates has consented to the use of the information for that other purpose, or
(b) the other purpose for which the information is used is directly related to the purpose for which the information was collected, or
(c) the use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual to whom the information relates or of another person.

15.1 Modifications

- 15.1.1 The Department of Education and Training may depart from this Information Protection Principle to use information for the purpose of child protection.
- 15.1.2 The Department of Education and Training may depart from this Information Protection Principle if the use of the information concerned is for a purpose other than the purpose for which it was collected and is reasonably necessary in order to enable the Department to exercise its complaint handling functions or any of its investigative functions.
- 15.1.3 The Department of Education and Training may depart from this Information Protection Principle to allow for the Department to obtain the consent of a parent, guardian or caregiver of a student enrolled at a government school if information about a student is to be used for a purpose other than that for which it was collected.
- 15.1.4 The Department of Education and Training may depart from this Information Protection Principle if the use of the information concerned is for a purpose other than the purpose for which it was collected and is considered necessary to promote and maintain a safe and disciplined learning environment
- 15.1.5 The Department of Education and Training may depart from this Information Protection Principle to use information for the purpose of obtaining legal advice and representation or for use in legal proceeding

15.2 Exemptions

- 15.2.1 The Department of Education and Training is not required to comply with this Information Protection Principle if the use of the information concerned for a purpose other than the purpose for which it was collected is reasonably necessary for law enforcement purposes or for the protection of the public revenue. [s23(4)]
- 15.2.2 The Department of Education and Training is not required to comply with this Information Protection Principle if it is lawfully authorised or required not to comply with principle or non compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998). [s25(a)&(b)]
- 15.2.3 This Information Protection Principle does not prevent or restrict the disclosure of information by the Department of Education and Training to another public sector agency administered by the same Minister for the purpose of informing the Minister about a matter under that administration, or to a disclosure to an agency administered by the Premier for the purpose of informing the Premier. [s28(3)]

16. Information Protection Principle 11 (Section 18)

Limits on disclosure of personal information

(1) A public sector agency that holds personal information must not disclose the information to a person (other than the individual to whom the information relates) or other body, whether or not such other person or body is a public sector agency, unless:

(a) the disclosure is directly related to the purpose for which the information was collected, and the agency disclosing the information has no reason to believe that the individual concerned would object to the disclosure, or

(b) the individual concerned is reasonably likely to have been aware, or has been made aware in accordance with section 10, that information of that kind is usually disclosed to that other person or body, or

(c) the agency believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person.

(2) If personal information is disclosed in accordance with subsection (1) to a person or body that is a public sector agency, that agency must not use or disclose the information for a purpose other than the purpose for which the information was given to it.

16.1 Modifications

16.1.1 The Department of Education and Training may depart from this Information Protection Principle to disclose information to a person or other body for the purpose of child protection.

16.1.2 The Department of Education and Training may depart from this Information Protection Principle if compliance might detrimentally affect or prevent the proper exercise of the Department of Education and Training's complaint handling functions or its investigative functions.

16.1.3 The Department of Education and Training may depart from s18(1)(a) of this Information Protection Principle to allow for consideration of any objection by a parent, guardian or caregiver of a student enrolled at a government school before disclosing any personal information it holds which relates to a student.

16.1.4 The Department of Education and Training may depart from s18(1)(b) of this Information Protection Principle to allow for consideration of whether a parent, guardian or caregiver of a student enrolled at a government school has been made aware or is reasonably likely to have been aware that information of the kind requested is usually disclosed to that other person or body.

16.1.5 The Department of Education and Training may depart from s18(1)(a) and s18(1)(b) of this Information Protection Principle, in certain circumstances, when it is in the best interest of a student enrolled in a government school, to disclose their personal information to the parent, guardian or caregiver of the student. This modification does not apply to counsellor records (see section

16.1.6).

- 16.1.6 The Department of Education and Training may depart from s18(1)(a) and s18(1)(b) of this Information Protection Principle in the case of government school students where a parent, guardian or caregiver refers their preschool or primary aged student or student with a significant intellectual disability, to the school counsellor for assessment and advice. This departure only applies when it is in the best interests of the student for the school counsellor to disclose to the parent, guardian or caregiver personal information from the student's counselling records.
- 16.1.7 The Department of Education and Training may depart from s18(1)(a) and s18(1)(b) of this Information Protection Principle, in certain circumstances, given the sensitivity of the issue and taking into account the age and maturity of the student, if the parent, guardian or caregiver of the student to whom the information relates expressly consents to the Department not complying.
- 16.1.8 The Department of Education and Training may depart from s18(1)(a) and s18(1)(b) of this Information Protection Principle in certain circumstances where it is considered necessary to promote and maintain a safe and disciplined learning environment.
- 16.1.9 The Department of Education and Training may depart from this Information Protection Principle to use information for the purpose of obtaining legal advice and representation or for use in legal proceedings.
- 16.1.10 The Department of Education and Training may depart from s18(1)(a) and s18(1)(b) of this Information Protection Principle to provide student application and performance information to the Board of Studies for the purpose of the School Certificate or Higher School Certificate.

16.2 Exemptions

- 16.2.1 The Department of Education and Training is not required to comply with this Information Protection Principle where the disclosure is made in connection with proceedings for an offence or for law enforcement purposes. [s23(5)(a)]
- 16.2.2 The Department of Education and Training is not required to comply with this Information Protection Principle where the disclosure is to a law enforcement agency to locate a person who has been reported missing to the police. [s23(5)(b)]
- 16.2.3 The Department of Education and Training is not required to comply with this Information Protection Principle where the disclosure is authorised by a subpoena, search warrant or statutory instrument. [s23(5)(c)]
- 16.2.4 The Department of Education and Training is not required to comply with this Information Protection Principle where the disclosure is reasonably necessary for the protection of the public revenue. [s23(5)(d)(i)]
- 16.2.5 The Department of Education and Training is not required to comply with this

Information Protection Principle where the disclosure is reasonably necessary in order to investigate an offence where there are reasonable grounds to believe an offence has been committed. [s23(5)(d)(ii)]

- 16.2.6 The Department of Education and Training is not required to comply with this Information Protection Principle if the information concerned is disclosed to another investigative agency. [s24(3)]
- 16.2.7 The Department of Education and Training is not required to comply with this Information Protection Principle if it is lawfully authorised or required not to comply with the principle or non compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998). [s25(a)&(b)]
- 16.2.8 The Department of Education and Training is not required to comply with this Information Protection Principle if the individual to whom the information relates has expressly consented to the Department not complying with the principle. [s26(2)]
- 16.2.9 This Information Protection Principle does not prevent or restrict the disclosure of information by the Department of Education and Training to another public sector agency administered by the same Minister for the purpose of informing the Minister about a matter under that administration, or to a disclosure to an agency administered by the Premier for the purpose of informing the Premier. [s28(3)]

17 Information Protection Principle 12 (Section 19)

Special restrictions on disclosure of personal information

(1) A public sector agency must not disclose personal information relating to an individual's ethnic or racial origin, political opinions, religious or philosophical beliefs, trade union membership, health or sexual activities unless the disclosure is necessary to prevent a serious or imminent threat to the life or health of the individual concerned or another person.

(2) A public sector agency that holds personal information must not disclose the information to any person or body who is in a jurisdiction outside New South Wales unless:

(a) a relevant privacy law that applies to the personal information concerned is in forces in that jurisdiction, or

(b) the disclosure is permitted under a privacy code of practice

(3) For the purposes of subsection (2), a relevant privacy law means a law that is determined by the Privacy Commissioner, by notice published in the Gazette, to be a privacy law for the jurisdiction concerned.

(4) The Privacy Commissioner is, within the year following the commencement of this section, to prepare a code relating to the disclosure of personal information by public sector agencies to persons or bodies outside New South Wales.

(5) Subsection (2) does not apply:

- (a) until after the first anniversary of the commencement of this section, or
- (b) until a code referred to in subsection (4) is made, whichever is later.

17.1 Modifications

- 17.1.1 The Department of Education and Training may depart from this Information Protection Principle to disclose information to a person or other body for the purpose of child protection
- 17.1.2 The Department of Education and Training may depart from this Information Protection Principle if compliance might detrimentally affect or prevent the proper exercise of the Department of Education and Training's complaint handling functions or its investigative functions.
- 17.1.3 The Department of Education and Training may depart from s19(1) of this Information Protection Principle in certain circumstances, when it is in the best interest of a student enrolled at a government school, the personal information of a student may be disclosed to a parent, guardian or caregiver of the student. This modification does not apply to counsellor records (see section 17.1.4).
- 17.1.4 The Department of Education and Training may depart from s19(1) of this Information Protection Principle in the case of government school students where a parent, guardian or caregiver refers their preschool or primary aged student or student with a significant intellectual disability, to the school counsellor for assessment and advice. This departure only applies when it is in the best interests of the student for the school counsellor to disclose to the parent, guardian or caregiver personal information from the student's counselling records.
- 17.1.5 The Department of Education and Training may depart from s19(1) of this Information Protection Principle in certain circumstances, given the sensitivity of the issue and taking into account the age and maturity of the student, if the parent, guardian or caregiver of the student to whom the information relates expressly consents to the Department not complying.
- 17.1.6 The Department of Education and Training may depart from s19(1) of this Information Protection Principle in certain circumstances, where it is considered necessary to promote and maintain a safe and disciplined learning environment.

The Department of Education and Training may depart from this Information Protection Principle to use information for the purpose of obtaining legal advice and representation or for use in legal proceedings.

17.2 Exemptions

- 17.2.1 The Department of Education and Training is not required to comply with this Information Protection Principle if the disclosure of the information concerned is reasonably necessary for the purposes of law enforcement in circumstances where there are reasonable grounds to believe that an offence may have been or may be committed. [s23(7)]
- 17.2.2 The Department of Education and Training is not required to comply with this Information Protection Principle if it is lawfully authorised or required not to comply with the principle or non compliance is otherwise permitted (or is necessarily implied or reasonably contemplated) under an Act or any other law (including the State Records Act 1998). [s25(a)&(b)]
- 17.2.3 The Department of Education and Training is not required to comply with this Information Protection Principle if the individual to whom the information relates has expressly consented to the Department not complying with the principle. [s26(2)]
- 17.2.4 The Department of Education and Training is not required to comply with this Information Protection Principle if in respect of health information where the individual's consent or, in the case of a student enrolled at a government school, the parent or caregiver of the student cannot reasonably be obtained and the disclosure is made to an authorised health worker. [s28(2)]
- 17.2.5 This Information Protection Principle does not prevent or restrict the disclosure of information by the Department of Education and Training to another public sector agency administered by the same Minister for the purpose of informing the Minister about a matter under that administration, or to a disclosure to an agency administered by the Premier for the purpose of informing the Premier. [s28(3)]