



POLICY STATEMENT:

This policy outlines Ballarat Grammar's policy on its uses and management of personal information. The School is bound by the Australian Privacy Principles contained in the *Privacy Act 1988(Cth)* and will annually review this Privacy Policy to take account new laws and the changing school environment.

DEFINITIONS:

Sensitive Information- means information relating to a person's racial or ethnic origin, political opinions, religion, trade union or other professional or trade association membership, sexual preferences or criminal record, that is also personal information; and health information about an individual.

Personal Information- means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not. (s6 *Privacy Act 1988(Cth)*)

Health Information- means information relating to medical records, disabilities, immunisation details, individual health care plans, counselling reports, nutrition and dietary requirements.

Serious Harm- could include serious physical, psychological, emotional, economic and financial harm, as well as serious harm to reputation and other forms of serious harm that a reasonable person in the school's position would identify as a possible outcome of the data breach. The Explanatory Memorandum also emphasises that though individuals may be distressed or otherwise upset at an unauthorised access to or unauthorised disclosure or loss of their personal information, this would not in itself be sufficient to require notification unless a reasonable person in the school's position would consider that the likely consequences for those individuals would constitute serious harm.

DETAIL:

1. Type of Information

- 1.1 Ballarat Grammar collects and holds personal, sensitive and health information regarding:
 - 1.1.1 Students and parents and/or guardians ('Parents') before, during and after the course of a student's enrolment at the School;
 - 1.1.2 Job applicants, staff members, volunteers and contractors; and
 - 1.1.3 Other people who come into contact with the School.
- 1.2 This information is collected by the following means:
 - 1.2.1 Parents, students or members of the school community completing forms, attending face to face meetings, interviews and telephone calls.
 - 1.2.2 In some circumstances the School may be provided with personal information about an individual from a third party, for example a report provided by a medical professional or a reference from another school.





- 1.3 In some cases where the School requests personal information about a student or Parent, if the information requested is not obtained, the School may not be able to enrol or continue the enrolment of the student.

Please note: Under the Privacy Act 1988(Cth) the Australian Privacy Principles do not apply to an employee record. As a result, this Privacy Policy does not apply to the School's treatment of an employee record, where the treatment is directly related to a current or former employment relationship between the School and an employee.

2. Use of Information

- 2.1 The School will use personal, sensitive and health information it collects from you for the primary purpose of collection, and for other related secondary purposes which might reasonably be expected, or to which you have consented.
- 2.2 The purpose in which the School may collect personal, sensitive and/or health information include but are not limited to:
- 2.2.1 enabling the School to provide ongoing education and pastoral care for students
 - 2.2.2 fulfilling our legal obligations regarding our duty of care and child protection obligations;
 - 2.2.3 keeping Parents informed about matters related to their child's schooling, through correspondence, newsletters and magazines;
 - 2.2.4 day-to-day administration;
 - 2.2.5 marketing, promotional and fundraising activities;
 - 2.2.6 supporting the activities of school associations such as Old Grammarians;
 - 2.2.7 supporting community-based causes and activities in connection with the School's functions or activities;
 - 2.2.8 assisting the School improve its daily operations;
 - 2.2.9 school administration including insurance purposes;
 - 2.2.10 looking after students' educational, social and medical well-being; and
 - 2.2.11 seeking donations and marketing for the School.
- 2.3 The School may collect personal information regarding job applicants, staff members and contractor for the primary purpose of assessing and (if successful) to engage the applicant, staff member or contractor, as the case may be. This personal information may be used for the following purposes:
- 2.3.1 in administering the individual's employment or contract, as the case may be;
 - 2.3.2 for insurance purposes;
 - 2.3.3 seeking funds and marketing for the School;
 - 2.3.4 to satisfy the School's legal obligations, for example, in relation to child protection legislation.
- 2.4 The School may also collect personal information regarding direct or indirect volunteers who assist the School in its functions or conduct associated activities, to enable the School and the volunteers to work together and maintain its commitment to a child safe environment.

3. Disclosure of Personal Information

- 3.1 The School may disclose personal information, including sensitive information, held about an individual to:
- 3.1.2 another school;





- 3.1.3 government departments;
- 3.1.4 medical practitioners;
- 3.1.5 people providing services to the School, including specialist visiting teachers and sports coaches;
- 3.1.6 recipients of School publications, like newsletters and magazines;
- 3.1.7 Parents; and
- 3.1.8 anyone to whom you authorise the School to disclose information.

4. Sensitive Information

- 4.1 Sensitive information will be used and disclosed only for the purpose for which it was provided or a directly related secondary purpose, unless you agree otherwise, or the use or disclosure of the sensitive information is allowed by law.

5. Management and security of personal information

- 5.1 The School's staff are required to respect the confidentiality of students' and Parents' personal information and the privacy of individuals.
- 5.2 The School has in place steps to protect the personal information the School holds from misuse, loss, unauthorised access, modification or disclosure, by various methods including locked storage of paper records, campus security and password access to computerised records.
- 5.3 If you would like further information about the way the School manages the personal information it holds, please contact the Headmaster's Personal Assistant.

6. Requesting Personal Information

- 6.1 Under the Privacy Act 1988(Cth), an individual has the right to obtain access to personal information which the School holds about them and to advise the School of any perceived inaccuracy. There are some exceptions to this right set out in the Act.
- 6.2 Students will generally have access to their personal information through their Parents, but older students may seek access themselves.
- 6.3 To make a request to access any information the School holds about you or your child, please contact the Headmaster's Personal Assistant in writing.
- 6.4 The School may require you to verify your identity and specify what information you require. The School may charge a fee to cover the cost of verifying your application and locating, retrieving, reviewing and copying any material requested. If the information sought is extensive, the School will advise the likely cost in advance.

7. Right of Access

- 7.1 Generally, the School will refer matters relating to the personal information of a student to the student's Parents.
- 7.2 The School will treat consent given by Parents as consent given on behalf of the student and notice to Parents will act as notice given to the student.
- 7.3 Parents may seek access to personal information held by the School about them or their child by contacting the Headmaster's Personal Assistant. However, there will be occasions when access is denied. Such occasions would include where release of the



information would have an unreasonable impact on the privacy of others, or where the release may result in a breach of the School's duty of care to the student.

- 7.4 The School may, at its discretion, on the request of a student grant that student access to information held by the School about them or allow a student to give or withhold consent to the use of their personal information, independently of their Parents. This would normally be done only when the maturity of the student and/or the student's personal circumstances so warranted.

8. Privacy Breaches

- 8.1 Commencing 22 February 2018, changes to the *Privacy Act 1988*(Cth) make it compulsory for schools to notify specific types of data breaches (Notifiable Data Breaches or NDBs), to individuals affected by the breach, and to the Office of the Australian Information Commissioner (OAIC). A data breach occurs where “personal information held by an agency or organisation is lost or subjected to unauthorised access, modification, disclosure, or other misuse or interference.”
- 8.2 This requirement applies to all non-government schools, unless they have a revenue of less than \$3 million and they do not provide a health service.
- 8.3 Not all data breaches will be NDBs. A NDB is defined as a data breach that is likely to result in serious harm to any of the individuals to whom the information relates. Serious harm could include serious physical, psychological, emotional, economic and financial harm, as well as serious harm to reputation.
- 8.4 Not all instances of unauthorised access or use of personal information will come under the mandatory reporting regime. The Privacy Act refers to an “eligible data breach”, while the OAIC uses the term NDB on its website.
- 8.5 Under the Act a data breach must be notified where:
- 8.5.1 there is unauthorised access to, or unauthorised disclosure of, personal information; and
 - 8.5.2 a reasonable person would conclude that the access or disclosure would be likely to result in serious harm to any of the individuals to whom the personal information relates.
- Or
- 8.5.3 Personal information is lost in circumstances where
 - 8.5.3.1 unauthorised access to, or unauthorised disclosure of, the information is likely to occur; and
 - 8.5.3.2 assuming that unauthorised access to, or unauthorised disclosure of, the information were to occur, a reasonable person would conclude that the access or disclosure would be likely to result in serious harm to any of the individuals to whom the information relates.

Examples of a data breach which may meet the definition of an eligible data breach include when: a device containing a member of the school community's personal information is lost or stolen e.g. a laptop; a database containing personal information is hacked; or personal information is mistakenly provided to the wrong person.

9. Notifiable Data Breach Procedure

- 9.1 Where an eligible data breach is suspected or believed to have occurred the School:





- 9.1.1 Carries out a risk assessment in the event that an eligible data breach is suspected which involves;
- 9.1.1.1 assessing whether there are reasonable grounds to believe that the relevant circumstances amount to an eligible data breach. This must be as prompt and efficient as practicable in the circumstances; and
 - 9.1.1.2 taking all reasonable steps to ensure that the assessment is completed within 30 days after becoming aware of the breach.
- The School may undertake a risk assessment where an individual has made a complaint in relation to the security of personal information and the school suspects that an eligible data breach may have occurred, but further information is required to ensure the criteria of an eligible data breach is met. If the risk assessment reveals that an eligible data breach has occurred, the school then follows the notification requirements under the Act and notifies both the OAIC and if practicable, the individual/s affected.
- 9.1.2 Prepares a statement of prescribed information regarding an eligible data breach that is believed to have occurred;
- 9.1.2.1 The statement includes the following:
 - 9.1.2.1.1 the identity and contact details of the school;
 - 9.1.2.1.2 a description of the eligible data breach that the school has reasonable grounds to believe has happened;
 - 9.1.2.1.3 the kind(s) of information concerned; and
 - 9.1.2.1.4 recommendations about the steps that individuals should take in response to the eligible data breach that the school has reasonable grounds to believe has happened.
 - 9.1.2.2 If the school believes that another entity regulated by the Act is involved in the eligible data breach, the Statement must include information about the other entity or entities.
- 9.1.3 Submits the statement to the OAIC as soon as practical after the School becomes aware of the eligible data breach; and
- 9.1.4 Takes all reasonable steps to contact all affected individuals or those individuals at risk of being affected directly or indirectly by publishing information about the eligible data breach on publicly accessible forums.
- 9.1.4.1 The reasonable steps will involve considerations regarding time, effort or cost of notification.
 - 9.1.4.2 The School will publish a statement on its website.

10. Complaints handling and Australian Privacy Principles (APP) breaches

- 10.1 The APPs require the School to take such steps as are reasonable in the circumstances to implement practices, procedures and systems relating to the School's functions or activities that will enable it to deal with enquiries or complaints about its compliance with the APPs.
- 10.2 Any complaints received will be dealt with in accordance with the School's Handling of Complaints Policy.
- 10.3 If the complainant does not believe the complaint was adequately dealt with by the School, that person may make a further complaint to the Privacy Commissioner and seek advice regarding any such complaint from the Privacy Hotline on 1300 363 992. Once referred to the Privacy Commissioner the complaint will be dealt with by way of conciliation or by means as deemed appropriate by the Privacy Commissioner.





11. Legal Proceedings

- 11.1 Ballarat Grammar recognises that it is an offence to destroy or interfere with any document that is reasonably likely to be required in evidence in a legal proceeding.
- 11.2 As 'reasonably likely' is not a defined expression, the School acknowledges that each category needs to be individually assessed.

12. General

- 12.1 The School endeavours to ensure that the personal information it holds is accurate, complete and up-to-date. A person may seek to update their personal information held by the School by contacting the Headmaster's Personal Assistant of the School at any time.
- 12.2 The Australian Privacy Principles require the School not to store personal information longer than necessary.
- 12.3 Any complaints in relation to the School's privacy management will be handled as per the School's Complaints Policy.
- 12.4 In relation to consent and young people the School follows the guidance from the Association of Independent Schools, as outlined in Annexure 'A'.





Annexure 'A'

Consent and young people

(specific guidance from the Association of Independent Schools)

The Privacy Act does not distinguish between adults and children and thus clearly envisages that young people are to be afforded rights in respect of their privacy. However, the APPs do not differentiate between children of different ages and thus it is difficult to determine when it is appropriate to seek consent from students.

In relation to consent and young people, the APP Guidelines provide as follows:

The Privacy Act does not specify an age after which individuals can make their own privacy decisions. An APP entity will need to determine on a case-by-case basis whether an individual under the age of 18 has the capacity to consent.

As a general principle, an individual under the age of 18 has capacity to consent when they have sufficient understanding and maturity to understand what is being proposed. In some circumstances, it may be appropriate for a parent or guardian to consent on behalf of a young person, for example, if the child is young or lacks the maturity or understanding to do so themselves.

If it is not practicable or reasonable for an APP entity to assess the capacity of individuals under the age of 18 on a case-by-case basis, the entity may presume that an individual aged 15 or over has capacity to consent, unless there is something to suggest otherwise. An individual aged under 15 is presumed not to have capacity to consent.

The Australian Law Reform Commission (ALRC) also considered the issue of consents by children and young people and recommended that the Privacy Act should be amended to provide that where an assessment of capacity to provide consent 'is not reasonable or practicable' an individual of the age of 15 or over should be capable of giving consent and a person under that age should be presumed not to be capable of giving consent.

The ALRC also noted that people with parental responsibility had some authority to make decisions on behalf of their children who lacked capacity if it was part of a duty to provide for their welfare but did not suggest that such authority extended to all situations.

In approaching the issue of privacy for Schools it is important to remember that the underlying arrangement between the School and parents is contractual. Parents are engaging the School to provide schooling for their child on the terms agreed by the parties. The School's authority over the child derives from the contract with the parents and its duties at law.

A parent is recognised by the common law as having the right to make decisions concerning the child's education and to bring up their child in the religion of their choice. In all States and Territories the age of majority is 18 years. For these reasons, one approach would be for the School to adopt the view that in many circumstances, the contract with the parents will govern their relationship with the child in relation to privacy, and thus consents given by parents will act as consents given on behalf of the child and notice to parents will act as a notice given to the child.



However, this approach will not be appropriate in all circumstances. A School should recognise that young people do have rights under the Privacy Act and in some circumstances it would be appropriate to seek consents from them, particularly when they are aged 15 or over, as indicated by the APP Guidelines and ALRC. No doubt in most cases decisions whether to seek information or consents from students or from parents is likely to follow current practices. Thus, for example, where a student puts his or her name down to take part in a team, the student would usually be impliedly consenting to it being disclosed to a relevant party to enable him or her to compete. As a student reaches greater maturity, the more important it will become to consider whether a parent should be asked for consent or the student. Hopefully in most cases common sense will provide the answer.

For example, in most cases it would be appropriate for the School to collect from a mature student personal (and sensitive) information about the student gained through an interview with the student. Also, there will be many instances throughout a student's schooling where it would be impracticable and inappropriate to first obtain a parent's consent when collecting personal information from a student (eg. during day to day classroom activities). In respect of collecting personal information about students from parents, it is suggested that it is sufficient if parents are given a collection notice informing them of the requirements set out in APP 5.2, then students do not have to be specifically informed.

Another potential concern is that students may attempt to claim a right to prevent disclosure of personal information to a parent, such as their School report. The 'standard collection notice' seeks to overcome this by informing parents that the School will disclose personal information about a student to the student's parents. If a student attempted to restrict disclosure of personal information (such as a School report) to a parent, it is reasonably clear that this would be a permitted purpose as being a related purpose to the purpose for which the information was collected. This does not prevent the School exercising its discretion to restrict disclosure of the personal information.

Particular issues may arise in the context of information provided to staff members, including counsellors, by students 'in confidence' that is, where the student has asked or expected the staff member not to disclose it. One factor when considering how to deal with such situations will be the age and capacity of the students to provide or refuse consent.

