

19 May 2016

Ms Kirsten Law
Manager
Legislative Policy, Strategic Policy & Legislation Branch
Strategy, Policy & Planning Division
Department of Health
Queensland Government
147-163 Charlotte Street
Brisbane QLD 4000

Dear Kirsten,

RE: CONFIDENTIAL – PROPOSED AMENDMENTS TO THE PUBLIC HEALTH ACT 2005

About Queensland Independent Schools

Queensland independent schools comprise non-government schools that are not part of the Catholic school system. Independent schools cater for students from varied socio-economic backgrounds and educate more than 119,000 students at 194 schools across more than 200 campuses, representing 15 per cent of all Queensland school students, and nearly 20 per cent of secondary students in the state. Five independent schools offer distance education to more than 3,000 students while 34 member schools cater for over 4,000 boarding students, comprising 69% of all boarding students attending non-government schools in Queensland.

Independent Schools Queensland has the following comments on the draft proposal to amend the Public Health Act 2005.

An amendment to the Public Health Act 2005 to enable schools to share information to improve the uptake of the school immunisation and school dental program would require an examination of the Australian Privacy Act 2008. Independent schools in Queensland are covered under the *Privacy Act 1988 (Cth)* and *Privacy Amendment (Enhancing Privacy Protection) Act 2012*.

This legislation requires the information collected to be used for the purposes for which it was intended (provision of education) and for a secondary purpose which is related to the primary purpose and which the individual would reasonably expect. Health information is defined as “sensitive information” under the Act and has special requirements around privacy and disclosure. It is not clear that disclosure of information for the purposes of immunisation and oral health care would be seen as a secondary purpose which is ‘directly related and reasonably expected’.

While under this legislation, independent schools may be able to disclose information about the student without consent when required to by legislation under the Australian Privacy Principals

(AAP) 6.2(b) this may not cover information previously collected by the school prior to a change in the Public Health Act. It should also be considered that the address and contact details of the parent/guardian of the student would not be covered under the secondary disclosure provisions and may be a breach of the privacy of the parent/guardian.

The submission uses a variety of terms to relate to students- 'secondary students', 'children' and 'adolescents'. It is important that there is a consistency of language as it may effect who schools can disclose information about and from whom consent may be required. The Australian Privacy Act 1988 does not specify an age at which individuals can make their own privacy decisions, however, the courts have ruled that a young person has capacity to consent when they have sufficient understanding and maturity to understand what is being proposed and that an individual of the age of 15 should be capable of giving consent.

We would seek clarification around the use of the word "authorise" in respect to a principal disclosing student information to the approved immunisation provider. A principal cannot disclose information if it is contrary to the Australian Privacy Act, even if it is "authorised". We note that there is capacity for a principal to refuse disclosure when it is considered in the child's best interests. We would also seek clarification on whether it is proposed that schools would disclose information about all students to immunisation and/or oral health service providers and on what basis would that be legally able to be disclosed? Or will immunisation and/or oral health service providers send the consent form initially to schools with the school still sending the initial consent form out to students? As well, given that the immunisation providers and the oral health providers are often different organisations, what is the expectation on schools to provide this information multiple times to a variety of immunisation and oral health providers?

The proposal also indicates that the providers will be required to protect all information under the *Information Privacy Act 2009*. However, independent schools are required to comply with ensuring the protection of data under the Australian Privacy Act 1988. We would request clarification about the security and privacy of data should it be disclosed to providers.

At this time, Independent Schools Queensland has respected the confidentiality of the proposed amendments. If these proposed amendments were to progress, we would want to undertake consultation with our member schools to gain a more complete response as to the impact and issues that the proposed amendments might have at the independent school level.

We appreciate being asked to comment at this early stage and would be very happy to be included in any further consultation on the matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Robertson', with a stylized flourish at the end.

David Robertson
Executive Director