



**Australian
Privacy
Foundation**

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Carmel Tebbutt, MP
Minister for Education & Training
NSW Government
Parliament House

Fax (02) 9228 5366 and minister@det.nsw.edu.au

Education Legislation Amendment Bill 2006 – an unjustified threat to privacy

Dear Minister

We urge you to withdraw Schedule 1, Clause [5] of the above Bill, as it will result in unjustified intrusion into the privacy of thousands of individuals and families in NSW.

These provisions, ostensibly addressing a problem involving a relatively small number of violent children, amount to a wholly disproportionate authorisation for exchanges of personal information, including sensitive health information, about any family with children in the NSW Education system, without consent.

The provisions directly undermine the privacy protection that would normally be provided, albeit imperfectly, by the State's own *Privacy and Personal Information Protection Act 1998* and *Health Records and Information Privacy Act 2002*, and the federal *Privacy Act 1988*.

Section 26B is not limited to 'violent behaviour', and therefore authorises the secretive transfer of any information in relation to a very broad concept of 'risk to the health or safety of any person', without any effective scrutiny or safeguards. This can include information that may be out-of-date or irrelevant, and even of baseless or prejudicial opinions.

We are particularly concerned that the number and type of persons to whom information can be disseminated within schools or education agencies are not limited. Thus inadequate or poor quality information may find itself in the hands of people who do not need to know, both within schools and within education agencies. For example, records may contain a mother or father's personal details, information about their marital state, employment, criminal record etc., dissemination of which should be closely guarded, and would be if privacy principles were to apply.

The Memoranda and Guidelines mechanisms (ss 26 J & K) under which the Director-General has total discretion in determining the nature and level of safeguards, are clearly inadequate as a substitute for the operation of information privacy laws. We argue that the provisions are in any case unnecessary and certainly not urgently required. This is because DET's current enrolment form already asks parents to consent to information transfers *where risk has been identified*.

Further, we understand that the DET's own legal advice which they have circulated to staff in their Legal Issues Bulletin No 40 supports the view that DET already have the power to request information from other sources even without parental consent *in cases involving violent behaviour*. There is for example an exemption already under privacy law for the use or disclosure of personal information where it is necessary to lessen or prevent the risk of serious and imminent threat to any person.

Even if a case can be made for some changes, there is a statutory mechanism available that is far more appropriate than this blanket exemption from the normal operation of privacy principles. The privacy legislation in NSW permits the creation of Privacy Codes of Practice that give effect to targeted exemptions from the requirements of the privacy legislation where those exemptions are required in the public interest. We understand the NSW Privacy Commissioner recommended the use of a Code of Practice in this particular case.

We understand that the NGOs *People with Disability Australia* and *Family Advocacy* have identified other problems with the Bill which include potential discrimination arising from the almost unlimited information exchanges which are authorised. While we have not had time to analyse these concerns in detail, they do appear to illustrate the many and varied adverse consequences for individuals, and families, which could flow from the proposed regime.

Yours faithfully

David Vaile

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About the Australian Privacy Foundation

The Australian Privacy Foundation is the leading non-governmental organisation dedicated to protecting the privacy rights of Australians. We aim to focus public attention on emerging issues which pose a threat to the freedom and privacy of Australians.

Since 1987 the Australian Privacy Foundation has led the defence of the rights of individuals to control their personal information and to be free of excessive intrusions. We use the Australian Privacy Charter as a benchmark against which laws, regulations and privacy invasive initiatives can be assessed.

For further information about us see www.privacy.org.au