



29 September 2020

Professor Joseph A Cannataci
UN Special Rapporteur on the Right to Privacy
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson
52 rue des Pâquis
CH-1201 Geneva, Switzerland

By email: srprivacy@ohchr.org

Dear Professor Cannataci

A BETTER UNDERSTANDING OF PRIVACY: CHILDREN'S RIGHT TO PRIVACY

I welcome this opportunity to provide comments in relation to the privacy rights of children. The following comments are provided to assist in your consideration of this issue.

The Information and Privacy Commission NSW (IPC) oversees the operation of information access and privacy laws in the state of New South Wales (NSW). As the NSW Privacy Commissioner, I have responsibility for overseeing and advising NSW public sector agencies on compliance with the *Privacy and Personal Information Protection Act 1998* (PIIP Act) and the *Health Records and Information Privacy Act 2002* (HRIP Act). The PIIP Act and HRIP Act establish the Information Protection Principles and Health Privacy Principles which govern the collection, use and disclosure of personal and health information by NSW government agencies, and, in the case of the HRIP Act, private sector health care providers.

NSW privacy laws contain provisions that are relevant to children and privacy. Section 9 of the PIIP Act supports the autonomy of young people over 16 years of age, by allowing public sector agencies to collect personal information directly from people over the age of 16 years. Privacy rights of children are balanced with child protection considerations under the *Children and Young Persons (Care and Protection) Act 1998* (Care Act). Chapter 16A of the Care Act takes precedence over privacy laws, including the PIIP Act and the HRIP Act, and allows agencies working with children and families to exchange information relating to a child or young person's safety, welfare or wellbeing in certain circumstances.

As Privacy Commissioner, I am regularly approached by NSW public sector agencies for comments on projects with privacy implications. Recent examples of projects on which I have been consulted, which had implications for children and privacy, include federal online safety legislation, and an integrated birth certificate project in NSW, which provides adopted people with the choice to use a birth certificate that includes information on their birth parents, as well as their parents and siblings after they have been adopted.

I have increasingly been monitoring the use of new forms of technology and the impact on citizens' privacy, especially in the context of the COVID-19 pandemic. This includes circumstances where technology is being used to support remote learning in the education sector. I have engaged with the NSW Department of Education and the university sector to better understand how different types of technology are being used and to reiterate the importance of ensuring that students' personal information is collected and handled in a way that protects their privacy and complies with relevant laws.

I hope that these comments will be of assistance. Please do not hesitate to contact me if you have any queries. Alternatively, your staff may contact Ananya Nandakumar, Senior Project Officer, on +61 2 9372 7887 or by email at ananya.nandakumar@ipc.nsw.gov.au

Yours sincerely



Samantha Gavel
Privacy Commissioner