

**Submission
No 1**

INQUIRY INTO STUDENTS WITH A DISABILITY OR SPECIAL NEEDS IN NEW SOUTH WALES SCHOOLS

Organisation: Privacy Commissioner of New South Wales

Date received: 16 September 2016



office of the
privacy
commissioner
new south wales



Director
General Purpose Standing Committee No. 3
Parliament House
Macquarie Street
SYDNEY NSW 2000

Our reference: **IPC16/A000256**

via- email to: Ms Teresa McMichael
gpscno3@parliament.nsw.edu.au

14 SEP 2016

Dear Director

Submission to inquiry into the provision of education to students with a disability or special needs in government and non-government schools in New South Wales

I write to provide you with my submission to the Legislative Council's inquiry into the provision of education to students with a disability or special needs in government schools in New South Wales.

The purpose of my submission is to highlight the importance of the United Nations Convention on the Rights of Persons with Disability (CRPD) and its relevance in the complaints mechanism for students with disability.

The importance of the CRDP

The CRPD is the first international instrument specifically dedicated to disability within the context of human rights. It contains two documents, the human rights provisions, and the Optional Protocolⁱ. Australia is a signatory country and it has ratified both, the convention and the Optional Protocol in July 2008 and in 2009 respectively.

Australia's ratification of CRPD means that it accepts the obligation to recognise the fundamental rights of individuals with disabilities. An important feature of the convention is that includes specific rights of privacy under Article 22:

Article 22 Respect for privacyⁱⁱ

- 1. No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.*



2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

Therefore, the importance of the CRDP is relevant to this enquiry as it recognises the protection of rights such as the respect to privacy of students with disabilities.

The relevance of the CRPD in the privacy complaint mechanisms within the NSW school systems

Parents and Carers concerned with how the Public and Private schools collect, use and disclose the personal and health information of students are provided with mechanism to complaint and review the conduct of public and private schools under the following statutes:

- the *Privacy and Personal Information Protection Act 1998* (PIIP Act),
- the *Health Records and Information Privacy Act 2002* (HRIP Act), and
- The *Privacy Act 1988*.

The Department of Education is the public sector agency responsible for conducting internal reviews when there are concerns a public school has breached privacy principles under the PIIP Act or/and HRIP Act.ⁱⁱⁱ

I have an oversight role during internal reviews conducted by the Department. This includes the power to make submissions on any relevant matters during the review or when applicants seek external review in the NSW Civil and Administrative Tribunal.^{iv}

Under the *Privacy Act 1998*, the Australian Privacy Commissioner handles complaints allegations of privacy breaches relating to the personal information of private sector school students.

I also have the power to deal with privacy allegations of breaches relating to health information under Part 6 of the HRIP Act in some circumstances.^v

I consider that private sector schools, public sector schools and the Department of Education can observe the CRPD as a policy objective. This will enhance the protection of privacy rights of students with disabilities in two spheres:

1. Proactive and preventive measures to avoid privacy breaches, and
2. Within the complaint and review mechanisms in the NSW school system.

This will enable more consistency between privacy legislation and the CRPD principles.

I am happy to assist the Standing Committee further with any questions raised by this submission.

I agree to this submission being published, should the Committee decide to publish submissions. Please ensure that prior to the publication of this letter that my signature is redacted from the version to the published.

Yours sincerely

Dr Elizabeth Coombs
Privacy Commissioner

14/9/16

ⁱ The Protocol discusses an individual complaints procedure. *Optional Protocol on the Rights of Persons with Disabilities*, opened for signature on 30 March 2007, A/RES/61/106 Annex II, (entered into force on 21 August 2009)

ⁱⁱ *The United Nations Convention on the Rights of Person with Disability*, opened for signature on 30 March 2007, A/RES/61/106, (entered into force on 16 August 2008) Art 22

ⁱⁱⁱ The *Privacy and Personal Information Act 1998* (NSW) Part 5 section 53

^{iv} Ibid section 53 (5) & 55 (6)

^v I have jurisdiction to deal with health privacy complaints that is concurrent with the Federal Privacy Commissioner's jurisdiction where the respondent:

- Provides a health service irrespective of the size of the enterprise, or
- Where a non-health service provider holds health information with an annual turnover of more than three million