



STATEMENT OF REASONS FOR APPROVAL OF WAIVER UNDER SECTION 157(4) OF THE INFORMATION PRIVACY ACT 2009

Background

The Duke of Edinburgh's Award (**Award**) is an internationally recognised venture focused on the advancement of young people aged 14 to 25 through challenge, adventure and achievement.

The State of Queensland entered in a three-year license agreement (**National Licence**) with the Duke of Edinburgh's Award In Australia, which is an Australian company limited by guarantee to run the Award in Queensland. The National Licence runs to 30 June 2015.

In turn, the State of Queensland has licensed over 150 operators (**Licensed Operators**) to deliver the Award program to approximately 8,000 young people. The Licensed Operators utilise the services of over 600 volunteers

To date the Award was administered through the Department of Communities, Child Safety and Disability Services (**DCCSDS**). On 1 July 2013, administrative responsibility was transferred from DCCSDS to the Department of Education Training and Employment (**DETE**).

Application by DCCSDS

Administration of the Award necessarily involves the collection, storage use and disclosure of personal information of Award participants and the coordinators, directors and volunteers associated with the Licensed Operators (**personal information holdings**). In order for DETE to effectively administer the Award these personal information holdings would necessarily need to be transferred from DCCSDS to DETE. This transfer would qualify as a 'disclosure' under section 23(2) of the *Information Privacy Act 2009* (**IP Act**).

On 27 June 2013, DCCSDS applied to the Information Commissioner under section 157(1) of the IP Act for an approval to waive its obligation to comply with Information Privacy Principle 11 (**IPP 11**) for the purpose for transferring the personal information holdings connected with the administration of the Award to DETE. IPP 11 sets out limits on disclosure of personal information.

Law

Under section 157(2) of the IP Act the Information Commissioner can, by gazette notice, give an approval that waives or modifies an agency's obligation to comply with the privacy principles. The Commissioner can give an approval if she is satisfied



that the public interest in the agency's compliance with the privacy principles is outweighed by the public interest in waiving or modifying the agency's compliance.¹

While an approval is in force, the affected agency does not contravene the privacy principles if it acts in accordance with the approval.

Public interest in compliance with the privacy principles

The primary objectives of the IP Act are to provide for the fair collection and handling of personal information in the Queensland public sector and to provide access and amendment rights for that personal information.² The privacy principles set out in the IP Act establish the framework for dealing with personal information so that the objectives of the Act can be met.

Accordingly, compliance with the privacy principles serves the public interest because their application contributes to the fair collection and handling of personal information in the Queensland public sector.

Public interest in non-compliance with the privacy principles

The Award has the laudable aim of enabling young people, regardless of location or circumstance to explore their potential and to develop leadership, self-understanding, confidence and optimism.

The State of Queensland has committed to administering the Award until 30 June 2015. The National Licence does not require the Award be run through any particular government agency. In order for DETE to administer the Award, it will require access to the personal information holdings. IPP 11 does not easily allow for the transfer of personal information holdings between departments. IPP 11(1)(b) would allow for the transfer of an individual's personal information between departments where the individual has expressly or impliedly agreed to the transfer.

The Acting Information Commissioner is satisfied that giving approval to DCCSDS for waiver of its obligation to comply with IPP 11 will enable the transition of the administration of the Award from the Department to DETE insofar as:

- it is not practicable given the available time and resources required to contact all the relevant individuals connected with the Award and obtain their express consent
- it would remove any uncertainty as to whether all the relevant individuals would impliedly agree to the transfer of their personal information

The Acting Information Commissioner also noted that the transfer is limited in scope and of a one-off nature.

Public interest balancing test

The term 'public interest' refers to considerations affecting the good order and functioning of the community and governmental affairs for the well-being of the

¹ Section 157(4) of the IP Act.

² Section 3 of the IP Act.



public.³ When considering the public interest in relation to an Act, the Act's purpose and objects are relevant.⁴

Decision

The Information Commissioner has the authority under the IP Act to give approvals of waivers and modifiers.

Having carefully weighed the important obligations set out for Queensland government agencies in the IP Act, against a strong public interest advanced in this case for non-compliance with IPP 11, the Acting Information Commissioner considered that it is in the public interest that the State of Queensland continue to administer the Award. .

Accordingly, the Acting Information Commissioner has decided to give the Department an approval of waiver on the following terms:

- the waiver is for the obligations in Information Privacy Principle 11 only
- the waiver applies to the personal information holdings relevant to the Award only
- the waiver has effect until the transfer of the personal information holdings is concluded .

The approval was gazetted on 5 July 2013.

³ OIC Guideline, 'Public interest balancing test – Section 49' at section 2.4, available at <http://www.oic.qld.gov.au/right-information-guidelines>.

⁴ *O'Sullivan v Farrer* (1989) 168 CLR 210 per Mason CJ, Brennan, Dawson and Gaudron JJ at 217 citing *Water Conservation and Irrigation Commission (NSW) v Browning* (1947) 74 CLR 492 per Dixon J at page 505.