

A Guide for NSW Non-Government Schools on Reporting, Disclosing or Exchanging Personal Information for the purposes of Child Well-being

1. INTRODUCTION

1.1 Legislation in New South Wales sets out a regime under which schools may be required or permitted to disclose the personal information of students, their families, employees and volunteers to others. The legislation also sets out circumstances in which a school may request another school (or other prescribed body) to provide them with information relating to the safety, welfare or well-being of a student or students including personal information.

1.2 The relevant legislation addressed in this Guide is:

- *Children and Young Persons (Care and Protection) Act 1998 (CYP Act)* see sections 2, 4 and 8;
- Part 5A of the *Education Act 1990* (Health and Safety risks of schools arising from student behaviour) see section 3;
- Part 5 of the *Education Act 1990* (Attendance of children at school) see section 9;
- *Child Protection (Working With Children) Act 2012 (WWC Act)* see sections 4, 5 and 6; and
- Part 3A of the *Ombudsman Act 1974 (Ombudsman Act)* see section 7.

Some of the legislation refers to a child or young person. This Guide refers to 'child' or 'children' to encompass both concepts.

1.3 The Federal *Privacy Act 1988 (Privacy Act)* and the Australian Privacy Principles (APPs) contained in the *Privacy Act* put in place various rules governing the collection, use, disclosure, security, quality and correction of personal information. The legislation in New South Wales will generally override the provisions of the *Privacy Act*. However, this does not mean that the privacy of students or of other people about whom information relates can be disregarded. Careful consideration needs to be given before disclosing a person's personal information to ensure it is being provided in circumstances contemplated by the relevant New South Wales law. The various Catholic Diocesan Offices and the Association of Independent Schools of N.S.W. have officers who can assist schools to determine where it is necessary or appropriate to disclose or collect personal information of others.

1.4 This Guide examines each piece of legislation to provide guidance to a school's obligations and rights under New South Wales law. It should be read in the context of these laws providing exceptions to the general provisions relating to privacy which apply to schools and which are set out in some detail in the Privacy Compliance Manual for schools which can be accessed at:

- (a) <http://www.cecsw.catholic.edu.au/dbpage.php?pg=view&dbase=programs&id=39>; or
- (b) <http://www.aisnsw.edu.au>,

(Privacy Manual).

- 1.5 The legislation covers six situations:
- (a) where a school is required to report certain information of students;
 - (b) where a school is required to report certain information of employees;
 - (c) where a school may disclose information about students;
 - (d) where a school may disclose information about employees;
 - (e) where a school may seek information about students and prospective students; and
 - (f) where a school may seek information about employees and prospective employees.
- 1.6 The APPs place restrictions on the collection, use and disclosure of personal information. These are set out in detail in the Privacy Manual but in summary terms these include:
- personal information can be collected by a school if it is reasonably necessary for one of its functions or activities;
 - personal information that is sensitive information, such as health information, can only be collected with consent;
 - personal information can only be used or disclosed:
 - (i) for the primary purpose of collection; or
 - (ii) for a related (or directly related in the case of sensitive information) secondary purpose which is reasonably expected; and
 - disclosure is permitted when it is authorised or required under law.
- 1.7 In each of the situations referred to in paragraph 1.5, a school may be collecting or disclosing personal information which will only be permitted if such disclosure is authorised under the *Privacy Act* or under other legislation such as the Acts referred to in paragraph 1.2. If there is a conflict with a school's obligations under the *Privacy Act*, and State legislation, the State legislation will take precedence. If a disclosure is not authorised under the State legislation, care needs to be taken that the requirements set out in the *Privacy Act* are followed.
- 1.8 However, it is important to remember that the more general APPs will continue to apply even where a State legislation is in operation, and in particular:
- (a) the personal information collected must be protected from misuse, interference and loss, and unauthorised access, modification or disclosure;
 - (b) reasonable steps must be taken to ensure that the personal information collected is accurate, up-to-date and complete;
 - (c) government related identifiers must not be adopted unless the adoption is required or authorised by law;
 - (d) reasonable steps must be taken to correct personal information that is held about an individual if satisfied that the information is inaccurate, out-of-date, incomplete,

irrelevant or misleading, or if the person concerned requests for correction; and

- (e) potentially, the person concerned could obtain access to the information under APP 12 unless there are grounds set out in APP 12 which would justify refusing access (see section 15 of Privacy Manual).

2. ***CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) ACT – EXCHANGE OF INFORMATION UNDER CHAPTER 16A***

Overview

2.1 Under Chapter 16A of the *CYP Act*, schools and other prescribed bodies are permitted to request information relating to the safety, welfare or well-being of a child or children in order to assist the school or other prescribed body to:

- (a) make a decision, assessment or plan; or
- (b) initiate or conduct any investigation; or
- (c) provide any service relating to the safety, welfare or well-being of a child or children; or
- (d) manage any risk to a child or class of children.

A list of prescribed bodies is contained in paragraph 2.24.

2.2 If a school receives a request for information by a prescribed body, it must comply with the request if the school reasonably believes that the information requested may assist the requesting agency to:

- (a) make a decision, assessment or plan; or
- (b) initiate or conduct any investigation; or
- (c) provide any service relating to the safety, welfare or well-being of a child or children;
- (d) manage any risk to a child or class of children.

2.3 A school must not use information provided to it or disclose information which is not associated with the safety, welfare or well-being of a child or class of children to whom the information relates.

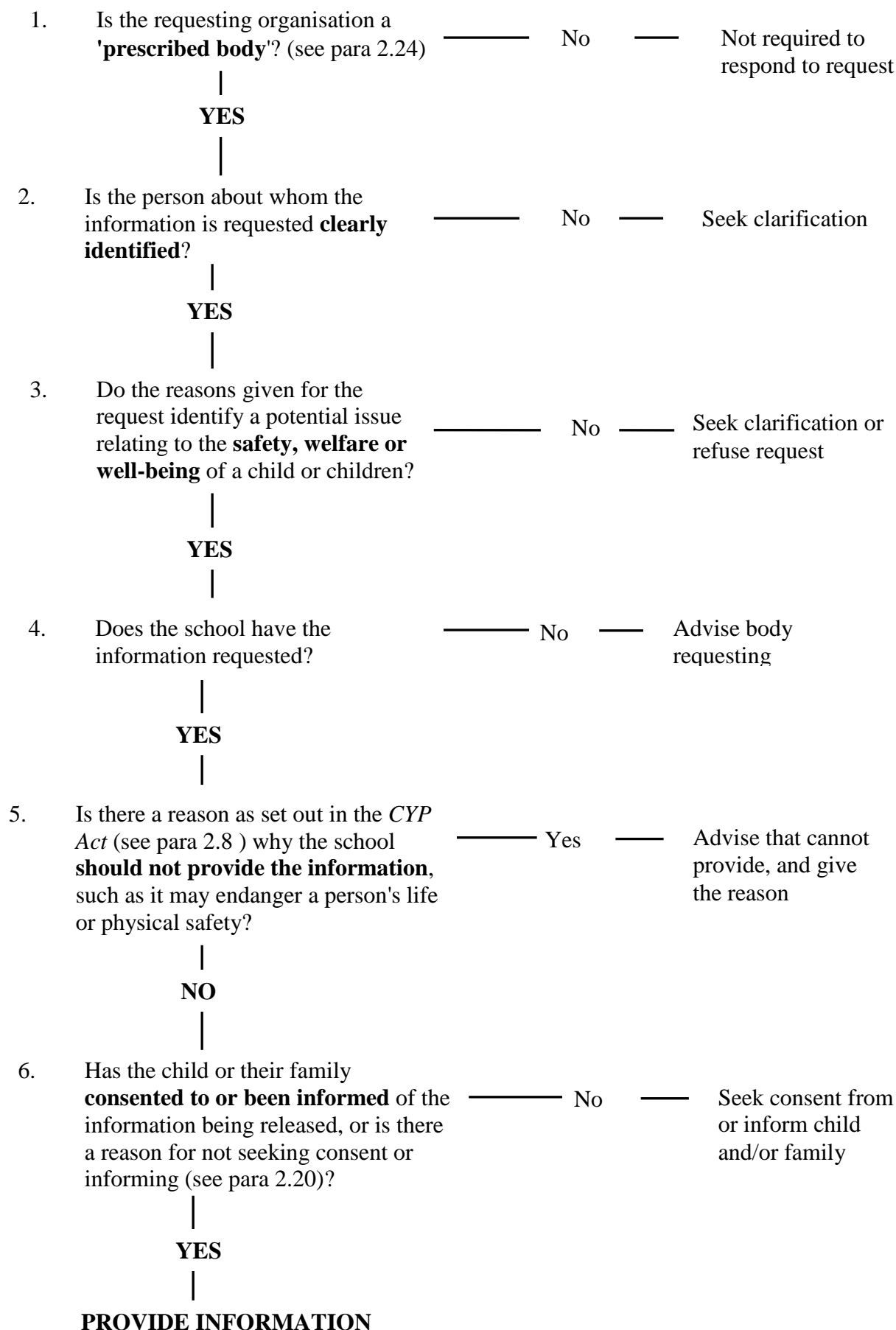
2.4 A school may also choose to provide this information to a prescribed body regardless of whether it has been requested to provide the information. An example may be where a school is aware that a child lives in a household where there are some domestic violence issues that have not met the threshold for reporting to the Department of Family and Community Services (**Community Services**). The school has a support/care plan in place for the child but the child is removed to another school. In the circumstances, the first school may consider it would assist the well-being of the child to pass on this information to the new school regardless of whether it is asked to do so.

2.5 Unlike the reporting provisions contained elsewhere in the *CYP Act*, it is not necessary for a risk of significant harm to a particular child or young person to be identified before the

information can be exchanged. However, at a minimum, general issues of safety, welfare or well-being of a child or children are required to be determined.

- 2.6 A flow chart to assist in determining how to deal with a request for information is set out on the next page.

Dealing with Requests under Chapter 16A of the Children and Young Persons (Care and Protection) Act



Interaction with other legislation

- 2.7 The *CYP Act* specifically provides that any other act or law (including the *Privacy Act*) that prohibits or restricts the disclosure of information does not operate to prevent the provision of information or a duty to provide information under the *CYP Act*. **This means that the duty to provide requested information relating to a child or class of children's safety, welfare or well-being will take precedence over confidentiality undertakings given to a student or employee or over an individual's right to privacy.**
- 2.8 Schools must comply with a request for information from a prescribed body if the school believes that the information requested may assist the school in the assessment of the child's safety, welfare or well-being of the child or children to whom the information relates, regardless of any agreement to the contrary. However, schools may refuse to provide requested information if the school reasonably believes that the provision of the information would:
- (a) prejudice an investigation of any breach (or possible breach) of any law, a coronial inquest or inquiry;
 - (b) prejudice care proceedings;
 - (c) contravene legal professional or client legal privilege;
 - (d) enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained;
 - (e) endanger a person's life or physical safety;
 - (f) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a breach (or possible breach) of a law; or
 - (g) not be in the public interest.
- 2.9 It is important to remember:
- (a) some information relating to the working with children clearances of current and prospective employees will be obtainable through the *Child Protection (Working With Children) Regulation 2013* (see section 5 below); and
 - (b) a school has a separate ability to obtain information about students and prospective students under Part 5A of the *Education Act* (see section 3 below).
- 2.10 Where an organisation collects personal information about an individual the APPs require that the organisation must take '*reasonable steps*' to ensure that the individual is aware of certain matters, including any laws that require the collection of the information and the fact that the individual can obtain access to the information. The Privacy Commissioner has indicated that there will be occasions when it is '*reasonable*' to take no steps to inform the individual of the personal information collected. Standard forms of collection notices contained in the Privacy Manual have been amended to make it clear that the school may collect this type of information. See the Standard Collection Notice at para 8.11.1 and the Employment Collection Notice at para 8.13.1.

Application

- 2.11 Before providing or requesting information under Chapter 16A of the *CYP Act*, the school must form a reasonable belief that the information requested or provided would be of assistance in relation to the safety, welfare or well-being of a child or class of children to whom the information relates.
- 2.12 The following scenarios illustrate potential situations where the provision of specific information could assist in protecting the safety, welfare or well-being of a child or children, and hence constitute a valid application of the *CYP Act*:
- (a) A child is expelled from a school for a violent act and appears to have an ungovernable temper. Informing the new school of the child's history would assist the new school to put a plan in place to manage the child and protect other children in the school. However see also commentary on Part 5A of the *Education Act* below;
 - (b) A child is removed from the school by parents and transferred to another school. The school believed that the child was suffering some trauma due to the child's home environment. Informing the new school of this belief would assist the new school to take this into account in looking after the child.
 - (c) A child who is new to the school is showing signs which may indicate difficulties at home. The school may wish to ask the previous school if they have any information which would assist in providing assistance to the child at the new school. The school may also contact other prescribed bodies to determine if any other agency has concerns or is working with the particular child.
 - (d) A child who is new to the school has visible bruises and abrasions. The school seeks clarification from the child as to how the injuries were caused. The child asserts the injuries were caused by an accident. If the school suspects the child may be at risk, they may wish to contact the child's previous school or other prescribed body to determine if the child is at risk of significant harm.
 - (e) Principal of X School has interviewed a prospective employee Y. Y is the preferred candidate. When the Principal X rings Y's current principal (Z), they are told that there has been an issue of concern about Y but due to privacy concerns, they can't say any more. Principal X is really keen to employ Y because they have been trying to get a teacher for this faculty for many months. The WWC screening has not raised any concerns. Principal X has grounds to seek information from Principal Z because Y may be a risk to children. Principal Z may only refuse to provide the requested information for the reasons set out in 2.8.
 - (f) Employee A has been at HUGS School since the beginning of 2009. A's current Principal B meets his former Principal C at a function. B says to C, 'I have A at my school. I believe you would know him.' C says to B, "I wish I didn't. He was never supposed to be in a school again.' C refuses to say anything else. Principal B may seek information from Principal C because Principal B now has possible grounds to suspect A may be a risk to children and needs to conduct a risk assessment. Principal C may only refuse to provide the requested information for the reasons set out in 2.8.

Employees

- 2.13 Under Chapter 16A, a school may also provide information about former employees, or request information relating to employment applicants if there is an existing concern that there may be a risk to the safety, welfare or well-being of a child, or request information relating to a current employee where the school is required to conduct an investigation or risk assessment.
- 2.14 If a school dismisses an employee, or an employee resigns, and the school reasonably believes that the former employee may present a risk to the safety, welfare or well-being of a child or class of children, any confidentiality agreement the school and the former employee entered into prohibiting the disclosure of the circumstances of that employee's termination will not have effect, to prevent the disclosure of that information if it is requested by another school or prescribed body. This is regardless of whether the agreement was entered into before or after the commencement of Chapter 16A of the *CYP Act*. It also includes an obligation to provide information to a new employer.
- 2.15 The situation may also arise where a school is employing a casual or part time teacher who works with children at other institutions and a serious issue relating to the safety, welfare or well-being of a child arises. In this case, the school may wish to advise those other institutions and/or seek information from them.
- 2.16 A school may also request information relating to an employee or potential employee from another school or other prescribed body if it believes that this will assist it to provide for the safety, welfare or well-being of its student/s. This should not be a routine inquiry but should only be made where there is a basis for concern.
- 2.17 An example would be:
- A school has employed a new teacher who appeared to be grooming a student. The school may wish to ask the school at which the teacher previously taught for any information which would assist the school to form a view about the conduct of the teacher and the risk to its pupils.
- 2.18 In fact, if an employee's employment in New South Wales had been terminated (or the employee had resigned) in circumstances where the previous school had found evidence that 'reportable conduct' had occurred then this should have been notified to the Office of the Children's Guardian, and been factored into the risk assessment when a working with children check was conducted (see Mandatory Reporting section 6 below).

Requesting information

- 2.19 The information requested could include information held on:
- (a) a child or young person's history or circumstances;
 - (b) a parent or other family member;
 - (c) people having a significant or relevant relationship with a child or young person or a group of children or young persons, such as a teacher, counsellor or bus driver, or
 - (d) the other agency's dealings with the child or young person, including past support or service arrangements, or with a teacher or other staff member that it previously

employed.

- 2.20 The Guidelines provided by the NSW government¹ (**Guidelines**) suggest that it is best practice to seek consent and/or inform a child or their family that information about them is being disclosed. However there are some circumstances in which a school would not seek consent or inform the child or their family about exchanging information, including where:
- (a) it may further jeopardise the child's safety, welfare or well-being;
 - (b) it could place yourself or another person at risk of harm; and/or
 - (c) the parent/carer is uncontactable and the matter is urgent.
- 2.21 If consent has not been obtained under one of these circumstances, it is suggested that the responding prescribed body should be advised of the relevant reasons.
- 2.22 When requesting information from a prescribed body, a school should:
- (a) identify the subject of the information request and (if it is not the child or young person) identify the subject's relationship to the child or class of children;
 - (b) make sure that the person who is the subject of the request is clearly identified so that there can be no mistake as to identity;
 - (c) explain how the request for information relates to the safety, welfare and well-being of the child or class of children;
 - (d) explain why the information will assist it to make a decision, assessment or plan, or to initiate or conduct an investigation, or to provide any service, or to manage any risk to the child or class of children;
 - (e) provide a background to the request, including whether or not consent has been requested and where it has not, why the agency should not inform a child, young person, parent or employee that the information has been requested (for example, safety concerns);
 - (f) indicate the time period for which the information is sought (e.g. for the last six months) and the type of information sought;
 - (g) advise of the time frame for providing the information, giving the agency a realistic time frame within which to notify, unless the information is required for court proceedings where a more limited time frame may be required; and
 - (h) contact the providing organisation by phone before making the request to discuss needs and ensure the request is well targeted (i.e. ask for the relevant information and avoid requesting all files/documents).

¹ NSW Interagency Guidelines website: <http://www.community.nsw.gov.au/kts/guidelines/info-exchange/provide-request>

Protection

- 2.23 Where a school provides information in good faith under Chapter 16A of the *CYP Act*, it cannot be liable for any civil or criminal action, or be held to be in breach of any code of conduct or professional ethics.

Other prescribed bodies

- 2.24 Schools may request information, or receive requests for information, from other prescribed bodies in New South Wales for the purposes of Chapter 16A of the *CYP Act*, including, amongst others:
- (a) the NSW Police Force;
 - (b) a State government department or a public authority such as NSW Health, Department of Education and Communities, Department of Human Services NSW and Community Services;
 - (c) a government school or a registered non-government school;
 - (d) a public service agency or a public authority;
 - (e) a TAFE establishment;
 - (f) a public health organisation;
 - (g) a private health facility;
 - (h) an accredited adoption service provider;
 - (i) an organisation registered or accredited for the purpose of arranging the provision of out-of-home care;
 - (j) any other organisations the duties of which include direct responsibility for, or supervision of, the provision of healthcare, welfare, education, children's services, residential services or law enforcement, wholly or partly to children.

For any additional information, updates on the list of prescribed bodies, and forms of letters seeking and providing information, go to the Community Services website at: <http://www.community.nsw.gov.au/kts/guidelines/info-exchange/provide-request>

3. PART 5A OF *EDUCATION ACT* – HEALTH AND SAFETY RISKS ARISING FROM STUDENT BEHAVIOUR

- 3.1 Part 5A of the *Education Act* provides that a school can request a relevant agency to provide it with information about a student or prospective student to:
- (a) assess whether the enrolment of the student is likely to constitute a risk (because of the behaviour of the student) to the health or safety of any person (including the student); and
 - (b) to develop strategies to eliminate or minimise such risk.
- 3.2 A school may seek this information from other schools, the Department of Education and Communities, school system authorities and certain other named bodies. A school may

also disclose this information to other schools, the Department of Education and Communities, school system authorities and certain other name bodies. A school may also disclose this information to another school without the need for a request.

- 3.3 Where a request is made to a school, it must supply this information if it is within the school's possession or control except where precluded by guidelines made under the *Education Act* or in some other limited circumstances.
- 3.4 If the information is provided in good faith and with reasonable care, a school will not incur liability, for defamation or other civil proceedings nor will it be a breach of professional etiquette or ethics.
- 3.5 The Minister has made Guidelines under the *Education Act* in relation to general principles to be followed when exercising a function under the *Education Act*, of what may constitute a risk to the health or safety of any person and certain other matters which must be followed.
- 3.6 The purpose of the provisions is to identify students with a propensity to violent behaviour and, if a risk is identified, to engage in strategies to minimise that risk. The guidelines indicate that violent behaviour can include any behaviour that seriously interferes with the physical or psychological health, safety and well-being of staff and students.
- 3.7 The Guidelines are available at:

<https://www.det.nsw.edu.au/media/downloads/legislation/mhsguidelines.pdf>

4. CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) ACT - DIRECTIONS TO SHARE INFORMATION WITH COMMUNITY SERVICES UNDER SECTION 248

- 4.1 In circumstances where a request for information by Community Services under Chapter 16A has been declined by a school, and further discussions have been unable to reach a mutually acceptable solution, Community Services may consider issuing a direction under section 248.
- 4.2 A section 248 direction for information made by Community Services must relate to the safety, welfare and well-being of a child or young person. This may include concerns about the current effects of past abuse on a child or young person, such as risk-taking and self-harming behaviour.
- 4.3 Section 248 of the *CYP Act* also allows Community Services to disclose personal information to schools.
- 4.4 Where a school is given a direction under section 248 by Community Services, it is required to promptly comply with that direction. This provision will override any privacy laws or requirements not to disclose personal information without consent.

5. *CHILD PROTECTION (WORKING WITH CHILDREN) ACT – REQUESTS TO OBTAIN INFORMATION UNDER SECTION 25*

- 5.1 Each person who engages in child-related work (except those who are exempt), including school employees, must obtain a working with children check clearance from the Children's Guardian under the *WWC Act*.
- 5.2 Section 25 of the *WWC Act* requires Children's Guardian to establish a working with children register that may be made publicly available in certain circumstances.
- 5.3 Under regulation 23 of the *Child Protection (Working With Children) Regulation 2013* a school may request from the Children's Guardian the following information about an employee or a prospective employee contained in the working with children register:
- (a) the application number of any application for a clearance;
 - (b) their current clearance status; and
 - (c) the number, class and expiry date of their clearance.

6. *MANDATORY REPORTING – CHILD PROTECTION (WORKING WITH CHILDREN) ACT*

Obligation to provide information to Children's Guardian under section 31

- 6.1 Under section 31 of the *WWC Act*, the Children's Guardian may request a person, including a non-government school in New South Wales, to provide the Children's Guardian with a statement setting out certain information relevant to an assessment of whether a person poses a risk to the safety of children for the purposes of the working with children check.
- 6.2 The information will generally be of a kind relevant to determining an application for a working with children check clearance or an assessment of an applicant or the holder of a clearance. As a working with children check clearance is valid for a five-year period, it will be most relevant to schools in relation to their former and current employees whose clearances are due to expire.
- 6.3 Where a school is given a written notice of a request under section 31 by the Children's Guardian, it is authorised to provide the Children's Guardian with the information requested.

Obligation to provide information to the Children's Guardian under section 35

- 6.4 Section 35 of the *WWC Act* requires reporting bodies, including organisations of dioceses of the Catholic Church in NSW, to notify the Children's Guardian of the name and other identifying particulars of any child-related worker against whom the reporting body has made a finding that the worker has engaged in the following types of conduct:
- (a) sexual misconduct committed against, with or in the presence of a child, including grooming of a child; or
 - (b) any serious physical assault of a child.

- 6.5 Although only findings of the above types of misconduct is required to be reported under section 35, the Ombudsman may report to the Children's Guardian other misconduct which has been reported to it under Part 3A of the *Ombudsman Act* (see section 7 below).
- 6.6 The information for reporting bodies provided by the Office of the Children's Guardian² states that schools must investigate allegations of such conduct in order to make an informed finding as to whether or not the conduct occurred. To determine whether or not the conduct meets the criteria, schools must consider the nature of the conduct itself and the context in which it occurred.
- 6.7 Where the Children's Guardian makes a written request to a school, the school must provide copies of records of allegations, investigations and findings concerning the subject of the notification. Such records must be kept by the school for a period of at least 30 years, or until the records are given to the Children's Guardian.
- 6.8 A notification provided under section 35 may be amended or withdrawn if:
- (a) the finding that is the subject of the notification is quashed, withdrawn or amended;
 - (b) there is an error in the notification or a finding that is the subject of the notification;
 - (c) the notification is otherwise wrongly made; or
 - (d) the person that is the subject of the notification dies.
- 6.9 Schools which make a notification under this section, or amend or withdraw a notification provided under this section, must, as soon as practicable after doing so, give written notice to the employee who is the subject of the relevant notification, amendment or withdrawal.
- 6.10 Any information obtained by the Children's Guardian under section 35 may be used for the purposes of making a report to the Secretary of Community Services under section 24 (Report concerning child or young person at risk of significant harm) or 27 (Mandatory reporting) of the *CYP Act*.

7. MANDATORY REPORTING – OMBUDSMAN ACT

- 7.1 Part 3A of the *Ombudsman Act* requires the heads of certain agencies, including non-government schools in New South Wales, to notify the New South Wales Ombudsman of the following:
- (a) all allegations of 'reportable conduct', or reportable convictions, against an employee;
 - (b) whether the school proposes to take any disciplinary or other action and the reasons why the school intends to take or not take any such action; and

² *Information for reporting bodies: Reporting certain misconduct involving children*, available on: http://www.kidsguardian.nsw.gov.au/ArticleDocuments/183/Reporting_certain_misconduct_involving_children_April2014.pdf.aspx?Embed=Y

- (c) any written submissions made to the head of the school concerning the allegation or conviction that the employee concerned wished to have considered.
- 7.2 The Ombudsman may monitor or review the school's investigation or in certain circumstances may decide to investigate a matter directly.
- 7.3 Reportable conduct is defined as:
- (a) any sexual offence or sexual misconduct, committed against, with or in the presence of a child - including a child pornography offence or an offence involving child abuse material within the meaning of the NSW crimes legislation;
 - (b) any assault, ill-treatment or neglect of a child; or
 - (c) any behaviour that causes psychological harm to a child,
- whether or not, in any case, with the consent of the child.
- 7.4 Reportable conduct does not extend to:
- (a) conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards; or
 - (b) the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures; or
 - (c) conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA.
- 7.5 A reportable conviction is a conviction, in NSW or elsewhere, of an offence involving reportable conduct.
- 7.6 According to the Fact Sheet provided by the Ombudsman³, heads of non-government schools must:
- (a) set up systems within their organisation to ensure that they are advised of any allegations of reportable conduct against their employees; and
 - (b) notify the Ombudsman as soon as possible and no later than thirty days after being made aware of an allegation.
- 7.7 The school must provide the Ombudsman with (among other things):⁴
- (a) details of the allegation(s) or conviction(s);

³ *Child protection: Responsibilities of heads of agencies:*

https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0020/3665/Child-Protection-Responsibilities-heads-agencies-Jan14.pdf

⁴ *Notification form Part A:*

http://www.ombo.nsw.gov.au/__data/assets/pdf_file/0007/4201/Notification_Form_PART-A_Dec15.pdf;

Notification form Part B:

http://www.ombo.nsw.gov.au/__data/assets/pdf_file/0008/4202/Notification_Form_PARTB_Jan15.pdf.

- (b) details of the employee the subject of allegation;
- (c) details of the alleged victim(s);
- (d) details of the investigation (including whether a risk assessment was conducted and a copy of that assessment);
- (e) the findings of the investigation;
- (f) interim action taken or proposed in respect of the reportable allegation(s); and
- (g) copies of relevant material available at the time of notification (including records of interview, memoranda, emails, file notes of conversations, and copies of correspondence to/ from persons or agencies); and
- (h) details of whether the Children's Guardian has been notified.

7.8 The information provided under these provisions cannot be accessed by other people, including new employers, but the individual may be able to access their own records. However, the Ombudsman may disclose certain information to the Children's Guardian for the purposes of the exercise of functions under the *WWC Act* (see section 6). This may include (amongst other things):

- (a) information about an employee of the school that the Ombudsman believes may cause that employee to be disqualified, or be subject to an assessment requirement under, the *WWC Act*; and
- (b) information about reports of investigations into reportable conduct by the Ombudsman or the school.

8. MANDATORY REPORTING - SECTION 27 OF THE *CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) ACT*

8.1 Under the *CYP Act*, mandatory reporting where current concerns exist for children at risk of significant harm applies to persons who:

- (a) in the course of their employment, deliver services including health care; welfare, education, children's services and residential services, to children; or
- (b) hold a management position in an organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of services including health care, welfare, education, children's services, and residential services, to children.

8.2 Such persons must, where they have reasonable grounds to suspect that a child is at a risk of **significant** harm, report to Community Services as soon as practicable, the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm.

8.3 The Mandatory Reporter Guide⁵ states:

⁵ Available at:

'A child or young person is at risk of significant harm if the circumstances that are causing concern for the safety, welfare or well-being of the child or young person are present to a significant extent.

What is meant by 'significant' in the phrase 'to a significant extent' is that which is sufficiently serious to warrant a response by a statutory authority irrespective of a family's consent.

What is significant is not minor or trivial, and may reasonably be expected to produce a substantial and demonstrably adverse impact on the child or young person's safety, welfare or well-being.

In the case of an unborn child, what is significant is not minor or trivial, and may reasonably be expected to produce a substantial and demonstrably adverse impact on the child after the child's birth.

The significance can result from a single act or omission or an accumulation of these.'

- 8.4 The Guide also incorporates a Structured Decision-Making System that may assist schools in assessing whether a child may be at risk of significant harm.
- 8.5 The grounds for mandatory reporting that a child may be at risk of significant harm which are especially pertinent to schools include instances of:
- (a) educational neglect. Parents or carers have not made proper arrangements and are unable or unwilling for their child to receive an education or the child is an habitual absentee; and
 - (b) cumulative impact. A series of acts or omissions incidents, when viewed together, may establish a pattern of risk of significant harm.
- 8.6 The information provided under these provisions cannot be accessed by other people, including other schools. An exception to this is where the disclosure of reporter information can be made to law enforcement agencies (such as Police) investigating a serious offence against a child (or where a reporter gives their consent for their name to be released).
- 9. MANDATORY REPORTING – SECTION 22A OF THE *EDUCATION ACT***
- 9.1 The *Education Act* provides that a school may provide information to the Department of Education and Communities solely for the purpose of assisting the Secretary of the Department of Education and Communities to ascertain:
- (a) the age, identity or whereabouts of a child who is not receiving compulsory schooling (or an alternative to compulsory schooling); and
 - (b) the reason why they are not receiving compulsory schooling.
- 9.2 The *Education Act* also provides that a school must provide this information if it is

requested by the Secretary of the Department of Education and Communities.

- 9.3 If the information is provided in good faith, a school will not incur liability, for defamation or other civil proceedings nor will it be a breach of professional etiquette or ethics.
- 9.4 The information provided under these provisions cannot be accessed by other people including other schools.

10. FURTHER INFORMATION

- 10.1 Further information about reporting or exchanging personal information, including reporting templates, reporting guidelines and updated information about prescribed bodies can be accessed at Community Services' website at:
<http://www.community.nsw.gov.au/preventing-child-abuse-and-neglect>