



Commissioner for Children and Young People  
Western Australia

**All enquiries**

Telephone: [REDACTED]

Email: [REDACTED]

Our reference: 19/6819

Public Sector Reform Unit  
Department of the Premier and Cabinet  
Locked Bag 3001  
WEST PERTH WA 68472

Attn: Public Sector Reform Unit

**Privacy and Responsible Information Sharing for the Public Sector**

Thank you for the opportunity to provide input into the Western Australian Government's consultation regarding future privacy and information sharing arrangements for the State's public sector. As Commissioner for Children and Young People in Western Australia I have a statutory responsibility under the *Commissioner for Children and Young People Act 2006 (WA)* to monitor and promote the wellbeing of all children and young people under the age of 18 years. In undertaking these responsibilities, I must give priority to Aboriginal and Torres Strait Islander children and young people and those who are vulnerable or disadvantaged for any reason. I must also have regard for the United Nations Convention on the Rights of the Child (UNCRC).

Issues to consider when developing privacy and information sharing legislation for WA

Most children and young people in Western Australia will have had some form of personal information relating to them collected by the State Government. This will have primarily occurred as a product of accessing or coming into contact with government services such as health, education, child protection, disability services or youth justice (amongst others). As a result, the State Government bears responsibility for ensuring a significant volume of information about children and young people is safely stored and disclosed only to appropriate parties for appropriate purposes.

Article 16 of the UNCRC states that no child shall be subjected to arbitrary or unlawful interference with their privacy, and that children have the right to the protection of the law against such interference. According to the UNCRC Implementation Handbook published by the

United Nations Children's Fund (UNICEF)<sup>1</sup>, privacy rights such as these require legislation ensuring that:

- Children and young people know of the existence of information stored about them;
- Children and young people know why this information is stored and who controls it;
- Children and Young People have access to their records, whether stored manually or electronically;
- Children and young people are able to challenge and, if necessary, correct the content of their information (if necessary, through recourse to an independent body); and
- There are limitations placed on who else has access to the information stored about a child or young person.

The UNICEF Implementation Handbook goes on to state that, in addition to the legislative safeguards above, children should know who else has access to the information stored about them.

Article 12 of the UNCRC should also inform the development of Western Australia's privacy and information sharing legislation. Article 12 requires State Parties to ensure a child who is capable of forming their own views the right to express those views freely in all matters affecting them, and for appropriate weighting to be given to those views based on the child's age and maturity. In practice, this creates an obligation on adults to provide children and young people with sufficient information to form a view, to listen to children's views, and to take those views into account to an appropriate degree. Western Australia's future privacy and information sharing legislation should therefore be drafted in such a way as to accommodate a case-by-case approach for children and young people where the consent of an individual is required for the collection or disclosure of personal information.

Poorly designed privacy laws, policies and practices have the potential to negatively impact the willingness of children and young people to seek assistance or raise issues that are concerning them, and may undermine their confidence in the people, systems and services they rely on. Similarly, unnecessary constraints on information sharing can prevent children and young people from receiving the supports and services that will best meet their needs. It will therefore be important for the Public Sector Reform Unit to consult directly with children and young people, as well as relevant government service providers, to ascertain how to best design and implement State privacy legislation that appropriately balances the need to respect and protect the privacy of young people (particularly those who have experienced trauma) versus the need for support services to efficiently and effectively act in the best interests of children and young people to prevent future harm or detriment. The *Involving Children and Young People Participation Guidelines* available on my website<sup>2</sup> will assist in the development of an

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<sup>1</sup> Hodgkin R & Newell P, *Implementation Handbook for the Convention on the Rights of the Child* (2007) p209

<sup>2</sup> Available at <https://www.cyp.wa.gov.au/media/1479/report-participation-guidelines-october-2009.pdf>

appropriate and effective consultation process for seeking the views of children and young people on these matters.

I would also draw your attention to the recommendations contained in Volume 8 of the Royal Commission into Institutional Responses to Child Sexual Abuse's Final Report. These recommendations specifically address recordkeeping and information sharing in institutional settings, and in broad terms seek to ensure relevant information is collected, monitored and shared in a manner that protects children and young people against the risk and impact of sexual abuse. As the Western Australian Government has accepted or accepted in principle all recommendations contained within Volume 8, it is critical that any future Western Australian privacy and information sharing reforms align with work being undertaken within the State and across Australia to ensure national consistency is maintained. Failure to do so may have significant consequences for the safety and wellbeing of children and young people both in Western Australia and in other States and Territories.

#### Role of the Privacy Commissioner

I note that the Discussion Paper identifies complaints handling as a potential role of the Privacy Commissioner. A child-friendly complaints mechanism will be a key element to ensuring a public sector privacy and information sharing scheme meets the State's obligations under Article 16 of the UNCRC. Additionally, the United National Committee on the Rights of the Child sees the provision of effective complaints procedures for children as integral to implementing Article 12 of the UNCRC.

In 2013 my office published *Are you Listening? Guidelines for making complaints systems accessible and responsive to children and young people*<sup>3</sup>. Six key elements of a child-friendly complaints system, identified through an analysis of feedback from children and young people and the best available evidence, are outlined in the Guidelines. Based on these elements, I believe the following should be incorporated into the design of any complaints handling responsibilities assigned to the Privacy Commissioner:

- Children and young people need to be recognised as users of the Privacy Commissioner's complaints system.
- Strategies to publicise the complaints system need to include a range of methods that will be effective in communicating with children and young people.
- The complaints system should be accessible to children. This should include making sure children and young people know who to make complaints to, how to make complaints, and have a variety of methods available to them for making complaints.

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<sup>3</sup> Available at <https://www.cyp.wa.gov.au/media/1414/report-are-you-listening-guidelines-for-making-complaints-systems-accessible-and-responsive-to-children-and-young-people-june-2013.pdf>

- The complaints system should be responsive to children and young people once they have made a complaint, and staff should receive appropriate training with regard to receiving and responding to complaints from children.
- Policies and procedures should address confidentiality and consent in relation to complaints made by children and young people. Staff will also need to receive appropriate training in implementing these policies and procedures.
- Appropriate data should be kept to enable reporting and monitoring and continuous improvement of the complaints system.

An effective and efficient child-friendly complaints mechanism that contains the design features listed above will empower children and young people to seek timely resolution of concerns they have regarding the storage and use of their personal information by the State Government. Such a mechanism will also facilitate continuous improvement of the privacy and information sharing scheme itself.

#### Supporting the implementation of privacy and information sharing legislation

Children and young people need to be active participants in the promotion, protection and monitoring of their rights. The successful implementation of privacy and information sharing legislation will require recognition by government agencies of children and young people as stakeholders whose views are to be sincerely sought and considered. Appropriate whole-of-government training and recruitment strategies will ensure the public sector workforce possesses the skills, respect and empathy required to effectively engage with children and young people.

Meaningful consultation at an agency level will allow implementation strategies to be designed that take into account the varying needs and abilities of children and young people. The participation guidelines referred to previously in this submission will assist with the development of such agency-specific consultation strategies. Potential areas of focus for consultations should include concerns children and young people currently have regarding the agency's information collection, storage and sharing practices, how to avoid embedding barriers in policies and practices that will prevent children and young people from exercising their rights over their personal information, and how to best educate children and young people they support about the implications of any new privacy and information sharing laws.

Thank you for the opportunity to make a contribution to this consultation process. I am happy to discuss any aspect of my comments in further detail if required.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Colin Pettit', written in a cursive style.

COLIN PETTIT

Commissioner for Children and Young People WA

31<sup>st</sup> October 2019